TAMÁS ANTAL: A HUNDRED YEARS OF PUBLIC LAW IN HUNGARY (1890–1990)

Dezső Szilágyi (1840–1901)
(Sculptor: Ede TELCS)

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TAMÁS ANTAL

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STUDIES ON THE MODERN HUNGARIAN CONSTITUTION AND LEGAL HISTORY

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TAMÁS ANTAL: A HUNDRED YEARS OF PUBLIC LAW IN HUNGARY (1890–1990)

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Abbreviations and Linguistic Information

CHL27–31	Chronicles of the Upper House (House of Lords) of the Hungarian Parliament (1927–1931) [*Az 1927. évi január hó 25-ére hirdetett országgyűlés felsőházának naplói*. Budapest, 1927–1931]
CHL92–96	Chronicles of the House of Lords of the Hungarian Parliament (1892–1896) [*Az 1892. évi február hó 18-ára hirdetett országgyűlés főrendi házának naplói*. Budapest, 1892–1896]
CHR27–31	Chronicles of the House of Representatives of the Hungarian Parliament (1927–1931) [*Az 1927. évi január hó 25-ére hirdetett országgyűlés képviselőházának naplói*. Budapest, 1927–1931]
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DK	*Délmagyarországi Közlöny* [South-Hungarian Daily Journal]
HNA	Hungarian National Archives [Magyar Országos Levéltár; MOL]
MJÉ	*Magyar Jogászegyleti Értekezések* [Essays of the Hungarian Jurist Association]
MRT	*Magyarországi rendeletek tára* [Official Collection of Hungarian Regulations]
OOR	Organizational and Operational Rules of the Council of Szeged
RGBl	*Reichsgesetzblatt für die im Reichsrate vertretenen Königreiche und Länder* [Official Collection of Austrian Imperial Acts and Decrees]
WHL27–31	Writings of the Upper House (House of Lords) of the Hungarian Parliament (1927–1931) [*Az 1927. évi január hó 25-ére hirdetett országgyűlés felsőházának irományai*. Budapest, 1927–1931]
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WHR87–92	Writings of the House of Representatives of the Hungarian Parliament (1887–1892) [*Az 1887. évi szeptember hó 26-ára hirdetett országgyűlés képviselőházának irományai*. Budapest, 1887–1892]
WHR92–96	Writings of the House of Representatives of the Hungarian Parliament (1892–1896) [*Az 1892. évi február hó 18-ára hirdetett országgyűlés képviselőházának irományai*. Budapest, 1892–1896]

The author calls the attention on the important differences between the use of human full names in the Hungarian and in the West and East European languages. The footnotes of the book contain the names of the Hungarian authors and editors in the form as they appear in the cited literature or other kind of source. Therefore the names in SMALL CAPITAL *are the family names (surnames) and the ones in normal type are the given names in the footnotes. In the main text of the papers – to make them easier to read – all the Hungarian names are written in the ordinary New-Latin, German, Anglo-Saxon and Slavic way: the first name is the given name and the second one is the surname of a concrete person.*

Preface and Historical Introduction

This book presents some of the focal questions of the Hungarian constitutional and legal history from the period between 1890 and 1990. This was the century of political, economic and international crises, which brought about a series of shocks throughout Europe, including Hungary. The author of the book does not intend to give a comprehensive picture of these times; instead, the readers can learn about them through some typical legal instruments. Accordingly, some questions of operation from the three historical periods: the late peace years of the Austrian-Hungarian dualism (1890–1914), the "Horthy era" between the two world wars (1919/20–1944) and the people's democratic state and legal system after the Second World War (1949–1989/90) are in the centre of investigations. The special events and laws of the 20th century revolutions (1918/1919, 1956) also the details of the short democracy of 1945–1948 are not under discussion here. In the interest of clarity, I am going to give a brief summary of the historical features of the three main periods.[1]

The *Austrian-Hungarian dualism* was a real union, that is the particular state relationship of two countries: the Austrian Empire and the Realm of Hungary from 1867 until 1918, in which both countries maintained their international legal sovereignty, but resulting from their common will, two important government activities – foreign affairs and military matters – and the financial matters required to maintain these were administered through common bodies (joint affairs ministries). In this way the Austro-Hungarian Monarchy was

[1] Unfortunately there are not many detailed pieces of work on the modern Hungarian history in foreign languages. The most recommended literatures are the following ones. Jörg K. HOENSCH: *A History of Modern Hungary, 1867–1986*. London–New York, 1988; C. A. MACARTNEY: *October Fifteen: A History of Modern Hungary, 1927–1945*. Edinburgh, 1956; Nathaniel KATZBURG: *Hungary and the Jews: Policy and Legislation, 1920–1943*. Jerusalem, 1981; *The Hungarian State: Thousand Years in Europe*. Editor: Gábor MÁTHÉ. The relevant chapters were written by Lajos IZSÁK, István KUKORELLI, Gábor MÁTHÉ, Barna MEZEY, Ferenc PÖLÖSKEI, János ZLINSZKY. Budapest, 2000, pp. 217–453; Lajos IZSÁK: *A Political History of Hungary, 1944–1990*. Budapest, 2002; Ferenc FEJTŐ: *Histoire des démocraties populaires*. Paris, 1952, further and augmented editions: *Histoire des démocraties populaires. 1. L'ère de Staline (1945–1952), 2. Après Staline (1953–1963)*. Paris, 1969, 1979, 1992, 1998, 2006 (Tel-Aviv, 1954; Firenze, 1955; Barcelona, 1971; New York–London, 1971; Köln, 1973; Tokyo, 1978; Budapest, 1991); *История Венгрии*. Том втарой и третий. Редакционная коллегия: Т. М. ИСЛАМОВ, А. И. ПУШКАШ, В. П. ШУШАРИН. Москва, 1972; József RUSZOLY: *Beiträge zur neueren Verfassungsgeschichte. (Ungarn und Europa)* = Ungarische Rechtshistoriker 3. Hrsg.: Barna Mezey. Budapest, 2009; István STIPTA: *Die vertikale Gewaltentrennung. (Verfassungs- und rechtsgeschichtliche Studien)* = Ungarische Rechtshistoriker 2. Hrsg.: Barna Mezey. Budapest, 2005; Gábor MÁTHÉ: *Die Problematik der Gewaltentrennung*. = Ungarische Rechtshistoriker 1. Hrsg.: Barna Mezey. Budapest, 2004.

actually more of a political than a public law phenomenon, since other government actions were exercised by both countries independently of each other. In this period, Hungary accomplished a parliamentary monarchy: the Acts of 1848 and the acts adopted after the Austrian-Hungarian Compromise (1867) established a bicameral Parliament, people's representation based first on property then on tax census, governance with public law and political responsibilities, and from 1869 an almost completely separate judicial branch of power, thereby realizing the 19th century East Central European model of the liberal, unitarian state. The golden age of the resulting capitalist economic and cultural development was at the end of the 1880s and at the beginning of the following decade. Then the internal social – public policy, demographic, ethnic and economic – tensions starting again at that time, coupled with the unfavorable international processes, broke the momentum, and these together with the Austrian crises swept along the Dual Monarchy into the First World War (July 1914 – November 1918). Finally, the historical Hungarian state crumbled away after the capitulation as a result of the bourgeois revolutions of 1918/19 and the continuous occupation.

The quarter of a century known as the *Horthy era* was the time of contradictions: the substantial territorial losses which were finalized in 1920, the political, ideological and economic difficulties afflicting the society after the revolutions and the state of war which ended only in the autumn of 1919 gave rise to limited bourgeois parliamentarism which, although much more centralized than formerly, continued to keep the legal institutions of dualism, and in the focus of which there was the new post of head of state: the governor elected instead of the king from February 1920. Governor Miklós Horthy and his Prime Ministers acted under the influence of the Entente forced path until 1932, followed by the German forced path, and the beneficial effects of public law and economic stabilization, which had almost been finished by 1929, were nearly immediately swept away by the imminent global economic crisis (1929–1933). In the shadow of the emerging Third Reich, the Hungarian governments subordinated everything to peaceful territorial revision, but that policy led Hungary not to the hoped-for goal but into the Second World War and anti-Semitism.

In 1946, the republic was proclaimed, but – as a result of the power vacuum and the expansionist Soviet foreign policy – the country was forced into the *people's democracy* declared in 1949 and the dictatorship of the proletariat. The *Soviet-style dictatorship* rejected the division of powers normatively and, in spite of the written state constitution, moved Hungary away from the parliamentary and democratic values and the freedom of market economy.

After the most difficult one and a half decades – the Stalin-faced "Rákosi era" and then the reprisals following the 1956 revolution and fight for freedom – the new economic mechanism introduced in 1968 and the more sophisticated solutions of public law breathed new life into the society. Still, it was only a sham people's democracy: Parliament formulated hardly any laws; the country was governed *de facto* by the Presidential Council elected from among its members and by the Council of Ministers responsible to the state party according to the party's decisions and direct influence, along the principles of "democratic centralism" and "socialist rule of law". This was warranted by the one-party system, the hierarchical council system, the complete lack of free elections, the continuous presence of the armed forces of the Soviet Union and the extensive activities of the secret services as well ("Kádár era"). After 1975 the economic upswing, "goulash socialism" came to a standstill and was followed by a decade of public indebtedness and "soft dictatorship": formally, the institutions were the same as before, but the inner circles of the society were made quite colourful by the newly-commenced autonomic movements. The democratic turn started in 1987 at the end of the international cold war and culminated in terms of public law in autumn 1989 and in spring 1990.

An epigrammatic thought of István Bibó, a democratic and moralist state philosopher, university professor, one of the icons of the 1956 Hungarian revolution could be quoted as a motto or rather as an ideological lesson of the one hundred years examined by the author: "Freedom as an abstraction is pointless in itself, and even as a general principle it makes sense only if it is born from the summation of the real freedoms of basic social units."[2]

I can recommend this richly annotated volume whole-heartedly to all the readers who are profoundly interested in the details of the constitutional and legal development of Hungary and Central Europe in the 19th and 20th centuries, or who would like to extend their knowledge and literature sources on the history of the peoples of the Carpathian Basin.

August, 2012, Novi Sad

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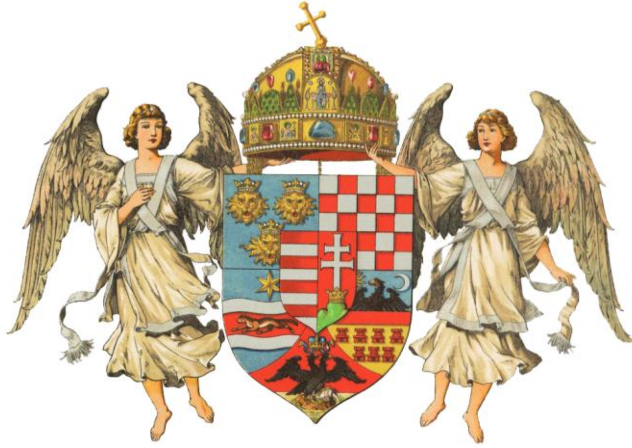
[2] *Bibó István egyetemi előadásai, 1942–1949*. [István Bibó's University Lectures, 1942–1949] Editor: DÉNES Iván Zoltán. Debrecen, 2004, p. 176.

Part I
Jurisdictional Reforms in Hungary
(1890–1914)



The arms of Hungary in the time of the Austro-Hungarian Dual Monarchy

The Codification of the Jury Procedure in Hungary

"I recognize no higher authority
Than the people – the people are my friends."
(Imre MADÁCH: *The Tragedy of Man*)

1. § Efforts towards the introduction of juries in the "Reform Era"

When areas outside the territory of the English common law are considered,[1] in German provinces and palatinates the criminal procedure with laymen was first regularised in modern history by *Constitutio Criminalis Carolina* (1532),[2] then constitutional reforms reached the Holy Roman Empire of the German Nation via the Rhineland principalities based on the bourgeois legal effects of the French Revolution (e.g. the principalities of Kurhessen, Württemberg, Baden, Braunschweig, Saxe-Weimar, Meiningen, Hannover, Hessen, Nassau, and also Bavaria, Prussia and Austria).[3] In France the criminal jury, subject to much subsequent difficulty and regulation, was introduced in 1791, and it was later adopted both by the *Code d' Instruction Criminelle* (1808) and by the

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[1] Ralph V. TURNER: *The Origins of the Medieval English Jury: Frankish, English or Scandinavian?* The Journal of British Studies, May 1968. Vol 7. No 2, pp. 2–6; BADÓ Attila: *Esküdtszéki ítéletek. Futni hagyott bűnösök?* [Verdicts. Offenders Being Let off?] Published by Studio Batiq, 2004, pp. 139–154.

[2] *Constitutio Criminalis Carolina* (CCC, 1532) was the achievement of the first extensive codification of criminal law and criminal procedure in the Holy Roman Empire led by Johann Freiherr von Schwarzenberg (†1528). Originally it was created for the whole Empire but in fact it was used only in a subsidiary way because territorial laws always had a primacy against the imperial law *(Kaiserrecht)*. R. LIEBERWIRTH, professor in Halle, wrote the following appreciation of the Code: „sie leitete eine neue Epoche der deutschen Strafrechtspflege ein; sie wurde zum Vorbild zahlreicher deutscher Territorialgesetze und damit zur Grundlage eines einheitlichen deutschen Strafrechts, das den Bedürfnissen der Zeit weitgehend entsprach. Auch in der Schweiz, in Holland und in Polen fand die Carolina Verbreitung. Erst das Zeitalter der Aufklärung ging in seinen strafrechtlichen Anschauungen über die Carolina hinaus" ['it introduced a new era in the development of German criminal law; it became the ideal of several German territorial acts and also turned to be the base of a unified German criminal law satisfying the needs of its age eminently. Its effect was spread even in Switzerland, in the Netherlands and in Poland. Carolina was superseded only during the time of Enlightenment with its new theories in criminal law']. In: Handwörterbuch zur deutschen Rechtsgeschichte (HRG), Hrsg.: Adalbert ERLER und Ekkehard KAUFMANN. Berlin, 1971, Vol 1, Columns 593–594. See also: *Die Peinliche Gerichtsordnung Kaiser Karls V. von 1532 (Carolina)*. Herausgegeben und erläutert von Gustav RADBRUCH und Arthur KAUFMANN. Stuttgart, 1991; *Die Peinliche Gerichtsordnung Kaiser Karls V. von 1532 (Carolina)*. Herausgegeben: Friedrich-Christian SCHROEDER. Stuttgart, 2000; *Strafrecht, Strafprocess und Rezeption: Grundlagen, Entwicklung und Wirkung der Constitutio Criminalis Carolina*. Herausgegeben: Peter LANDAU und Friedrich-Christian SCHROEDER. Frankfurt am Main, 1984.

[3] RÉSŐ ENSEL Sándor: *Az esküdtszék Magyarországon*. [The Jury in Hungary] Pest, 1867, pp. 127–128.

Code Pénal (1810), and then it was passed on to Belgium at the time of its foundation (1830).[4] In Europe the golden age of the criminal jury was in the second part of the 19th century: it spread to almost every "civilized state" with the exception of Spain and the Netherlands – even to Russia.[5] It is not surprising that Hungary was also affected by this development.

The idea of the introduction of the modern jury in Hungary was raised in the proposals of law reformers and liberal politicians only towards the end of the Reform Era.[6] Although jury trial was mentioned by István Széchenyi[7] in *Stádium* (1833), Ferenc Kölcsey[8] argued for a court organization adhering to the feudal nature – Hungarian personalities with decisive influence both in national and county political life supported the further maintenance of the traditional court organization at the beginning of the 1830s.[9] They all knew the

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[4] James M. DONOVAN: *Magistrates and Juries in France, 1791–1952*. French Historical Studies, 1999, Vol 22, No 3, pp. 379–420; RUSZOLY József: *Európa alkotmánytörténete. Előadások és tanulmányok középkori és újkori intézményekről*. [The Constitutional History of Europe: Lectures and Essays on Institutions of the Middle Age and the Modern Age] Budapest, 2005, pp. 270–272, 352–355.

[5] Samuel KUCHEROV: *The Jury as a Part of the Russian Judicial Reform of 1864*. American Slavic and East European Review, April 1950, Vol 9, No 2, pp. 77–90.

[6] The Reform Era means the first half of the 19th century in Hungary (1791–1848). In spite of the Austrian absolutism, the Hungarian liberal politicians and writers made important efforts to develop the country both legally and culturally. The Hungarian Parliament carried several bills which led Hungary towards the revolution and war of independence in 1848/49. This period contained a movement called "neology" as well, which aimed at the development and modernisation of the Hungarian language. These decades are important because of the raising of the national consciousness of the Hungarian people and essentially they are similar to the period called *Vormärtz* in Germany.

[7] István Széchenyi (1791–1860) was a politician and a member of the Hungarian Parliament during the Reform Era and he was the Minister of Transport in the first Hungarian Government in 1848. In the 1830s he wrote several monographs about the conditions of the Hungarian public law, economy and society. He offered his whole annual income for the establishment of the Hungarian Academy of Sciences in 1825. He led the construction of the first permanent bridge of Budapest called *Lánchíd* (Chain Bridge). After the revolution and the unsuccessful war of independence in 1848/49, he had to live in a sanatorium in Döbling near Wien (Vienna) until his suicide. *Stádium* was the title of his most important book ([Stadium] Leipzig, 1833) which contained his reform plans in twelve points. He also wrote a critical essay against the absolutism of the Habsburgs entitled *Ein Blick auf den anonymen Rückblick* in Döbling in 1859/60. Lajos Kossuth once called him "The Greatest Hungarian".

[8] Ferenc Kölcsey (1790–1838) was a poet and a liberal politician in the Hungarian Reform Era. He was a member of the feudal parliament between 1832 and 1838. He wrote the lyrics of the later Hungarian national anthem entitled *Himnusz* (Anthem) in 1823. This poem was set to music by the celebrated romantic composer Ferenc Erkel in 1844.

[9] BOTH Ödön: *Küzdelem az esküdtbíráskodás bevezetéséért Magyarországon a reformkorban és az 1848. április 29-i esküdtszéki rendelet*. [Struggle for Jury Jurisdiction in Hungary in the Reform Period (…)] Acta Juridica et Politica Szeged, Editors: BOTH Ödön and KOVÁCS István etc. Tomus VII. Fasc. 1, Szeged, 1960, pp. 5–7. Before the revolution in 1848 the system of Hungarian courts was very complicated. Every estate had courts for itself separated from each other according to their feudal liberties. BÓNIS György – DEGRÉ Alajos – VARGA Endre: *A magyar bírósági szervezet és per-*

necessity of modernization but they found it unachievable on account of the difficult economic, social and political conditions of the country. The change was brought about by the Twelve Points of Szatmár[10] in 1841, in which Antal Somogyi[11] and others demanded the introduction of trial upon indictment and the jury, in the case of the latter – similarly to the English model – both the grand jury and the trial (petty) jury. The establishment of a court of cassation was also proposed.[12] Following this, the reception of a court system modelled partly on the Anglo-Saxon example was encountered in an increasing number of delegate instructions,[13] until Bertalan Szemere,[14] in his work entitled *Utazás külföldön* (1840, *Journey Abroad*), openly acknowledged the superiority of the jury procedure over the Hungarian jurisdictional organization and procedure.[15] Lajos Kossuth[16] also supported the proposal for the use of juries in the col-

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jog története. [The History of the System of Courts and Procedural Law in Hungary] Zalaegerszeg, 1996, pp. 11–50, 82–155.

[10] The document called the *Twelve Points of Szatmár* was a kind of reform program containing demands formulated by the liberal *congregatio* (county court) of Szatmár county. They demanded constitutional and economic reforms in 1841, which were realized after the revolution in 1848. In fact these points contained the concrete program of the reform opposition (those who supported the radical reforms) for the first time.

[11] Antal Somogyi (1811–1885) was the main author of the Twelve Points of Szatmár mentioned above. He was a representative in the Hungarian Parliament in 1848 and 1849. He was a close friend of Ferenc Deák, the Minister of Justice in the first Hungarian Government. After the unsuccessful war of independence he emigrated like many others, and lived in Paris, in London and on the island of Malta. He returned to Hungary in 1868 but he did not enter politics again.

[12] RÁCZ István: *Az 1841. évi szatmári 12 pont*. [Twelve Points of Szatmár in 1841] Acta Universitatis Debreceniensis de Ludovico Kossuth Nominate, Tomus II, Budapest, 1955. See point No. 11 par No. 3, pp. 122–123.

[13] Delegate instructions *(instructiones)* were directives for the members of the first chamber of the feudal Hungarian Parliament created by the city councils and the county courts. These sources contained the official point of view of the electorates and the leadership of the counties and cities on the topics or the bills of the next meeting of the parliament. The delegates *(ablegatus)* were required to act on the orders of the instructions so they did not have the chance to vote independently from their electorates. See also note No. 22!

[14] Bertalan Szemere (1812–1869) was a politician, a lawyer and a writer. He travelled through Western Europe in the 1830s and examined the constitutional institutions of the modern states. He took part in the formulation of the Manifesto of Opposition in 1847. He was the Home Secretary of the first Hungarian Government in 1848 and the Prime Minister of the Hungarian Government in 1849 after accepting the Declaration of Independence (14th April 1849). Because of these activities he was sentenced to death while he was in exile, so finally he could return home only in 1865 after the general amnesty granted by King and Emperor Franz Joseph.

[15] SZEMERE Bertalan: *Utazás külföldön*. [Journey Abroad] Budapest, 1983, pp. 160–161.

[16] Lajos Kossuth (1802–1894) is one of the most important politicians in Hungarian history. He was a lawyer, a journalist, later a member of the Hungarian Parliament. He became the charismatic leader of the Hungarian reform opposition in the Reform Era. He was the Chancellor of the Exchequer in the first Hungarian Government; during the war of independence he acted as the president of the Homeland Defender Committee (it functioned as a quasi government and organized the defence of the country). After accepting the Declaration of Independence on 14th April 1849 – which meant the dethronement of the House of Habsburg – he was the “governor president” of Hungary. After the

umns of *Pesti Hírlap (Pest Print)*,[17] which declared – in line with the aim of achieving the freedom of the press – the fact that the civilization-establishing power of the jury and the free press was increasingly being recognised by an ever-wider range of intellectuals (e.g. Ferenc Pulszky,[18] Dániel Vay,[19] Lajos Kuthy;[20] the author of the anonymous pamphlet published in Leipzig entitled *Ungarn im Jahre 1841* recognised the importance of the jury and the free press, too).[21]

In the codification board of the Hungarian Parliament *(Magyar Országgyűlés)* appointed by Act V of 1840 – which contained in total more than fifty members from both of the chambers[22] – the adoption of the jury system in criminal

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tragic end of the war he left the country and emigrated to the west. He could never return home. In his further life he continued the political fight against the Habsburgs all over the world even in the United States of America. He created the utopian plans for a special confederation of Hungarians and other nations living in and around the Carpathian Basin. He did not accept the Compromise between Austria and Hungary in 1867. Although he went on campaigning against the Habsburg Dynasty consistently, his political view became superseded in Hungary and also abroad. He died in Torino, Italy. Although he was not really successful in exile and left the country in the last minutes of the lost war leaving the responsibility to others who were finally executed – like the first Prime Minister of Hungary, Lajos Batthyány (†1849) –, he became an emblematic person of the independence of the Hungarian state and he is still considered to be one of the greatest heroes of the Hungarian nation.

[17] Pesti Hírlap (Pest Print) was a journal published between 1841 and 1844. Its editor in chief was Lajos Kossuth and it was published for the first time on 2nd January 1841. This journal became the press of the radical opposition in the Reform Era, which published articles on several political and legal subjects and reform plans. It had a total number of 365 issues published.

[18] Ferenc Pulszky (1814–1897) was a reform politician, a traveller and an art-historian. He was the Undersecretary of State of Pál Eszterházy, Minister of Foreign Affairs in the first Hungarian Government (1848). Later he worked as the clerk for Lajos Kossuth in his western exile. After returning home he forsook Kossuth and joined the Deák Party, which supported the Compromise between Austria and Hungary. During the dual monarchy he was a member of the House of Representatives of the Hungarian legislature.

[19] Dániel Vay (1820–1893) was a liberal politician, an excellent orator and a member of the feudal Hungarian Parliament between 1843 and 1848. He was a journalist of Pesti Hírlap, too. After the war of independence he lived in Paris then he returned home and became the lord lieutenant (prefect) of Szabolcs county (1864–1867). Later he retired and did not take part in public life.

[20] Lajos Kuthy (1813–1864) was a writer and a lawyer. Before the revolution he was a clerk for the later Prime Minister Lajos Batthyány; he also worked for the Ministry of Home Affairs in the first Hungarian Government in 1848. He was a member of the Hungarian Academy of Sciences as well.

[21] TARNAI János: *A sajtótörvény keletkezésének története*. [The History of the Formation of the Press Act of 1848] Jogtudományi Közlöny, 31 May 1912 (No 22), p. 188.

[22] The feudal *(rendi)* Hungarian Parliament *(Magyar Országgyűlés)* was a bicameral legislature from 1608. Its first chamber was called *The House of Estates of the Realm (status et ordines regni Hungariae)*, the second one was named *The House of Lords* between 1608 and 1848. The chambers had district sessions *(sessiones circulares)* for the pre-negotiations according to the four regions of the country. A bill was passed if both of the chambers accepted it in the same form. The traditional estates *(status et ordines)* of Hungary were the following: clergy *(praelatis)*, lords *(baronibus)*, nobility *(nobilibus)* and the commons or bourgeoisie *(liberis civitatibus)*. The members of the first chamber *(ablegatus)* had so-called delegate instructions to the debates formulated by the county courts which they had to act on (imperative mandate). The feudal parliament usually held its meetings in

process was rejected notwithstanding the arguments made by Ferenc Deák,[23] István Bezerédj,[24] József Eötvös,[25] Gábor Klauzál[26] and Ferenc Pulszky, but the members arguing for it attached a dissent to the official standpoint set out in a memorandum. A short time later, on 28th November 1843, the debate on the Code of Criminal Procedure was started at the corporate district session[27] of the feudal parliament *(rendi országgyűlés)*, during which the debate on the introduction of a jury system irrespective of the feudal (legal) differences was first adjourned, then despite the adjournment nevertheless the planned juries were voted for by the counties on 27th January 1844, with a proportion of their votes of 28:22.[28] However, the lords rejected the entire bill because of its liberal and anti-feudal institutions. General equality in jurisdiction instead of

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Pozsony (Bratislava). Read BÓNIS György: *The Hungarian feudal diet (13th–18th centuries)*. In: Gouvernés et Gouvernants. IV. Bas moyen âge et temps modernes. II, Éditions de la Librairie Encyclopédique, Bruxelles, 1965, pp. 287–307; BÓNIS György: *The Powers of Deputies in the Hungarian Feudal Diet (1790–1848)*. In: Liber Memorialis Sir Maurice Powicke [Dublin, 1963], Éditions Nauwelaerts, Louvain-Béatrice-Nauwelaerts, Paris, 1965, pp. 169–190.

[23] Ferenc Deák (1803–1876) was an excellent lawyer and a significant Hungarian politician in the 19th century. He led the first codification of the Hungarian criminal law and criminal procedure in 1843. He was the first Minister of Justice in the history of the Hungarian governments (1848) and the very first decree on the jury trial was issued by him in the months of the revolution, too. Later he was one of the originators and the main leader of the negotiations between Austria and Hungary for the Compromise in 1867. The bill on the relations between Croatia and Hungary was also his creation. The basic structure of the dual monarchy was planned mostly by him on the Hungarian side. He was called "The Oracle of the Mother Country" or "The Procurator of the Nation" by the contemporary politicians of his age.

[24] István Bezerédj (1796–1856) was the leader of the reform opposition of Tolna county and one of the reform members of the feudal Hungarian Parliament since 1830. In 1844 he joined those aristocrats who decided to pay tax willingly despite having a tax exemption by the Hungarian feudal law. He was also a representative in the parliament in 1848/49. He was sentenced to death after the war of independence but finally was given an amnesty.

[25] József Eötvös (1813–1871) was a novelist, a lawyer and a liberal politician. He took part in several western European journeys where he examined the modern laws and societies in the 1830s. In 1848 he was the Minister of Education and Religion in the first Hungarian Government and he occupied the same post after the Compromise between Austria and Hungary in 1867 and 1868. He formulated the bill on the equality of nationalities (Act XLIV of 1868) and the bill on public education (Act XXXVIII of 1868). He wrote his most famous novel about the war of Hungarian peasants in 1514.

[26] Gábor Klauzál (1804–1866) was a lawyer and politician in the Reform Era. He was a member of the liberal opposition in the feudal parliament from 1832 as the deputy of Csongrád county. He filled the post of the Minister of Agriculture and Industry in the first Hungarian Government in 1848. He was also a representative between 1865 and 1866.

[27] District sessions *(sessiones circulares)* were quasi informal meetings of the members of the first chamber of the feudal Hungarian Parliament for pre-negotiations on the bills and on the offences against the rights of the estates from the end of the 18th century. Originally there were four of them according to the geographic regions of the kingdom. After 1790 they were organized jointly and they held their sittings together.

[28] BOTH 1960, pp. 9–13; STIPTA István: *A magyar bírósági rendszer története*. [The History of the System of Courts in Hungary] 2nd edition, Debrecen, 1998, pp. 133–134. Before 1848 Hungary had no criminal codes of its own, the several courts used mostly the Austrian codes (like *Praxis Criminalis*, 1656) in criminal procedures or simply the rules of the Hungarian common law.

the old legal privileges – which created a very complicated system of courts according to the several feudal liberties – was not acceptable for them.[29]

The *Ellenzéki nyilatkozat* (1847, *Manifesto of the Opposition*)[30] did not support the jury system openly but the desire for the jury as one of the then ideas of European legal advancement could be observed in the delegate instructions issued by several counties on the eve of the last feudal parliament in Hungary. As a matter of fact, the issue was also neglected by the address proposal of March 1848,[31] but Item 8 of the Twelve Points of March[32] already included a demand to this effect expressly ("Juries and representation on an equal basis")[33] and a month later Article 17 of the sanctioned (royally approved) Act XVIII of 1848 (Press Act) already declared that "Press offences shall be judged publicly by a jury".[34]

On 29th April 1848, Ferenc Deák Minister of Justice issued the decree – as drawn up by rapporteur István Békey – regulating jury procedure on the basis of the draft of the Code of Criminal Procedure of 1843, which was the first "codified" and *officially applied* criminal procedural law statue in the bourgeois era of Hungarian history (1848–1949).[35] Based on this decree – as far as I know – one complete jury procedure was held while another case reached

[29] The first codifications of the Hungarian criminal law and criminal procedural law – including the draft of 1843 – was published in original languages (German and Latin) by Elemér BALOGH: *Die ungarische Strafrechtskodifikation im 19. Jahrhundert*. = Rechtsgeschichte und Rechtsgeschehen 12. Hrsg. von Thomas Vormbaum. Lit Verlag, Berlin, 2010.

[30] The Manifesto of the Opposition was the official program of the reform opposition in the last feudal parliament in Hungary. It was formulized by Lajos Kossuth and Ferenc Deák. The members of the opposition accepted it on 7th June 1847. Because of the political conditions of that time it was printed only in 1848 – not in Hungary but in Leipzig.

[31] The address proposal of March was a petition of the Hungarian Parliament to King Ferdinand V, which was about the legal and constitutional reforms planned by the last feudal parliament in Pozsony (Bratislava). Lajos Kossuth and a delegation carried it to Wien (Vienna) at the same time as the revolution began in Austria on 13th March 1848. This petition was independent from the Twelve Points of March (see the next footnote!).

[32] The Twelve Points of March as a proclamation contained the most important demands of the revolutionists in Budapest on 15th March 1848 when the Hungarian revolution started. It was created without the knowledge of the Hungarian Parliament, which had its sessions in Pozsony (Bratislava), mostly by young politicians and intellectuals, who later came to be known as "The Young People of March". Although it was also compartmentalized to twelve points, it was different from the Points of Szatmár (1841) mentioned above.

[33] The meaning of the sentence referred to is the following: the Hungarian people wanted equal rights for everyone instead of the feudal legal differences. They fought for equality in politics, in public law and in the representation in the parliament, also in the jurisdiction of the Hungarian courts.

[34] *The Acts of 1848 in Hungary*. Translated and edited by Norbert VARGA. = Fundamenta Fontium Juris 2, Serial editor: Elemér BALOGH. Szeged, 2012, pp. 60–61.

[35] The formation and the text of the decree in 1848 are analysed by BOTH 1960, pp. 19–40.

only the grand jury; both cases occurred in Pozsony (Bratislava).[36] The circumstances of the war of independence in 1848/49 and the new absolutism of the Habsburgs after that (1849–1867) hindered the enforcement of the decree.

2. § The first legal stage of the Hungarian jury procedure (1867–1900)

The issue of regulating the juries was raised immediately upon the reorganization of the courts at the time of the Compromise between Austria and Hungary:[37] after 1867 the jury had to be fitted into the structure which replaced the juridical system of neo-absolutism – according to the social-political considerations of the time.

Károly Pfendeszak expounded his views about the issue of the organization of the new legal system simultaneously with the first publication of *Jogtudományi Közlöny (Legal Gazette)*.[38] He outlined the guarantee principles on which the modern Hungarian legal *corpus* was to be founded: according to these, jurisdiction had to be separated from public administration and one had to guarantee the judges' independence both as regards irremovability and independence from instruction, as well as publicity and orality (procedure by spoken word rather than in writing, in contrast to the medieval written procedure which had caused many difficulties), the freedom of the press had to be preserved, and he proposed "in terms of criminal cases to vest the juries with

[36] SARLÓS Béla: *Az 1848/49-es forradalom és szabadságharc büntetőjoga*. [The Criminal Law of the Revolution and the War of Independence in 1848/49] Budapest, 1959, p. 45; BOTH Ödön: *Sarlós Béla: Az 1848/49-es forradalom és szabadságharc büntetőjoga*. (Review) [Béla Sarlós: The Criminal Law of the Revolution and the War of Independence in 1848/49] Századok, 1962, Vol 96, No 1–2, pp. 261–264; RÉSŐ 1867, p. XII.

[37] The Compromise of Austria and Hungary established an extraordinary connection between the two monarchies in 1867, which is technically described as a real union of states. It meant that both Austria and Hungary were sovereign states but they had three common relations: foreign affairs, defence in the case of a war and the finances connected with the preceding areas (the term "Austro-Hungarian Monarchy" is rather a political than a legal expression). This cooperation functioned quite well but it came to a sudden end after World War I (October–November 1918). Nowadays it is common opinion that these five decades – except the years of the world war – were the most successful era in the Hungarian history in the past five hundred (!) years. See in English: *The Hungarian State 1000–2000. Thousand Years in Europe*. Editor: Gábor MÁTHÉ. The relevant chapters are written by Gábor MÁTHÉ, Ferenc PÖLÖSKEI and János ZLINSZKY. Budapest, 2000, pp. 217–248, 305–342.

[38] *Jogtudományi Közlöny* (Legal Gazette) was one of the most high quality legal journals of the second half of the 19th century in Hungary. Its first issues were published in 1866. Later it was printed weekly like other similar legal journals (*A Jog*, *Ügyvédek Lapja*, etc.). Formally this paper still exists but with different characteristics. Károly Pfendeszak was a lawyer in Budapest, he wrote several articles and essays on public law, and he translated the Code of Civil Procedure of Hannover in 1867.

judgement of guilt" with the simultaneous establishment of a well-trained faculty of lawyers.[39]

A question to be decided in the first place was what the nature of the institution of the jury should be. Should it be a legal, political or judicial body? Starting from these questions, *in a wider sense* the jury meant a complex institution which embodied the opposite of the exercise of jurisdiction based on the systematized tribunal officials of the state. *In a stricter sense*, however, it was a legal institution of procedural law and a means through which the persons selected made a decision concerning the issues of fact and law in the case under the chairmanship and leadership of trained judges.[40] In the following discussion the juries will be examined as *legal instruments* instead of being considered primarily political institutions because juries were *in fact* institutions legal rather than political ones.

When planning the organization of the criminal jurisdiction, it seemed expedient for legal experts to take the wider European experience into consideration, too, in addition to the Hungarian solutions from the years 1843 and 1848, as juries were working not only in England but also in Portugal, France and Belgium, in the German territories of the Rhine, in Prussia, Geneva and other Swiss cantons, in Malta, Sweden and Norway. The Hungarian scholars of the time were familiar with and propagated mainly the English, French and German models – the first as "faultless", the others as "faulty adaptations".[41]

It is worth adding at least here that the continental juries mostly followed the solutions of the French model although it was very variable in practice. During the first republic before the consulship of Napoleon (1792–1799) the number of the potential jurymen (who were listed as eligible to serve on juries) was high but in the era of Napoleon I (1799–1813) jurymen's lists did not contain

[39] PFENDESZAK Károly: *A bíróságok szervezéséről*. [About the Organization of Courts] Jogtudományi Közlöny, 12 March 1866 (No 11), pp. 169–171. It is interesting that there were no special professional requirements for lawyers in Hungary before 1867 although several Hungarian law schools functioned in the first half of the 19th century. Legal education became more organised only after 1869 when an act declared the exact requirements for judges and later for public prosecutors (1871) and for other lawyers (1874).

[40] EKMAYER Ágost: *Az esküdtszék*. [The Jury] Jogtudományi Közlöny, 16 Jun 1867 (No 24), pp. 127–128.

[41] The most expansive analysis of the European juries of that time can be read in RÉSŐ 1867. Although the title of the monograph suggests that it is about the Hungarian judicial system, in fact the author – who was a recognised lawyer in Budapest – wrote mainly about the English, French and German juries in the middle of the 19th century. It is also interesting to read the comparative articles of EKMAYER Ágost entitled: *Az esküdtszékek*. [The Juries] Jogtudományi Közlöny, 21 July 1867 (No 29), pp. 155–157, 4 August 1867 (No 31), pp. 172–174, 11 August 1867 (No 32), pp. 181–182.

the names of so many citizens as the ones before on account of the new legal requirements and the final lists were produced by impressionable government clerks. The Bourbons extended the number of the qualified jurors again (1815–1830) but then Louis Philip used a high property qualification to favour the interest of the bourgeoisie as Napoleon Bonaparte had done it before. In 1848 the property qualification ceased to exist and the jurymen's qualification was general during the rule of Napoleon III (1851–1870), too, but the lists were compiled by loyal government clerks again so in fact the compilation became newly politically influenced. In 1835 the ballot was introduced in the process of voting of the jurors and they decided the legal questions by simple majority (seven votes of twelve were enough to find someone guilty). It is also interesting and characteristic that it was just press crimes which were taken out of the competence of juries in France in 1865 by a broad review.[42] So the starting point for the Hungarian reformers – for those who were planning the introduction of the trial jury – was that the jury should not be a purely political institution as it was in France, where *mair*s and *prefect*s gained substantial influence in compiling the jurymen's lists and where the secrecy of vote and the determination of voting proportions in the petty jury also changed whimsically between 1791 and 1852 – as was mentioned above.[43] Furthermore, folk elements – like well-off provincial (rural) burghers and countrymen – should not be excluded from the organization of juries and the influence of government organs on compiling the lists should not be permissible.

The formation of the new legal norms was repeatedly started after the Compromise in 1867 considering the professional discussions as well, based primarily on the draft of 1843 and on the decree of 1848. The legislative competence of the first governments of Hungary in the age of Dualism was recognized by the Hungarian Parliament by means of statutory authorizations (decrees) even for subjects typically falling into the range of statutory regulations (acts which were superior to decrees), at the same time demanding that this legislative solution should be only provisional;[44] however – as in this case –

[42] SZ. I.: *Az esküdtszékek szervezéséhez*. [To the Organisation of Juries] Pesti Napló, 10 August 1865 (No 182), p. 1, 17 August 1865 (No 187) p. 1; EKMAYER Ágost: *Az esküdtszékek*. [The Juries] Jogtudományi Közlöny, 11 August 1867 (No 32), p. 181.

[43] For detail see: DONOVAN 1999, pp. 379–420. Naturally, juries were designed to be non-political institutions originally in France, too, but there the juries came in fact to operate politically during the reign of Napoleon I and the neo-absolutisms (1815–1848, 1852–1870).

[44] Although acts of the Hungarian Parliament were the highest forms of legislation, Hungarian governments occasionally also had the right of some sort of legislation, but in order to do so they had to have authorisation from the parliament to pass decrees for this purpose. Ordinarily the Hungarian Parliament gave that power for them to create decrees being compatible with the constitution and the laws of the state on a given topic. In the first years of the dualism some matters which could have

enactment in the form of a statutory regulation failed to be carried out in many cases.[45] Therefore the codification of criminal procedure was implemented on the level of decrees, more than 20 of which were issued by the Ministry of Justice in the subsequent four years.

The first such norm (a decree) was the proposal submitted by the Minister of Justice – presented at the government meeting of 5th February 1867 and made into a ruling as a resolution in the House of Representatives *(Képviselőház)* on 9th March and in the House of Lords *(Főrendi Ház)* on 12th March[46] – in which the idea was expressed for the first time that the press jury procedure[47] should be adjusted to the public law circumstances created in 1848 in such a way that – by enacting the press act again with small modifications – press juries would not be working in all the municipalities but only in the seats of district mixed courts *(kerületi/vegyes bíróságok)* and the royal court of appeal *(királyi tábla)*. This meant that preliminary censorship was to be terminated and the press act was to be put into force again.[48] For this purpose the government called upon the municipalities concerned to compile the lists of potential jurymen already in March and again at the beginning of May 1867.[49]

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been covered by statutory regulations were in fact dealt with by means of decrees, too. See also the next footnote!

[45] MÁTHÉ Gábor: *A magyar burzsoá igazságszolgáltatási szervezet kialakulása, 1867–1875.* [Formation of the System of the Hungarian Bourgeois Jurisdiction, 1867–1875] Budapest, 1982, pp. 64–65; Gábor MÁTHÉ: *Die Trennung der Machtzweige*. In: Ders.: Die Problematik der Gewaltentrennung. = Ungarische Rechtshistoriker 1. Budapest, 2004, pp. 39–43.

[46] The Hungarian Parliament had two chambers after 1848, too: the House of Lords and the House of Representatives according to Act IV of 1848. The representatives had free mandates so they could not be instructed by their electorates any more. The functioning of the Hungarian Parliament was very similar to that of the English Parliament in the 19th century. It held its meetings in Budapest. The institutions of parliamentarianism also existed and prevailed between 1867 and 1918.

[47] Press juries were lay courts which sentenced in offences (crimes) committed in all kind of printed journals or papers. The press act of 1848 listed those dispositions (offences) that were tried by jury. The most frequent cases were in connection with the following crimes: defamation, vilification, outraging the Royal Family, offences against constitutionality or offences against the connections between Austria and Hungary by press. The later ones meant mostly articles or memorandums which supported the whole separation of the two countries or demanded autonomy for the minorities.

[48] HNA. K27 X57. 3744, 25 February 1867, p. 7, and 9 March 1867, p. 5.

[49] Miniszteri előterjesztés 1867. február 25-ről a sajtóügyben [...]. [Memorandum of the Minister of Justice on the press on 25th February 1867] MRT 1867. 2nd edition, Pest, 1871, pp. 34–36; a m. k. bel- és igazságügyministernek 1867. márczius 17-én kelt 490/B.M. és 16/I.M.E. számok alatt kelt rendelete a sajtóviszonyok tárgyában [...]. [Decree of the Minister of Justice on the press relations on 17th March 1867. No 490/B.M] MRT 1867. 2nd edition, Pest, 1871, pp. 39–41; a m. k. igazságügyminister 1867. évi május 4-én 174/eln. sz. a. kelt rendelete, az esküdtszékek tárgyában [...]. [Decree of the Minister of Justice on the subject of juries on 4th May 1867. No 174/eln] MRT 1867. 2nd edition, Pest, 1871, pp. 83–84. See also MÁTHÉ 1982, pp. 66–67.

The “great decree” regulating the jury procedure was prepared as early as the end of April 1867 in accordance with the decision taken at the government meeting held on 25th April,[50] but it was promulgated by Boldizsár Horvát, Minister of Justice[51] only on 17th May 1867 and came into force on 16th June: thereby a special norm, intended to be provisional yet remaining in effect until 1st January 1900, which represented Hungary’s first “code” of criminal procedure happened to be “codified” statutorily during the Dualism.[52] Essentially, the government observed considerations of expediency and centralization when repeating the seats of the courts – mentioned originally in the Decree of 5th February 1867 – in the Decree of May 1867: given prevailing social conditions, it was illusory to expect to operate a press jury in every municipality in the first place; moreover, the number of press offences was not so high and thus the professional members of the jury-court (judges as distinct from the lay jurors) could be appointed by the government. (All these regulations were entirely in harmony with the later Article 3 of Act IV of 1869 on exercising judicial power, pursuant to which judges were appointed by the king and countersigned by the minister of justice.) In my opinion the objections made by *Béla Sarlós*, according to which these modifications would have abused the freedom of the press, are not well-founded.[53] The new decree was based on that of the year of 1848 and its text also showed considerable similarities, but it differed in some major points *mutatis mutandis*: for instance, the grand jury was abandoned, the voting proportions were changed (the number of votes

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[50] HNA. K27 X 57. 3744, 25 April 1867, p. 4.

[51] Boldizsár Horvát (1822–1898) was the first Minister of Justice of Hungary during the Dualism between 1867 and 1871. He led the formulation of several acts which established the basic instruments of the modern system of courts [for instance: the regulation of the legal status of judges (1869), the assignment of the geographic seats of royal county tribunals (1871), the reform of the Curia (1869) and the codification of the first Hungarian Code of Civil Procedure (1868)].

[52] A m. k. igazságügyministeriumnak 1867. május 17-én 307/eln. sz. a. kelt rendelete a sajtóvétségek felett ítélendő esküdtszékek felállítása iránt. [Decree of the Minister of Justice on the subject of the organization of press juries on 17th May 1867. No 307/eln] MRT 1867. 2nd edition, Pest, 1871, pp. 89–115; RÉVÉSZ T. Mihály: *A sajtószabadság érvényesülése Magyarországon, 1867–1875*. [The Emergence of the Freedom of the Press in Hungary, 1867–1875] Budapest, 1986, p. 38; SARLÓS 1959, pp. 59–60; SARLÓS Béla: *A sajtószabadság és eljárási biztosítékainak fő vonásai*. [The Freedom of the Press and the Main Features of its Safeguards] In: Jogtörténeti tanulmányok II. A dualizmus korának állam- és jogtörténeti kérdései, [Essays on Legal History II: The Legal Historical Questions of the Era of the Dualism] Editors: BOTH Ödön, CSIZMADIA Andor [...]. Budapest, 1968, pp. 195–196.

[53] SARLÓS 1968, p. 195. Béla Sarlós wrote his article at the time when the common political (public) opinion in Hungary – which was followed officially by legal historians as well – did not have a good opinion of the Austro-Hungarian Monarchy and its legal system as it was too “bourgeois”. They expressed strong criticism of the first governments of the Dualism, too, because of the compromises which were made with the Austrians in legal questions – especially in connection with the reform acts of 1848/49. These judgements of the antidemocratic era called people’s democracy (1949–1989/90) are mostly superseded nowadays.

required to ascertain guilt was decreased from 8 to 7 of twelve), the compulsory defence of the accused by a lawyer was ignored, yet all these did not render it a reactionary provision allowing governmental absolutism over the freedom of the press – at least from the legal point of view. Naturally, the abuse of the freedom of the press and the governmental absolutism over the press are not necessarily the same concepts but in fact Sarlós reflected only on the latter one.

However, the Decree of 1867, which did not so much reject the virtues of the Decree of 1848 but rather refined it, did not prove sufficient. As only one procedure was held on the basis of the Decree of 1848 – as already mentioned in Pozsony (Bratislava) – its Achilles' heels could not be revealed either, but as legislators were compelled to make amendments in the years after the Compromise, the deficiencies soon came to light in practice – this prompted the long process of norm formation during which successive ministers of justice settled and refined each institution created by the basic decree, thereby contributing to maintenance of the rule of law. This is how the first additional decree, which made the statute of 17th May 1867 more concrete and precise in 19 points, was published as early as July 1867, and the second one was issued next year – Decree 480/1868 of the Minister of Justice – for the correction of the previous two.[54] This legislation by decree proved to be sufficiently flexible to eliminate the anomalies.

The scope of the decrees mentioned was not extended to Transylvania[55] so only the two decrees published on 14th May 1871 created the enforceable freedom of the press there; the first was drawn up on the basis of Article 12 of Act XLIII of 1868 on the detailed rules of the union of Hungary and Transylvania and provided for the introduction of the jury in Transylvania, while the other decree regulated the operation of press juries there, based on the text of the norm formulated for Hungary in 1867, which also incorporated several amendments made during the years since then and which designated Marosvásárhely (Târgu Mureş) as the seat of the Transylvanian press jury.[56]

[54] A magyar kir. igazságügyministernek 1867. július 25-én 307. számhoz kelt pótrendelete [...]. [Supplementary decree of the Minister of Justice on 25th July 1867 to No 307] MRT 1867. 2nd edition, Pest, 1871, pp. 242–248; a m. kir. igazságügyminister 1868. évi május 15-én 480. sz. a. kelt rendelete [...]. [Decree of the Minister of Justice on 15th May 1868. No 480] MRT 1868. 3rd edition, Pest, 1884, pp. 184–185.

[55] HNA. K27 X57. 3744, 28 May 1867, p. 12.

[56] A m. k. igazságügyministernek 1871. május 14-én 1498. eln. sz. a. kelt rendelete [...] az esküdtszéki eljárásnak Erdélybe való behozatala iránt. [Decree of the Minister of Justice on the organization of the jury process in Transylvania on 14th May 1871. No 1498] MRT 1871. Pest, 1872, pp. 183–186; and a m. kir. igazságügyministernek 1871. május 14-én 1498. eln. sz. a. kelt rendelete a marosvásárhelyi sajtóbíróság előtt követendő eljárás iránt. [Decree of the Minister of Justice on the process

It is interesting and noteworthy that Act LVI of 1868 on the expropriations of real property in the area of the cities of Buda and Pest for developments of public utility also provided for a jury, pursuant to the French model, for the settlement of disputed cases of indemnification, thus for a short period of time juries appeared in the Hungarian private law, too.[57] However, the newer Act of year 1881 on the expropriation of land did not adopt this institution.

The history of the regulation of juries in Hungary was not ended by this: the process of the comprehensive codification of criminal procedure repeatedly raised the question of transforming juries and extending their scope of authority.

3. § The second legal stage of the Hungarian jury procedure (1900–1914)

Juries were not included in the codification of the criminal procedure led by Károly Csemegi in 1882,[58] and neither were they in the bill of the Code of Criminal Procedure submitted by Teofil Fabiny Minister of Justice[59] in December 1888. This bill was withdrawn by Dezső Szilágyi,[60] the new Minister

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of the press jury in Marosvásárhely on 14th May 1871. No 1498] MRT 1871. Pest, 1872, pp. 186–214.

[57] RUSZOLY József: *A kisajátítás törvényi szabályozásának története Magyarországon (1836–1881).* [The History of the Regulation of Expropriation in Hungary (1836–1881)] In: Ruszoly József: Tíz tanulmány a jog- és alkotmánytörténet köréből, [Ten Essays on Legal History] Szeged, 1995, pp. 81–82; József RUSZOLY: *Gesetze über die Enteignung in Ungarn (1836–1944).* In: Acta Jur. et Pol. Szeged, Tomus LV. Szeged, 1999, pp. 307–332; József RUSZOLY: *Lois sur l'expropriation en Hongrie, 1836–1944*. In : Société Jean Bodin pour l'Histoire Comparative des Institutions, Congrés d'Anvers, 8–11 mai 1996. "L'expropriation". Rapport général. 19 p. (mimeographed manuscript); HELD Kálmán: *Esküdtszéki eljárásunk kisajátítási ügyekben*. [Our Jury Process in Expropriation Cases] Magyar Themis, 30 July 1872 (No 31), p. 255.

[58] Károly Csemegi (1826–1899) was a recognised jurist during the Dualism; he worked for the Ministry of Justice as an Undersecretary of State and he led the codification of the first Hungarian Criminal Code (Act V of 1878), which is still called Csemegi-codex by the jurists. He formulated the first version of the Code of Criminal Procedure in 1872, which in fact was a reference book and not a statute, although judges used it as an authentic regulation until 1900. It was called only "The Yellow Book". He did not support the introduction of the jury or the jurisdiction of any kind of lay courts. He consistently omitted it from all his works – from the draft of 1882, too – because he thought that the jury would have been a defective system in the social conditions of Hungary of that time, although it was supported in most of the developed countries of Europe.

[59] Teofil Fabiny (1822–1908) was a lawyer, a presiding judge at the Hungarian Supreme Court (Curia) and the Minister of Justice between 1886 and 1889. The bill on the criminal procedure submitted by him was the developed version of the draft of 1882 as both of them were formulated by Károly Csemegi.

[60] Dezső Szilágyi (1840–1901) was one of the most important Ministers of Justice in Hungary. Earlier he was a member of the House of Representatives and a Professor of Law at the University of Budapest. As a minister (1889–1895) he realized complex juridical reforms like the organization of

in 1889, specifically because of the disregard of the juries. It was he who commissioned Lajos Schédius to prepare the draft of a new code including the jury procedure as well in 1890. Jenő Balogh, the then ministerial Undersecretary of State and university professor was commissioned to draw up the new rapporteur draft of the entire code of criminal procedure taking into account the comments received. The draft was submitted to a panel of experts, after which a six-member formulating committee was set up under the leadership of Dezső Szilágyi. Its members were Jenő Balogh, Imre Battlay, Ferenc Chorin, Lajos Schédius, Ferenc Vargha and Gyula Wlassics.[61] The text intended as the final version was finished by April 1893. The work and expertise of Jenő Balogh had to be credited for the majority of the text formulation. Subsequently the official reasoning of the previous bill[62] was also revised in order to adjust it to the new draft. The final bill finished at the beginning of 1895 was submitted to the House of Representatives by Sándor Erdély Minister of Justice on 4th May, 1895.[63]

The accepted Code of Criminal Procedure left two questions open: the scope of authority of the courts and the selection of the members of the jurymen's lists. The first draft of these smaller acts concerned with the scope of authority and the selection of jurymen was prepared by Imre Battlay commissioned by

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the new Appeal Courts in 1890/91, the modernisation of the legal status of Hungarian judges (1891), the transformation of the institutions of the Austro-Hungarian consular jurisdiction (1891) and the turning of church weddings into marriages registered by the clerks of the state (1894). He was also a brilliant orator in the parliamentary debates and an outstanding legal expert. All his contemporaries admired his knowledge and beautiful mind. Between 1896 and 1900 he was the president (Speaker) of the House of Representatives in the Hungarian Parliament. See Tamás ANTAL: *Reforms of the Judicial System in the Era of Dezső Szilágyi*. In: Ius et legitimatio. Tanulmányok Szilbereky Jenő 90. születésnapja tiszteletére, [Essays for the Birthday of the 90-year-old Jenő Szilbereky] Edited by SZABÓ Imre. Szeged, 2008, pp. 9–16.

[61] The gentlemen mentioned were noted lawyers and jurists in Hungary at the end of the 19th century. I would like to call attention to Ferenc Vargha (who became the deputy of the Crown's Chief Prosecutor a decade later), because in 1905 he published a very remarkable argument against the jury jurisdiction (VARGHA Ferenc: *Az esküdtszék*. [The Jury] Budapest, 1905).

[62] The official reasoning of a bill or an act is a document formulated by the legislature which explains the text of the legal norm authentically. It helps in using the act correctly in practice and it also contains the theoretical background of the legal instruments codified in the act.

[63] FINKEY Ferenc: *A magyar büntető perjog tankönyve*. [Textbook of Hungarian Criminal Procedural Law] Budapest, 1916, pp. 58–59; JELLINEK Arthur: *A büntető bíróságok szervezete és hatósági köre tekintettel a magyar bűnvádi eljárás tervezetére*. [The Organization of Criminal Courts and their Competence with Special Regard to the Draft of the Hungarian Code of Criminal Procedure] MJÉ XI. Budapest, 1883 (Reading: 3 February 1883), pp. 26–37; FAYER László: *Bűnvádi eljárás a törvényszék előtt. Szokásjogi forrásból*. [Criminal Process at the Court: By the Common Law] Fasc. 1–3, Budapest, 1885. Also about the reforms: Franz von LISZT: *A jövő büntetőjoga*. [The Criminal Law of the Future] MJÉ LXXVI. Budapest, 1892 (Reading: 4 April 1892), pp. 4–23; SZOKOLAY István: *Az esküdtszék körüli téveszmék*. [Delusions about the Juries] A Jog, 11 January 1891 (No 2), pp. 9–10; *R-E*: *Erdélyi Sándor*. [Sándor Erdélyi] Ügyvédek Lapja, 17 July 1897 (No 29), p. 1.

Szilágyi in 1894, then it was entirely rewritten in 1895 and partly in 1896. Finally, Jenő Balogh formulated both bills after the review by two panels of experts. These were submitted to the Hungarian Parliament by Sándor Erdély in March 1897.[64]

Thus the much-awaited reorganization of the jury system was eventually realized by several acts: first of all Chapter XIX of the Code of Criminal Procedure (Act XXXIII of 1896) regulating the main trial before the jury and Act XXXIII of 1897 on the organization of juries. Act XXXIV of 1897 on the enactment of the Code of Criminal Procedure specified the new scopes of authority of the jury (Article 15). Here only the debates concerning the criminal procedure related to the present topic will be dealt with.

The parliamentary debate of the Code of Criminal Procedure started on 3rd September 1896 at Session 647 in the House of Representatives. This was preceded by the report on the bill by the judicial board[65] in which they voiced their opinion as to supporting the reorganization of the juries: "the greatest value of the jury – according to Glaser, the renowned supporter of this institution[66] – lies in the fact that judicial power is shared between permanent qualified judges and irreproachable men from the ranks of the citizens destined for judicial function. Insistence on the indispensability of the juries does not stem from distrust in the court but rather from the idea what dizzying power is vested in the jurist working in an invariable bench when judging over life, freedom and social existence on the basis of an oral trial and the free appreciation of evidence." The report emphasized that: "the situation in which the laws meant to ensure law and order and the existence of the society are administered by a closed body of professional judges with the total exclusion of the citizens can hardly be maintained". Thus the incorporation of the institution of

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[64] FINKEY 1916, p. 60. See data on Dezső Szilágyi in ANTAL Tamás: *Szilágyi Dezső igazságügyi reformjairól (1890–1900).* [About the Judicial Reforms of Dezső Szilágyi (1890–1900)] In: Jogtörténeti tanulmányok VIII, [Essays on Legal History VIII] Edited by KAJTÁR István [...]. Pécs, 2005, pp. 9–28. Read about Gyula Wlassics in MEZEY Barna: *Wlassics Gyula, a büntetőjog és a bűnvádi perjog professzora*. [Gyula Wlassics, Professor of Criminal Law and Criminal Procedural Law] In: Wlassics Gyula és kora, 1852–1937 [Gyula Wlassics and his Age, 1852–1937] = Zalaegerszegi füzetek 8, [Zalaegerszeg Papers 8.] Editor: KAPILLER Imre. Zalaegerszeg, 2002, pp. 60–78.

[65] Both of the chambers of the Hungarian Parliament had several technical boards organised from the members of the House of Representatives and the House of Lords. These boards examined the bills first then created an official report for the appropriate chamber in which they offered the bill for acceptance or did not support it. The bills connected with jurisdiction or legal codifications belonged to the competence of the judicial board.

[66] Julius GLASER was a Wiener professor and jurist in the 19th century. The judicial board referred to his view as well in its report. His most important literary work includes: *Zur Juryfrage*. Wien, 1864; *Anklage, Wahrspruch und Rechtsmittel im englischen Schwurgerichts-Verfahren*. Erlangen, 1866.

the jury in the criminal procedure was accepted by the board unanimously. On the other hand, the introduction of the institution of the German-type people's tribunal (*Schöffengericht*)[67] in the county tribunals, similarly proposed by the bill, was not recommended.[68] Concerning the jury procedure, only a few not very significant modifications of the bill were made in the detailed report.[69]

The general debate of the Code of Criminal Procedure in the House of Representatives started with the opening statement of Ferenc Chorin, rapporteur from the judicial board. The procedural bill of 1843 and the press juries of 1848 were designated in his statement as the starting point for the reform of the juries. However, he called attention to the fact that the judgement of press offences showed a very kaleidoscopic picture in Hungary: in territories beyond Királyhágó (Bucea) the Austrian press procedure of 1852 was in force with a jury, the same in Fiume (Rijeka) without a jury, in the Határőrvidék (Military Frontier) the Austrian press procedure of 1862 and in other parts of the country the decree issued in 1848 and then in May 1867 governed.[70] (Then again, in other regions of Transylvania the decree of 1871, mentioned above, had to be applied.)

The principles of the bill were identified as follows: an indictment system, the assertion of orality and directness,[71] publicity as well as the safeguarding of the rights of the accused, the availability of the right to legal remedy (right of

[67] As in the Anglo-American model, the lay participants in a court decide all questions of fact independently of the professional judges who decide only questions of law. These independent jurors differ very much from German *Schöffen*, lay judges in a collaborative lay court (with other words: in a people's tribunal, *Schöffengericht*). Markus Dirk Dubber explained the substantive differences between them this way: "In a collaborative lay court, lay judges sit with one or more professional judges and decide issues of law and fact in conjunction with the professional judges. […] The distinction between the independent and collaborative models remained largely irrelevant until the latter half of the nineteenth century, when efforts to abandon the jury for the collaborative model began [in Germany]." See Markus Dirk DUBBER: *The German Jury and the Metaphysical Volk: From Romantic Idealism to Nazi Ideology*. In: The American Journal of Comparative Law, Vol 43, No 2 (1995), pp. 230–231.

[68] All the quotations in this paragraph are taken from: WHR92–96. XXXIV. (1896) Issue 1110, pp. 7–8.

[69] WHR92–96. XXXIV. (1896) Issue 1110, pp. 152–162.

[70] CHR92–96. XXXIV. (1896) p. 20.

[71] Orality and directness are natural maxims of the criminal process now but before the time of the dual monarchy Hungarian courts concluded the cases in written procedures mostly without any oral argument. It was a common feature of the feudal process laws across the continent. The modern form of procedures required making oral communication between the parties possible, also directness which meant that the courts had to base their decisions on facts experienced directly by proving processes during oral trials. It needed a new jurisdictional system to achieve these aims at the end of the 19th century – in connection with both the system of courts and the criminal and civil procedural law.

appeal, writ of error) and the regulation of the jury in such a way that not only criminal offences in relation to printed material, but also other serious crimes (e.g. murder, mayhem, robbery, arson, rebellion, high treason, excoriation), were within its scope.[72] It was the jury itself which was regarded as the most important change in the bill: "the judicial organization qualified for applying the criminal procedure cannot be construed properly without a jury".[73] As regards the press juries it was emphasized that "they operated fairly satisfactorily when sanctions for a crime against the state or the nation were in question but several – let me say well-founded – objections were raised to their operation in defamation and libel cases".[74]

Chorin claimed that data proved that jurymen were mistaken at the expense of the accused much more rarely than permanent trained judges were. The reason for this was that in contrast with other judicial forums jury trial enjoyed the great advantage of publicity, public confidence in the verdicts, the right of rejection of some of the jurymen *(voir dire)*, the high proportion of votes required to establish guilt (at least 8 of 12) and experience in life. "The jury confined to press cases is more of a political than a legal institution" – Chorin continued – "because it deals exclusively with political or personal questions. The jury which investigates exclusively press cases is like an isolated tree, exposed to the vicissitude of times on barren soil, which cannot take root, which can be uprooted by the storm of political passions. [...] But apart from this, juries are looked upon everywhere as the great security of civil and political freedom." This institution also prevents the alienation of the citizen from the judicial organization.

The objections to the use of jury trial raised by many politicians regarding diversity of nationality and religious denomination were not considered substantiated as diverse nationalities also lived in France, in England and in Germany. Language could not be problematic, either: there was not a single tribunal in the country where a sufficient number of jurymen with a command of the language of the state was not available – the rapporteur maintained.[75]

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[72] CHR92–96. XXXIV. (1896) pp. 21–22.

[73] CHR92–96. XXXIV. (1896) pp. 22–23.

[74] CHR92–96. XXXIV. (1896) p. 25.

[75] CHR92–96. XXXIV. (1896) p. 26. Hungary was a multi-national country in the 19th century which caused several tensions in politics from 1848. Some say that these difficulties were responsible also for the death of the dual monarchy in 1918. The following minorities lived in Hungary at that time: Bulgarians, Poles, Romanians, Ukrainians, Serbians, Croatians, Slovenians, Slovakians, Saxons and other German speaking nationalities, also Armenians and Russians. Although the Hungarian Parliament carried acts on the rights of nationalities in 1849 and 1868, the legal problems of minorities were not solved in Hungary or in Middle Europe before 1918 (and nor were they solved later). The objection regarding nationalities and religion concerned both of mixing of nationality and relig-

In addition to Sándor Erdély, Minister of Justice,[76] only a few representatives spoke in the further debate on the bill: Géza Polónyi, Lajos Ragályi, Dániel Haviár, Győző Issekutz and Soma Visontai[77] expounded their similar supportive views, and based on these and on the voting the bill was deemed to be suitable for detailed debate by the House of Representatives.

The detailed debate proved to be surprisingly short and constructive. Here only the comments relating to the chapter on juries are mentioned: on 10th September Géza Polónyi, Győző Issekutz, Ferenc Chorin, Soma Visontai and Sándor Plósz (Undersecretary of State at that time, later Minister of Justice), and on 11th September Lajos Mérey and Károly Szalay commented on the planned text.[78] The House of Representatives – after the speech of Sándor Erdély voicing his support – accepted some of the modifications which were of slighter importance (e.g. the possibility of the jurors' voting by ballot as proposed by Issekutz).[79]

The third reading was given on 12th September 1896, then the accepted text was passed on to the lords. In the House of Lords, on 19th September 1896, again Sándor Erdély argued for the jury and suggested that the bill be accepted in the form as already proposed in the House of Representatives. He pointed out there as well that the Code of Criminal Procedure could not be formulated without juries – given that public opinion was in favour of them omitting the juries would have been unwise.[80]

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ion on the jury and differences between the nationality or religion of the jury and the defendant. See József RUSZOLY: *Das Nationalitätengesetz von Szeged und die Verfassungsentwicklung in Europa (1848–1849).* In: Acta Jur. et Pol. Szeged, Tomus LXIX, Szeged, 2007, pp. 605–616.

[76] Sándor Erdély (1839–1922) was an excellent Hungarian lawyer. In 1891 he became the president of the Appeal Court in Győr. One year later he was an Undersecretary of State in the Ministry of Justice. He was appointed to be the Minister of Justice after Dezső Szilágyi in 1895 and he occupied this post until 1899.

[77] The gentlemen mentioned were the members of the House of Representatives in the Hungarian Parliament in the last decade of the 19th century. Although they represented several political parties (liberal, radical or conservative) they all supported the introduction of the jury in Hungary. They had mostly technical reflections during the debate, the necessity of the bill and the institution of the jury was not queried by them. For instance, even Géza Polónyi, a member of the radical opposition, named Dezső Szilágyi "The Father of the Juries" approvingly, although earlier they were irreconcilable antagonists in the House of Representatives.

[78] See the previous note above!

[79] ANTAL Tamás: *Törvénykezési reformok Magyarországon (1890–1900).* [Jurisdictional Reforms in Hungary (1890–1900)] Szeged, 2006, pp. 223–229.

[80] CHL92–96. VII. (1897) pp. 6–7; WHL92–96. XXIII. (1896) Issue 989, pp. 5–8.

The only speaker in the debate was Nándor Zichy;[81] he did not consider the introduction of "administration of justice by jury" in Hungary desirable on account of the proportions of nationalities and the under-representation of the Hungarians in some places. He held the view that juries could not be based on firm grounds in this society, because while the jury could be composed only of citizens who understood the Hungarian language, it would be dangerous to exclude others. Yet, because of the progressive and necessary nature of the code of procedure, he proposed the bill for *en bloc* acceptance.[82] In accordance with Zichy's proposal, all the 592 articles of the bill on the Code of Criminal Procedure were passed by the lords *en bloc,* at the same time.[83]

A separate act was carried by the Hungarian Parliament on the organizational issues of the jury, particularly with respect to the compilation of the jurymen's lists and the manner of selection, which was passed – unlike the Code of Criminal Procedure after a fierce and lengthy debate – by the House of Representatives on 29th May 1897 and by the House of Lords on 16th August of the same year (Act XXXIII of 1897). In contrast with the Code of Criminal Procedure and Act XXXIV of 1897 putting it into force, this Act came into force as early as 1st January 1899 as the jurymen's lists and other organizational tasks of 1900 had to be prepared in 1899.[84]

The Hungarian adaptation of the institution of the jury was completed with this; a major change was effected in it only by Act XIII of 1914 in the twenty-fourth hour of its history. As the case was, the use of the jury was suspended by the government in several of its decrees in autumn 1914 – first only in Transylvania and in Felvidék (Upper Hungary), then also in the inner areas of the country.[85] The suspension was legally strengthened by Prime Minister

[81] Nándor Zichy (1829–1911) was an aristocrat politician and a financier in Hungary during the dual monarchy. First he was a member of the House of Representatives, later he took a chair in the House of Lords. He made active efforts in the negotiations leading to the Compromise in 1867. He established the Catholic People's Party in 1895. He was not a member of any minorities.

[82] CHL92–96. VII. (1897), pp. 8–10.

[83] CHL92–96. VII. (1897), p. 10. It should be noted that the lords did not have serious objections against the jury or the bill so they would have passed it by the rules of the normal legislative procedure in parts, too, it would just have taken a longer time. In fact the acceptance of the bill *en bloc* was a courtesy from the lords.

[84] ANTAL 2006, pp. 229–243.

[85] A m. kir. ministerium 1914. évi 5486. M. E. számú rendelete egyes bűncselekményeknek az esküdtbíróság hatásköréből a kir. törvényszékek hatáskörébe utalásáról. [Decree of the Government on the transfer of some of the crimes from the competence of juries to the competence of courts. No 5486/1914] MRT 1914. Budapest, 1914, p. 1433; a m. kir. ministerium 1914. évi 5487. M. E. számú rendelete az esküdtbíróságok működésének egyes kir. törvényszékeknél felfüggesztéséről. [Decree of the Government on the suspension of the functioning of several juries. No 5487/1914] MRT 1914. Budapest, 1914, p. 1434; a m. kir. ministerium 1914. évi 5735. M. E. számú rendelete a háború ese-

Károly Huszár[86] in 1919 as well (with reference to Act LXIII of 1912) emphasizing its temporary character.[87] However, the suspension of the use of juries became *de facto* permanent, but it is worth mentioning that the relevant rules of law were not repealed expressly; this was realized *de jure* only by repealing the entire Code of Criminal Procedure (1st January, 1952).[88]

4. § Some conclusions

Contemporary professional literature does not reveal any article attacking the organisational rules of the jury. All criticism centred on the process of press juries and on other rules of Code of Criminal Procedure connected with jury trial. The legal profession, however, gave the jury a mixed reception: some lawyers – particularly the academic lawyers – idolised it, and saw it as a modern institution which was in complete conformity with European values, and which was an embodiment of the undoubtedly independent administration of justice.[89] Others, however, were of the opposite opinion. They considered it an

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tére szóló kivételes intézkedések tárgyában kiadott rendeletek hatályának kiterjesztéséről. [Decree of the Government on the extension of the effect of several decrees connected with the special actions in the case of a war. No 5735/1914] MRT 1914. Budapest, 1914, pp. 1448–1450 (points No 9 and 10); a m. kir. ministerium 1914. évi 6082. M. E. számú rendelete a háború esetére szóló kivételes intézkedések tárgyában kiadott egyes rendeletek hatályának kiterjesztéséről. [Decree of the Government on the extension of the effect of several decrees connected with the special actions in the case of a war. No 6082/1914] MRT 1914. Budapest, 1914, p. 1473 (points No 1 and 2).

[86] Károly Huszár (1882–1941) was the Prime Minister of Hungary between November 1919 and March 1920 after the months of the Hungarian Republic of Councils and the Romanian intervention. In those critical days Hungary had to get ready for the peace talks in Versailles and had to decide the question of the form of governance. As a Christian politician he was provisionally supported by the Entente as well.

[87] A magyar kormány 1919. évi 6898. M. E. számú rendelete az esküdtbíróságok működésének ideiglenes felfüggesztéséről. [Decree of the Hungarian Government on the provisional suspension of the functioning of the juries. No 6898/1914] MRT 1919. Budapest, 1919, pp. 967–968. The title of the act referred to is: *About the special actions in the case of a war*. Article 12 of this Act gave the right to the government to suspend the functioning of the juries in such territories of the country where "the weal of the jurisdiction" found it necessary. At these places all the trials were taken to the competence of normal courts.

[88] Az 1951. évi III. törvénybe iktatott büntető perrendtartás hatálybaléptetéséről szóló 1951. évi 31. tvr. [Law-Decree No 31 of 1951 on giving effect to Act III of 1951 on the Code of Criminal Procedure] Paragraphs 1 and 2.

[89] *Az esküdtszéki intézmény ellen*. [Against the Institution of Juries] Jogtudományi Közlöny, 6 July 1900 (No 27), p. 209; FINKEY Ferenc: *Tanulságok esküdtbíróságaink három éves működéséből*. [Lessons from the Functioning of Our Juries in the First Three Years] Jogtudományi Közlöny, 13 March 1903 (No 11), p. 94, 20 March 1903 (No 12), pp. 101–102; FINKEY Ferenc: *Esküdtbíróság és hivatalnokbíráink*. [Jury Tribunals and Professional Judges] Jogtudományi Közlöny, 18 September 1903 (No 38), pp. 313–315; BÁTTASZÉKI Lajos: *Esküdtszék és szakbíróság*. [Jury and Professional Court] A Jog, 11 July 1897 (No 28), p. 213; MOSCOVITZ Iván: *A szakbíróságaink szigorú praxisa*. [Hard Praxis of Our Professional Courts] A Jog, 11 November 1900 (No 45), pp. 322–323; FAYER

almost diabolic institution that spoiled the judicature and subverted the gravity of criminal proceedings. Many practising lawyers regarded jurors as incompetent and tried to prove the atavism of the jury system by enumerating verdicts that, from a dogmatic aspect, proved to be nonsensical and by expounding the western findings on the psychology of the jury.[90]

The introduction of the jury system in Hungary did not take place because of its infallibility. In the late 19th century a jury was regarded as the *sine qua non* of the rule of law in every developed European country. Since there were no classic constitutional courts in Europe at the time, people regarded it as the means that would break legal positivism. They also thought it would balance the text-based power of judges as there was at the time a general distrust of professional judges throughout Europe. On the continent – with the possible exception of Spain and the Netherlands –, the jury was praised and regarded as a victory of liberal democracy.[91] Hungary itself could not evade the main-

László: *Az esküdtszék védelme*. [The Defence of the Jury] Jogtudományi Közlöny, 28 April 1905 (No 17), pp. 141–146; X: *Esküdtszék*. [Jury] Jogtudományi Közlöny, 19 August 1904 (No 34), p. 273; *Vélemények az esküdtszék iránt*. [Opinions about the Jury] Jogtudományi Közlöny, 15 September 1905 (No 37), p. 301.

[90] *Az esküdtszéki intézmény ellen*. [Against the Institution of Juries] Jogtudományi Közlöny, 6 July 1900 (No 27), p. 209; KÁRMÁN Elemér: *Tanulságok az esküdtbíróságaink hároméves működéséből*. [Lessons from the Functioning of Our Juries in the First Three Years] Jogtudományi Közlöny, 21 August 1903 (No 34), pp. 283–286; BÁRÁNY Gero: *Meglepő verdictek*. [Amazing Verdicts] A Jog, 30 September 1900 (No 39), pp. 273–274; BÁLINT Lajos: *Az esküdtszék hatásköre*. [The Competence of the Jury] Ügyvédek Lapja, 18 November 1899 (No 46), pp. 2–4, 25 November 1899 (No 47), pp. 1–3, 2 December 1899 (No 48), pp. 4–5, 9 December 1899 (No 49), pp. 2–3, 16 December 1899 (No 50), pp. 2–4, 30 December 1899 (No 52), pp. 3–4; PAZÁR Zoltán: *Esküdtbíróságaink működése*. [The Functioning of Our Juries] Jogtudományi Közlöny, 30 October 1903 (No 44), pp. 365–366; *Az esküdtbírósági rendszer hiányairól. Jogászegyleti vita*. [Debate on the Deficits of the Jury System] Jogtudományi Közlöny, 4 March 1904 (No 10), pp. 80–82; BLEUER Samu: *Az esküdtbírósági rendszer hiányai*. [Defects of the Jury System] MJÉ 235. Budapest, 1904; DOLESCHALL Alfréd: *A bűnvádi perrendtartás életbeléptetése előtt*. [Before the Implementation of the Code of Criminal Procedure] Ügyvédek Lapja, 1 July 1899 (No 26), pp. 5–7, 8 July 1899 (No 27), pp. 3–4, 15 July 1899 (No 28), pp. 2–3, 22 July 1899 (No 29), pp. 3–4, 29 July 1899 (No 30), pp. 3–4; VARGHA Ferenc: *Az esküdtszék*. [The Jury] Budapest, 1905; *G-N*: *Az esküdtek igazmondása*. [Truthfulness of Jurymen] Magyar Jogász Újság, 15 December 1903 (No 24), p. 478; *Nyuly Mihály felmentése*. [Release of Mihály Nyuli] Ügyvédek Lapja, 30 June 1900 (No 26), pp. 6–7; RÉVAY Bódog: *A népakarat az esküdtbíróságnál és rendes bíróságoknál*. [The Will of People at Jury Tribunals and Ordinary Courts] A Jog, 3 June 1900 (No 22), pp. 174–175, 17 June 1900 (No 24), pp. 188–189, 24 June 1900 (No 25), pp. 198–199; HEIMANN Jenő: *A szegedi verdict*. [A Verdict in Szeged] Jogtudományi Közlöny, 15 July 1904 (No 29), pp. 238–239; BAUMGARTEN Izidor: *A törvényhozás művészetéről*. [About the Art of Legislation] Jogállam, Volume for 1905, pp. 14–18.

[91] See the classic work of Jerome FRANK: *Law and the Modern Mind*. London, 1930.

stream since the idea of a kind of "unified Europe" already existed at that time, although it did not last for long.[92]

The Hungarian jury procedure followed mainly the French version of the Anglo-American model;[93] in fact it had no important distinctive features compared with the solutions of other European countries. All the widely known institutions of juries in criminal processes were adopted by the Code of Criminal Procedure including the right of rejection of unappealing jurymen, too. Because of these this article does not consider the detail of criminal procedure or jury trial in Hungary because it would not be informative to summarize the rules in only a few paragraphs.[94]

Finally, Hungarian juries functioned only for less than five decades, during which time some of the lawyers were satisfied with them while others criticized them strenuously in practice. It cannot be said that the Hungarian press juries or the later real criminal juries were completely defective systems but it is true that the jurisdiction with twelve laymen did not operate entirely satisfactorily – with special regard to some very incorrect acquitting verdicts form the viewpoint of members of the profession[95] – in Hungary in the era of the Austro-Hungarian Dual Monarchy.

[92] KOSÁRY Domokos: *Az európai kis államok fejlődési típusai*. [The Types of Development of the Small States in Europe] In: Kosáry Domokos: A magyar és az európai politika történetéből, [From the History of the Hungarian and European Politics] Budapest, 2001, pp. 594–603, 627–636.

[93] The French model had three conspicuous differences compared with the Anglo-American juries: *1*. jurymen frequently made their decision with the cooperation of the official judges; *2*. if they decided alone, they could not diverge from the questions formulated by the official judges; *3*. the procedure did not require the jurors to make their verdict unanimously.

[94] The provisions have been explained shortly by Andor Csizmadia in more recent special literature. CSIZMADIA Andor: *Az esküdtbíróság Magyarországon a dualizmus korában*. [Jury in Hungary during the Era of the Dualism] In: Jogtörténeti Tanulmányok I., [Essays on Legal History, I] Editor: Csizmadia Andor. Budapest, 1966, pp. 131–147; compare with: VÁMBÉRY Rusztem: *Kézikönyv esküdtek számára*. [A Handbook for Jurymen] Budapest, 1900, pp. 1–96.

[95] See the history of some very incorrect verdicts in: ANTAL 2006, pp. 265–277. The author analyses the details of two notorious murders and the false jury trials after them: the Eremits Case (1904) and the Nyuli Case (1900).

Organisation of the Appeal Court in Temesvár (1890–1891)

1. § In memoriam Dezső Szilágyi, Minister of Justice

Dezső Szilágyi was a prominent figure among Eastern-Central European politicians, thinkers and legal scholars in the second part of the 19th century, contributing – as a parliamentary representative, university professor, Minister of Justice and chairman of the House of Representatives of the Hungarian Parliament – to the development of liberal ideas and their corresponding system of social and legal institutions, including the development of legal culture and modern (bourgeois) all-society values.

Dezső Szilágyi was born on 1 April, 1840 in Nagyvárad (Oradea), in a Calvinist intellectual family; he inherited his dedication to jurisprudence from his father, who himself was engaged in legal practice as a respectful lawyer. Szilágyi finished his studies in Pest-Buda and in Vienna, after which he practiced as a lawyer for a while, then in 1867 he started to work for the Hungarian Ministry of Justice, where he participated in the establishment of the Hungarian state institutions of public law in the era of Dualism; first as the secretary of the presidency, then as ministerial councillor. In 1870 he travelled to England on behalf of the Ministry and studied the organization of jurisdiction and the characteristic features of Anglo-Saxon procedural law. It was then that he became the standard-bearer for the institution of the jury, which also determined his subsequent ministerial activity.[1]

Having returned from England, he took an active part in political life, too: he was a representative in the Hungarian Parliament *(Magyar Országgyűlés)* from 1871 right until his death, first as a representative of Gyulafehérvár

[1] *Szilágyi Dezső igazságügyminiszteri osztálytanácsos hivatalos jelentéséből, az angol büntető eljárást illetőleg*, I. rész. [From the Official Report of Dezső Szilágyi, Councillor of the Ministry of Justice, with Regard to the English Criminal Procedural Law, Part 1] Themis, 6 September 1870 (No 10), p. 122, *Szilágyi Dezső igazságügyminiszteri osztálytanácsos hivatalos jelentéséből, az angol büntető eljárást illetőleg*, II. rész. [From the Official Report of Dezső Szilágyi, Councillor of the Ministry of Justice, with Regard to the English Criminal Procedural Law, Part 2] Themis, 13 September 1870 (No 11), pp. 134–137, *Szilágyi Dezső igazságügyminiszteri osztálytanácsos hivatalos jelentéséből, az angol büntető eljárást illetőleg*, III. rész. [From the Official Report of Dezső Szilágyi, Councillor of the Ministry of Justice, with Regard to the English Criminal Procedural Law, Part 3] Themis, 4 October 1870 (No 14), pp. 193–194; Tamás ANTAL: *The Codification of the Jury Procedure in Hungary*. In: The Journal of Legal History, Vol 30, No 3, December 2009 (GB), pp. 279–297, especially pp. 289–295.

(Alba Iulia), then of Budapest and finally of Pozsony (Bratislava). His consistent political faith is characterized by the fact that in the beginning he participated in public life as a member of the progressive Deák Party,[2] then from 1875 as a member of the newly-founded *Szabadelvű Párt* (Liberal Party). From 1878 until 1886 he delivered his speeches in Parliament as the speaker of the constructive opposition against Prime Minister Kálmán Tisza (1875–1890),[3] as one of the leading figures of *Egyesült Ellenzék* (United Opposition, later Moderate Opposition), which was formed partly by him. In 1889, when he was appointed Minister of Justice, he joined the liberals again, which made it possible for him to enjoy the confidence of both the government and the majority of the opposition. In 1898 – despite already being the chairman of the House of Representatives – he stayed true to his faith and temporarily joined the opposition again when he regarded the *ex lex* legal situation arising in connection with the budget as a breach of the constitution, which soon led to the resignation of Prime Minister Dezső Bánffy (1895–1899). Thereafter, he returned to the liberal party again.[4]

However, Dezső Szilágyi was not only a politician (1871–1901) and Minister of Justice (1889–1895) or the chairman of the House of Representatives (1895–1898) but – possibly in the first place – a *legal scholar* as well. He was appointed by the monarch to be a full university professor at the Faculty of Law of the University of Budapest at a young age, in 1874, where he lectured in public law and criminal law for 15 years.[5] He also held the office of Dean of the Faculty of Law in the academic year of 1879–1880. He much excelled over his contemporaries in factual knowledge: his deep, thematic and dogmatic knowledge of the contemporary Hungarian and European legal systems was, so to say, unparalleled, his substantive thinking, theoretical and practical grounding, great education in comparative law were acknowledged by his

[2] Ferenc Deák (1803–1876) was an excellent lawyer and a significant Hungarian politician in the 19th century. He led the first codification of the Hungarian criminal law and criminal procedure in 1843. He was the first Minister of Justice in the history of the Hungarian governments (1848). Later he was one of the originators and the main leader of the negotiations between Austria and Hungary for the Compromise in 1867. The bill on the relations between Croatia and Hungary was also his creation. The basic structure of the dual monarchy was planned mostly by him on the Hungarian side.

[3] KOZÁRI Monika: *Tisza Kálmán és kormányzati rendszere*. [Kálmán Tisza and the System of His Governance] Budapest, 2003.

[4] Read his detailed biography in JÓNÁS Károly – VILLÁM Judit: *A magyar országgyűlés elnökei, 1848–2002. Almanach*. [Presidents of the Hungarian Parliament, 1848–2002: An Almanac] Budapest, 2002, pp. 123–127.

[5] ECKHART Ferenc: *A Jog- és Államtudományi Kar története, 1667–1935*. = A Királyi Magyar Pázmány Péter Tudományegyetem története, 2. kötet. [The History of the Faculty of Law of Royal Hungarian Péter Pázmány University of Sciences, 1667–1935: Volume 2] Budapest, 1936, pp. 534, 598–599.

followers and political adversaries alike. For instance, Géza Polónyi, a politician of the Independence and 1848 Party, who was Szilágyi's implacable opponent and a frequent participant in the rhetorical combats fought during his ministerial office, also bowed to his greatness when making the following statement during the debate on the Code of Criminal Procedure in the House of Representatives in 1896: "the fact that Hungary will be blessed with the institution of the jury has antecedents, and in order to achieve this the country needed the genius and the great heart of the current honourable chairman of the House [Dezső Szilágyi]".[6]

From among his abundant activities as minister, the decentralization of appeal courts (Act XXV of 1890), the reform of the legal status of judges (Act XVII of 1891), the transformation of the Austrian-Hungarian consular jurisdiction (Act XXXI of 1891), the introduction of the civil summary procedure (Act XVIII of 1893), the transformation of marriage law and the institutions of registration (Act XXXI and Act XXXIII of 1894) and also the adoption of ecclesiastical reforms (Act XXXII of 1894, Act XLII and Act XLIII of 1895) are especially noteworthy. The Code of Criminal Procedure of 1896 and Act XXVI of 1896 on the organization of administrative jurisdiction as well as the act on the organization of juries (Act XXXIII of 1897) and the rule of law on the amendment of jurisdiction on elections (Act XV of 1899) were all prepared during his office as Minister.[7] Besides, he considerably promoted the development of prison matters, the comprehensive codification of the law of civil procedure, finally completed only in 1911, and also the adoption of Act V of 1894 on settlements financed by the state, as a result of which several

[6] Az 1892. évi február hó 18-ára hirdetett országgyűlés nyomtatványai. Képviselőház. Napló, XXXIV. kötet (1896). [Documents of the House of Representatives of the Hungarian Parliament, Official Chronicles, Vol XXXIV (1896)] p. 36.

[7] STIPTA István: *Szilágyi Dezső és a magyar igazságszolgáltatás reformja*. [Dezső Szilágyi and the Reform of Hungarian Jurisdiction] In: Publicationes Universitatis Miskolciensis. Sectio Juridica et Politica, Tomus XI, Miskolc, 1995, pp. 111–115; STIPTA István: *Szilágyi Dezső és az igazságügyi modernizáció*. [Dezső Szilágyi and the Jurisdictional Modernisation] In: Deák és utódai. Magyar igazságügyi miniszterek 1848/49-ben és a dualizmus korában, Editors: CSIBI Norbert, DOMANICZKY Endre. Pécs, 2004, pp. 137–152; ANTAL Tamás: *Törvénykezési reformok Magyarországon (1890–1900). Ítélőtáblák, bírói jogviszony, esküdtszék*. [Jurisdictional Reforms in Hungary (1890–1900): Courts of Appeal, Legal Status of Judges, Jury] = Dél-alföldi évszázadok 23. Serial Editor: BLAZOVICH László. Szeged, 2006(a); ANTAL Tamás: *A konzuli bíráskodás a dualizmus korában. Az 1891. évi XXXI. tc. létrejötte*. [Consular Jurisdiction in the Era of Dual Monarchy: The Way of Passing Act XXXI of 1891] In: Publicationes Doctorandorum Juridicorum, Tomus IV, Szeged, 2004, pp. 5–52.

settlements were founded in West Bácska (*Zapadnobački okrug*, Serbia) – one of which was named after him in 1903 *(Szilágyi, Svilojevo)*.[8]

The acclaimed writer, Kálmán Mikszáth wrote the following about him in 1894, in his book about his contemporaries: "Titanic thoughts are brewed, great plans whirl in Szilágyi's brain. His soul hungers for extraordinary actions. And he is almost continuously irritated by the ridiculous, trivial means at his disposal, by the petty conditions amidst which he lives. He is dissatisfied. Melancholic. He is tensed by vague, unnameable ambitions. At times he feels a desire to stamp on something, at times he would like to shatter the whole country and build a new one instead. Great truths shine before his eyes, like wandering lights in the night."[9]

In addition to all this, Szilágyi was a great orator. In the course of his career he "crushed orators, distorted their theories and logic"[10] in his stupendous speeches, which were compiled in four volumes after his death.[11] His reasoning was infinitely crystal-clear, flawless and professionally unquestionable, his Parliamentary speeches lasting for several hours are still looked upon as gems in rhetoric. The peak of his career as an orator is considered to be his monumental speech delivered in the great defence debate (1889) by some, in the reform of consular jurisdiction (1891) by others or on the occasion of the religious policy proposal in the year of 1894 by others again.

At the same time Szilágyi was a great legal scholar and politician not only on a Hungarian but also on a European scale, who fought for the rise of not only the Hungarian people but also of other peoples living in the Carpathian basin in the last third of the 19th century, and whose legacy is to be treasured by all of us: by Serbians, Romanians, Croatians, Slovakians, Ruthenians and Hungarians alike. He embodied the idea of Europeanism being formed at that time for all peoples and nations, without religious, ethnic or political prejudices. At the same time, similarly to all intellectual giants, he was lonely; he did not start a family, he devoted his entire life, strength and knowledge to the devel-

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[8] DAMPFINGER Irén: *Szilágyi telepes község története*. [The History of Settlement Svilojevo] Szilágyi, 2006; Lanji KALMAN: *Apatin i okolina. Prigrevica, Kupusina, Sonta, Svilojevo i Gomboš na razglednicama i slikama*. Apatin, 2004, pp. 121–138.

[9] MIKSZÁTH Kálmán: *Szilágyi Dezső*. [Dezső Szilágyi] In: Az én kortársaim, [My Contemporaries] Volume 1, Budapest, 1910, pp. 112–113.

[10] MIKSZÁTH 1910, pp. 114–115.

[11] See especially: *Szilágyi Dezső beszédei*. [Dezső Szilágyi's Speeches] Volume 2, Editor: VIKÁR Béla. Budapest, 1909, pp. 132–286, and Volume 4, Editor: Dr. FAYER Gyula. Budapest, 1913, pp. 75–154.

opment of the legal system.[12] It is all too sad that his sudden death on 31 July, 1901 deprived him of seeing the completion of the House of Hungarian Parliament (1904) designed by Imre Steindl…

In 1908 Béla Vavrik, the President of the Hungarian Lawyers' Society *(Magyar Jogászegylet)*, paid homage to his memory at his resting place with the following words: "just like the granite lion of this tombstone, he was a man carved from one block, staying one and the same under whatever circumstances of life – he represented the strength and the fearless courage which breaks but does not bend in the lengthy struggle for law, for the sacred aims of the glory and prosperity of his motherland, to which he dedicated his whole life."[13]

2. § The reform of the courts of appeal in Hungary

In the era of the dual monarchy (1867–1918), the Hungarian judicial system was ever changing, reorganising and improving.[14] A stable system of judicial

[12] *Igazságügyi reformok*. [Jurisdictional Reforms] Ügyvédek Lapja, 15 August 1891 (No 33), pp. 1–2; HOMO: *A margitszigeti banket*. [Banquet on Margit Island] Ügyvédek Lapja, 23 May 1891 (No 21), p. 1; *Szilágyi Dezső*. [Dezső Szilágyi] Jogtudományi Közlöny, 15 June 1894 (No 24), p. 1; *Szilágyi Dezső*. [Dezső Szilágyi] Jogtudományi Közlöny, 18 January 1895 (No 3), pp. 17–18; VAVRIK Béla: *Beszéd Szilágyi Dezső síremlékének leleplezése alkalmából*. Elmondotta: 1908. október 18-án. [Speech on the Occasion of the Dedication of Dezső Szilágyi's Sepulcher, 18 October 1908] In: Magyar Jogászegyleti Értekezések 289, Budapest, 1908, pp. 3–8; STILLER Mór: *Szilágyi Dezső miniszterségének első évfordulójára*. [For the First Anniversary of Dezső Szilágyi in Ministry] A Jog, 20 April 1890 (No 16), pp. 151–152; MÁRKUS Dezső: *Igazságügyi reform*. [Jurisdictional Reform] Jogi Szemle, 23 July 1891 (No V/4), pp. 81–83; MÁRKUS Dezső: *Igazságügyi állapotaink*. [Our Jurisdictional Conditions] Jogi Szemle, 3 September 1891 (No V/10), pp. 233–237.

[13] VAVRIK 1908, p. 8.

[14] MÁTHÉ Gábor: *A magyar burzsoá igazságszolgáltatási szervezet kialakulása, 1867–1875*. [Conformation of the System of Hungarian Bourgeois Jurisdiction, 1867–1875] Budapest, 1982; Gábor MÁTHÉ: *Die Gerichtsorganisation*. In: Ders.: Die Problematik der Gewaltentrennung. = Ungarische Rechtshistoriker 1. Budapest, 2004, pp. 73–146; NYEVICZKEY Antal: *A Budapesti Királyi Ítélőtábla története 1861. évi május 1-től 1891. évi május 4-ig*. [The History of the Appeal Court of Budapest, 1861–1891] Budapest, 1891; STIPTA István: *A magyar bírósági rendszer története*. [The History of the System of Hungarian Courts] Debrecen, [2]1998, pp. 119–159; István STIPTA: *Die Rechtskontrolle der öffentlichen Verwaltung*. In: Ders.: Die vertikale Gewaltentrennung. = Ungarische Rechtshistoriker 2. Budapest, 2005, pp. 95–190; BÓNIS György – DEGRÉ Alajos – VARGA Endre: *A magyar bírósági szervezet és perjog története*. [The History of the System of Hungarian Courts and Procedural Law] Zalaegerszeg, [2]1996, pp. 211–231; RUSZOLY József: *A választási bíráskodás Magyarországon, 1848–1949*. [Jurisdiction on Elections in Hungary, 1848–1949] Budapest, 1980; József RUSZOLY: *Parlamentarische Wahlprüfung*. In: Ders.: Beiträge zur neueren Verfassungsgeschichte. = Ungarische Rechtshistoriker 3. Budapest, 2009, pp. 447–548; CSIZMADIA Andor: *Az esküdtbíróság Magyarországon a dualizmus korában*. [The Jury in Hungary in the Era of Dualism] In: Jogtörténeti Tanulmányok 1, Editor: Csizmadia Andor. Budapest, 1966, pp. 131–148.

forums existed only for certain periods of time – only for a couple of decades. Both ordinary and special courts gained their final, “classical” forms by way of complementary reforms that took place before the end of World War I. This paper will focus on a part of the first key event of the last decade of the nineteenth century: on the royal appeal court *(ítélőtábla)* reform which happened in 1890/91, with special regard to Temesvár (Timişoara).

There was much to change in the judicial system: its every aspect provoked harsh criticism. For this reason, the new Minister of Justice Szilágyi started the implementation of reforms *in medias res* with the most spectacular intervention, i.e. the decentralisation of the appeal court of Budapest and that of Marosvásárhely (Târgu Mureş). There was one sensitive issue concerning the drafting of Act XXV of 1890, and this was chiefly not a legal one: the seats of the appeal courts had to be chosen. Most major Hungarian cities were not willing to forego the chance of acquiring an appeal court and the resulting socio-economical boom. Hence, they had already started campaigning when the law was being drafted. The campaigns initiated then by the cities of Debrecen and Arad, what more: the campaigns of the abovementioned cities took place at a national level.[15] However, not all cities campaigned so vigorously. For example, Nagyvárad (Oradea), another major city in the region, did not canvass votes.[16] After submitting its proposals to the legislature, it calmly waited for their decision. In the case of Debrecen, however, the issue of selection caused much greater excitement.

The government tried to come up with objective criteria for the selection of seats. Among others, these included the socio-economic level of development in the applicant cities, their regional gravitational status and, in minority-inhabited regions, a display of feeling of a common national identity among the citizens as well. The outcome of the selection-process was severely criticized in the political debates – primarily along local and not party lines – but

[15] GYALAY Mihály: *A Pesti Királyi Törvényszék működésének első öt éve, a tizenegy királyi ítélőtábla megszervezésének előzményei*. [The Operation of the Royal Tribunal of Pest in Its First Five Years…] Jogtudományi Közlöny, April 1999 (No 4), pp. 176–180; ANTAL Tamás: *A debreceni királyi ítélőtábla felállításának és Puky Gyula elnökségének története*. [The History of the Organisation of the Appeal Court in Debrecen…] In: Hajdú-Bihar Megyei Levéltár Évkönyve XXIX, Editor: RADICS Kálmán. Debrecen, 2002–2003, pp. 215–230; ANTAL Tamás: *Egyiknek sikerült, a másiknak nem. A királyi ítélőtáblák újjászervezéséről*. [One was Successful, the Other One was not: About the Reorganization of the Appeal Courts] In: Szeged, January 2003 (No 1), pp. 10–12. See also UJJ [János]: *A magyar törvénykezés reformévtizedéről*. [About the Reform Decade of Hungarian Jurisdiction] In: Szövétnek. Aradi Kulturális Szemle, Editor: UJJ János. April 2007, p. 15, review.

[16] ANTAL Tamás: *A nagyváradi ítélőtábla felállítása (1890–1891)*. [Organization of the Appeal Court in Oradea, 1890–1891] In: Ünnepi tanulmányok Máthé Gábor 65. születésnapja tiszteletére, Editors: MEZEY Barna, RÉVÉSZ T. Mihály. Budapest, 2006(b), pp. 12–31.

in the end the pro-government majority adopted the minister's version. The allocation of seats was defensible from one aspect, but also subject to criticism from another since, in some areas, it sometimes apparently resulted in inadequate solutions.[17]

All in all, although the decentralisation process caused a considerable stir throughout the country, its outcome proved generally satisfactory. As a final event, those cities that managed to obtain a royal appeal court began celebrating on 5 May 1891, while the others sought to adapt to the new situation.[18]

Critical opinions mostly came from the publicists of the *Ügyvédek Lapja* [Solicitors' Review]. As if guided by a sense of duty, they mainly sought to pinpoint the disadvantages resulting from the reform. The articles of this weekly magazine, however, are important from another aspect as well. Since they were based on information leaking from the Ministry, they could reflect how the reform progressed week after week.[19] The actual process of the allocation of high court judges can be reconstructed on the basis of the official bulletins published then in the *Budapesti Közlöny* and the semi-official ones in the *Ügyvédek Lapja*. The differences between the two sources are largely due to the fact that the official journal reported the ministerial appointments, whereas the latter source only informed the public of the filled positions a few weeks later.

The efficiency of the reform of the appeal court system is apparent from the decline in the backlog of unheard court cases. In the years subsequent to the reform this backlog significantly diminished, jurisdiction speeded up and the time people had to wait for their case to be heard decreased. Thus the courts became more efficient in Hungary.[20]

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[17] ANTAL Tamás: *A királyi ítélőtáblák újjászervezése (1890)*. [Reconstruction of the Royal Appeal Courts, 1890] Jogtudományi Közlöny, October 2003 (No 10), pp. 432–439.

[18] The winner cities and the places of the appeal courts were: Budapest (Hungary), Debrecen (Hungary), Győr (Hungary), Kassa (Košice, Slovakia), Kolozsvár (Cluj-Napoca, Romania), Marosvásárhely (Târgu Mureş, Romania), Nagyvárad (Oradea, Romania), Pécs (Hungary), Pozsony (Bratislava, Slovakia), Szeged (Hungary), Temesvár (Timişoara, Romania).

[19] ANTAL Tamás: *Az ítélőtáblák decentralizációja (1890–1891)*. [Decentralization of the Appeal Courts, 1890–1891] Bírák Lapja, 2003, No 2, pp. 74–82.

[20] For more details see ANTAL 2006a, pp. 19–136, and Tamás ANTAL: *Reforms of the Judicial System in the Era of Dezső Szilágyi*. In: Ius et legitimatio. Tanulmányok Szilbereky Jenő 90. születésnapja tiszteletére, Editor: SZABÓ Imre. Szeged, 2008, pp. 9–16.

3. § Events of the organization of the appeal court in Temesvár (Timişoara)

In Temesvár (Timişoara) mayor Károly Telbisz convened an extraordinary general assembly for the municipal board *(törvényhatósági bizottság)* by 20 January, 1890 in the hope of obtaining the appeal court, prior to which the report of the ad hoc committee appointed specifically for this purpose had been discussed by the special departments of the city administration.[21]

The extraordinary general assembly was chaired by prefect (lord lieutenant, *főispán*) Viktor Molnár. The following resolution was passed by the members unanimously, without debate: the city was ready to convert and furnish the Palace of the Governor, the Crown Prince tenement or any designated property as a temporary location for the appeal court. As regards its final location, they were willing to construct a new building to this end. This meant that the city – similarly to its rivals[22] – bound itself by resolution to temporarily accommodate the appeal court and its offices without imposing expenses on the state and to bear the costs incurred. As a final solution, it planned to erect an appropriate appeal court palace in less than 10 years and to transfer its site into the ownership of the royal treasury.[23]

At the same time Temesvár (Timişoara) could not feel secure about its position and offer: its rival in the region was Arad. Arad launched its campaign against Temesvár (Timişoara) in good time, for the time being in the form of a four-person delegation. The citizens of the latter one were somewhat frightened by this: Arad "could steal the royal appeal court from Temesvár (Timişoara) in the last minute" – the local press warned.[24] It is interesting to note that in response to the resulting competition, the inhabitants of Makó were fast to take a stand on the matter in their newspaper *Maros*: they emphasized that their county tribunal was in Szeged – therefore the competition between Arad and Temesvár (Timişoara) had no effect on them – yet, if asked, they would rather support Temesvár (Timişoara).[25]

[21] Délmagyarországi Közlöny (hereinafter: DK), 19 January 1890 (No 15), p. 3.

[22] In the official documents of the parliamentary debate of Act XXV of 1890 (Appendix No 2) the offerings of the following cities were mentioned beside the one of Temesvár (Timişoara): Győr, Kassa (Košice), Nagyvárad (Oradea), Pécs, Sopron, Szeged, Kolozsvár (Cluj-Napoca), Pozsony (Bratislava), Arad (Arad), Szombathely, Besztercebánya (Banská Bystrica), Eperjes (Prešov), Kőszeg, Marosvásárhely (Târgu Mureş), Nagykanizsa, Pápa, Nagyszeben (Sibiu) and Fiume (Rijeka).

[23] DK 21 January 1890 (No 16), pp. 2–3.

[24] DK 4 February 1890 (No 28), p. 4; DK 5 February 1890 (No 29), p. 3; DK 7 February 1890. (No 31), p. 4.

[25] DK 12 February 1890 (No 35), p. 4.

Possibly prompted partly by the news of the moves made in Arad, Achill Deschán, sub-prefect *(alispán)* in Temes county, announced a joint meeting with the city for the afternoon of 14 February, to be held in the assembly hall of the city casino in Temesvár (Timişoara). The announcement was dated 9 February, and mayor Károly Telbisz soon joined the initiative by sending out further appeals himself.[26] On the eve of the coming social event, *Délmagyarországi Közlöny* called the competition between the two cities noble. At the same time it was wished to be fair, too. The fact that, in agreement with the state (national) considerations, the Ministry was planning to make Temesvár (Timişoara) the seat of an appeal court was looked upon as the manifestation of this. The first argument for the correctness of the decision was the geographic location: Temesvár (Timişoara) was the centre of Torontál, Temes, Arad and Krassó-Szörény counties, while Arad was situated in the northern part of the region. The second argument was that the government always placed a "major institution" in the city "which shoulders the responsibility of solving greater nationwide tasks, and which has to face more severe obstacles during the solution of these tasks than the other one." And the tasks of Temesvár (Timişoara) were always more significant than those of Arad – at least this was the opinion in the city under discussion, while Arad sent a "huge delegation" to Budapest.[27]

In the afternoon of 14 February, a great number of city and county municipal board *(törvényhatósági bizottság)* members[28] made their appearance indeed. Imre Vargics parliamentary representative was appointed to be chairman, and in his opening speech he denounced the agitation by Arad as extreme. Thereafter, Bertalan Schweiger lawyer argued for Temesvár (Timişoara). Finally, the following resolution proposed by Béla Kormos, royal public notary *(közjegyző)* from Versecz, was adopted: "Considering that the jurisdictional and political viewpoints to be considered in the first place during the decentralization of the royal appeal court will be our best advocates – for the time being the meeting does not deem it necessary to take further steps and is looking forward to the decision to be made by the government and legislation trustingly." Nevertheless, an executive committee was set up: one hundred members were elected from the county municipal board and forty from the city

[26] DK 11 February 1890 (No 34), p. 1.

[27] DK 13 February 1890 (No 36), pp. 1 and 4.

[28] Municipal boards were the partly elected representative organs of the counties and cities of county rank in Hungary. During the time of the dual monarchy Atc XLII of 1870 and Act XXI of 1886 included the most important legal norms on them. Later the reform of municipal boards happened only in 1929. István STIPTA: *Die Geschichte des Ungarischen Selbstverwaltungssystems*. In: Ders.: Die vertikale Gewaltentrennung. = Ungarische Rechtshistoriker 2. Budapest, 2005, pp. 215–243.

one. Its chairman was prefect Viktor Molnár. This level-headed attitude was greatly appreciated by the countrywide daily papers.[29]

On 30 March a "friendly feast" was held by a few members of the barristers' bar of Temesvár (Timişoara) in hotel "Trónörökös Szálló" in honour of Károly Eötvös, representative for the Independence and 1848 Party, and Bernát Friedman [Friedman was the public prosecutor in the "half-a-million lottery case" in progress[30] which caused great excitement in Temesvár (Timişoara)]. During the conversation, Ignác Bartha asked Eötvös whether Temesvár (Timişoara) could count on the support of his party. The representative made it clear in his answer that all the parties in the House of Representatives agreed that the city should have a royal appeal court. Irrespective of political beliefs, everybody knew that Temesvár (Timişoara), by virtue of its geographical location and cultural mission, had all the right to claim an appeal court. He, himself, was also in favour of this and promised that if somebody should speak against it, he would immediately refute him. This comforted the hearts of the lawyers in Temesvár (Timişoara) and they acknowledged with joy: "knowing about the connections that Eötvös has […] we can be absolutely sure that the issue of the royal appeal court will be settled to Temesvár's (Timişoara's) liking. And the pleasure is not only that we will receive a royal appeal court but even more so the circumstance that we did not strive, did not canvass, did not besiege the reception chambers in the ministry, yet everybody in legislature is convinced of our right, regardless of party affiliation."[31]

However, their joy did not last long: a few days later the ultra left-wing politician Eötvös, who quickly found his feet in every situation, promised an appeal court to Arad, too, during his visit there, and in Békéscsaba he alluded to the possibility of a "small branch appeal court". The press in Temesvár (Timişoara) rectified with disappointment: Eötvös "is better than a minister – at making promises".[32]

In the end, the submission of the bill to the House of Representatives brought relief: "no news has recently caused greater joy or greater satisfaction in Temesvár (Timişoara) – *Délmagyarországi Közlöny* wrote enthusiastically – than the news from the local papers that in the draft submitted by the Minister of

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[29] DK 16 February 1890 (No 39), pp. 3–4.

[30] BOROVSZKY Samu (Editor in chief): *Magyarország vármegyéi és városai. Temes vármegye és Temesvár*. [The Counties and Cities of Hungary: Temes County and Timişoara] Budapest, 1914, p. 260.

[31] DK 1 April 1890 (No 76), p. 1.

[32] DK 17 April 1890 (No 89), pp. 3–4.

Justice to the House of Representatives, with regard to the decentralization of the royal appeal courts, Temesvár (Timişoara) was named as one of the seats for the royal appeal court to be decentralised." They did not glee at their rival, the events were simply commented by stating that Arad had to draw back from Nagyvárad (Oradea) and Temesvár (Timişoara).[33] However, the press in Arad was not so calm and continued its abuse against the rivals.[34]

It is understandable that people in Temesvár (Timişoara) were happy in spite of their neighbour's envy: Temesvár (Timişoara) was indeed to be favoured over Arad – they thought.[35] At the same time the national opposition also credited themselves for the city being awarded an appeal court. The liberals firmly refused this as in their opinion it was the Independence Party supporters who argued for Arad, and the Moderate Opposition left this question open. The city itself shared the view of the governmental party: "[Temesvár (Timişoara)] owes this not to the silent forbearance of the opposition but to its geographical location and to the government being able to distinguish public interest from the local interests of Arad, to its strong will not wavering under the most diverse and most conflicting influences."[36]

The debate of the bill in the House of Representatives did not bring any surprises. The general opinion was in favour of Temesvár (Timişoara), apart from Miksa Falk, a representative from Arad, nobody spoke against it.[37] Let me remark that this was no coincidence, either: one of its parliamentary representatives was the former Minister of Justice, Boldizsár Horvát (1867–1871),[38] who in all likelihood smoothed his city's way in his party. Thus on 7 May 1890 the local public could read the following telegraphic news – in bold letters: "The royal appeal court in Temesvár (Timişoara) has been voted for!" – for which the government and the Hungarian Parliament received due appreciation.[39]

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[33] DK 19 April 1890 (No 91), pp. 1–3.

[34] DK 19 April 1890 (No 91), p. 4.

[35] DK 20 April 1890 (No 92), pp. 1–2.

[36] DK 4 May 1890 (No 104), p. 1.

[37] ANTAL 2006a, pp. 26–39.

[38] MEZEY Barna: *Deák Ferenc és Horvát Boldizsár*. [Ferenc Deák and Boldizsár Horvát] In: Deák és utódai. Magyar igazságügyi miniszterek 1848/49-ben és a dualizmus korában, Editors: CSIBI Norbert, DOMANICZKY Endre. Pécs, 2004, pp. 73–88; LAKY Ferenc: *Horvát Boldizsár, a polgári jogfejlődés katalizátora*. [Boldizsár Horvát, Catalyser of the Development of Bourgeois Law] In: Deák és utódai. Magyar igazságügyi miniszterek 1848/49-ben és a dualizmus korában, Editors: CSIBI Norbert, DOMANICZKY Endre. Pécs, 2004, pp. 89–99.

[39] DK 6 May 1890 (No 105), p. 5; DK 7 May 1890 (No 106), p. 5; DK 10 May 1890 (No 109), p. 1.

In order to find a location for the appeal court, the leadership of the city took steps straightaway: on 14 May, mayor Károly Telbisz, royal chief engineer Ákos Kovács and royal director of finance László Bárczy inspected the Palace of the Governor *(kormányszéki palota)* as a potential location. Fifty-four rooms were designated in it for the appeal court, in which the district court *(járásbíróság)*, the public prosecutor's office *(királyi ügyészség)* and the post office were housed at the time.[40]

Considering later events, by January 1891 the reconstruction work was quite advanced, and the city council had published an invitation for tender in this matter. Participants therein included József Geml city clerk *(városi főjegyző)*, Imre Rózsa chief official legal counsel *(tiszti főügyész)*, Henrik Reiber chief engineer *(főmérnök)*, Henrik Kratochvill chief auditor *(főszámvevő)*, Ferenc Radislovits engineer and several members of the municipal board. The total costs were estimated to be 18,260 forints and 67 crowns. Finally, the offer by János Bonn craftsman was accepted. Moving in was scheduled by the beginning of April.[41]

The news was telegraphed on 23 January: contrary to previous guesses which had foretold Sándor Sélley's appointment,[42] Andor Paiss, presiding judge of the appeal court in Budapest was going to be the chairman of the new royal appeal court in Temesvár (Timişoara). He was known to have been born in a noble family on 10 April, 1836 in Marczali (Somogy county); he became a legal expert in 1859 and took the barristers' examination in 1861. First he was appointed to be a second county clerk *(megyei aljegyző)* in Somogy county, then he was elected to be a representative in the Hungarian Parliament in 1867 and he also became a session clerk *(jegyző)* in the House of Representatives. After his political career began, he became an assistant lecturer in the court of cassation of the Royal Supreme Court *(Curia)*. In the same year he became a judge in the Budapest royal appeal court. He was a Royal Supreme Court judge from 1882 and a presiding judge in the royal appeal court, in (criminal) council IV from 1887. He was a member of the national barrister examination committee and judge examination committee, and the chairman of the latter one, too.[43]

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[40] DK 15 May 1890 (No 113), p. 3.

[41] DK 8 January 1891 (No 5), p. 4; DK 9 January 1891 (No 6), p. 4; DK 13 January 1891 (No 9), p. 3.

[42] DK 3 January 1891 (No 2), p. 2. Finally Sándor Sélley was chaired to the Court of Appeal of Szeged.

[43] DK 24 January 1891 (No 19), p. 5; DK 25 January 1891 (No 20), pp. 2 and 4; DK 27 January 1891 (No 21), p. 4.

The city had all the reason to congratulate itself on having such a prominent chairman, and they immediately started to prepare for the judges' reception. Appropriate flats were needed for this, therefore those who were in possession of suitable property to let were contacted under the leadership of József Kappusz, honorary councillor.[44] They were obviously looking forward to the appeal court and the judges: "they will be destined to set the intellectual trend not only for the territory of our city but also for the other respectful cities under the jurisdiction of the royal appeal court." Furthermore, it was thought that "the chairman's person will guarantee that our appeal court will play a prominent role among the other appeal courts". The appointment of Ádám Fluck and Jenő Horváth, judges of the Budapest royal appeal court, to be presiding judges was also welcomed, while it was regretted that István Mály, the head of the local tribunal *(törvényszék)* and chairman for 15 years, was not made presiding judge.[45]

On 3 February 1891 further nominations to be expected were revealed, and the chairman and the two presiding judges arrived in Temesvár (Timişoara) as early as on 2 February to inspect the rooms.[46] The chairman and István Lobmayer chief public prosecutor *(királyi főügyész)*, appointed to office in Szeged, were received officially by István Mály, chairman of the tribunal, on 13 February, and they inspected the rooms of the appeal court under construction together. Prefect Viktor Molnár held a banquet in their honour, in which the mayor also participated. Paiss made the noteworthy remark that thirteen rooms for the judges would not be sufficient: sixteen would be needed, and he immediately arranged for forms and stationery. He intended to take over the rooms and offices of the appeal court on 15 April.[47]

The personnel of the royal appeal court in Temesvár (Timişoara) was planned to be as follows: one chairman, two presiding judges, sixteen judges, one secretary, five scriveners, one administrative office director, two office clerks, five amanuenses and the necessary number of junior clerks. At the same time it was clear that no independent chief public prosecutor's office *(királyi főügyészség)* would be established in Temesvár (Timişoara); instead, it would be attached to the one to be organized in Szeged.[48] In the meantime further ap-

[44] DK 30 January 1891 (No 24), p. 3.
[45] DK 1 February 1891 (No 26), p. 1; DK 31 January 1891 (No 25), p. 4.
[46] DK 3 February 1891 (No 27), pp. 2–3; DK 5 February 1891 (No 28), p. 4.
[47] DK 14 February 1891 (No 36), p. 3; DK 15 February 1891 (No 37), p. 4.
[48] DK 6 March 1891 (No 53), p. 3; DK 29 March 1891 (No 72), p. 3.

pointments of judges were written about,[49] and at the beginning of April the administrative office staff was also appointed.[50]

The first meeting of the judges who came predominantly from Budapest was held on 11 April, in the Capital. The organization of councils of judges was also discussed there.[51] In the middle of April the last appointments came to light: it turned out that from among its own citizens, Gyula Avarffy judge of the local tribunal as well as Szvetozár Dimitrievits and Zsigmond Kisfaludy local lawyers were appointed to be judges in the appeal court.[52]

In the end, Andor Paiss took possession of the rooms of the appeal court on 19 April 1891. The administrative office director also arrived and started to sort out the files from Budapest. A backlog of approximately 1,500 cases could be expected. The royal appeal court itself was situated on the first floor of the Palace of the Governor. The banqueting hall of the appeal court was the corner room opposite the Eisenstädter house. The chairman's rooms and library, and also the room of the chairman's secretary were situated next to this. Then came one of the presiding judges' rooms, some judges' rooms and a courtroom, then the other presiding judge's room. Altogether three council rooms and withdrawing rooms were created, and each judge received their own office, too. Furnishing was almost complete by 24 April, the furniture was regarded comfortable and also spectacular-looking: "the pieces of furniture are real masterpieces made by the craftsmen of Temesvár (Timişoara)" – a correspondent wrote enthusiastically.[53]

Both the local legal community and the citizens were preparing for the opening ceremony. The municipality of the city welcomed the new appeal court on 5 May as follows: "As a result of the wise measure of legislation – the ceremonial address started – taken in the course of the (re)organization of the national administration of justice initiated by the genial statesman heading the Ministry of Justice, the inhabitants of the free royal city of Temesvár (Timişoara) can enjoy the honourable fortune to welcome the royal appeal court, destined to enforce the holiest task of state authority, jurisdiction, in this important southern part of the country, on the occasion of starting its beneficent

[49] DK 5 March 1891 (No 52), p. 2; DK 1 April 1891 (No 73), p. 2.

[50] DK 11 April 1891 (No 82), p. 3; DK 9 April 1891 (No 80), p. 4.

[51] DK 16 April 1891 (No 86), p. 3.

[52] DK 16 April 1891 (No 86), pp. 3 and 5; DK 19 April 1891 (No 89), p. 5; DK 5 March 1891 (No 52), p. 2; DK 1 April 1891 (No 73), p. 2.

[53] DK 21 April 1891 (No 90), pp. 2–3; DK 25 April 1891 (No 94), p. 3; DK 1 May 1891 (No 99), p. 4.

activity on this day of outstanding importance in legal history." First of all, the cultural public interests of the city were expected to develop in the southern part of the country.[54]

On 5 May 1891, the opening ceremony started with a service in the Roman Catholic cathedral at 9 o'clock in the morning. The entire nobility of the city and the county was present, together with the representatives of the county tribunals and district courts belonging to the territory of the appeal court, the members of the city municipal board and many others. The mass was celebrated by bishop Sándor Dessewffy.

At 10 o'clock in the morning the guests went over to the centre of the royal appeal court, where the formal opening meeting was held in the banqueting hall. Andor Paiss opened the meeting, then László Róth scrivener read out the chairman's appointment document, after which Paiss took his oath. This was followed by the presentation of the warrant received from the Minister of Justice, which contained the presiding judges' and other judges' names, who also took their oaths.[55]

After the formal events the chairman held his opening speech. In this he reasoned that decentralization had been made necessary by the largely increased workload of judges, by the principle of directness and orality and also by exercising the right of administrative type (not jurisdictional) control on tribunals more efficiently. He remarked that 1,214 civil and 464 criminal cases, altogether 1,743 cases were handed over from the Budapest appeal court, to which the cases addressed to the Temesvár (Timişoara) appeal court by the five county tribunals and twenty-five district courts operating in its territory would be added (on average 8,424 cases to be expected annually).[56] After this, Jenő Horváth presiding judge welcomed the chairman on behalf of the judges.

[54] DK 5 May 1891 (No 102), pp. 3–4.

[55] DK 6 May 1891 (No 103), pp. 2–3.

[56] Namely the following royal county tribunals *(vármegyei törvényszékek)* and district courts *(járásbíróságok)* were relevant: the county tribunal of *Fehértemplom* [*Bela Crkva*, Serbia] (with the district courts in Detta, Fehértemplom, Károlyfalva, Oravicabánya, Szászkabánya, Temes-Kubin, Versecz), the county tribunal of *Karánsebes* [*Caransebeş*, Romania] (with the district courts in Bozovics, Karánsebes, Ó-Orsova, Teregova), the county tribunal of *Lugos* [*Lugoj*, Romania] (with the district courts in Facset, Lugos, Német-Bogsán), the county tribunal of *Pancsova* [*Pančevo*, Serbia] (with the district courts in Alibunár, Antalfalva, Pancsova, Perlasz) and the county tribunal of *Temesvár* [*Timişoara*, Romania] (with the district courts in Buziás, Csákovár, Lippa, Temesrékás, Temesvár, Új-Arad, Vinga). See for details the editorial explanation of Act XXIX of 1890 on the determination of the seats and territories of royal county tribunals and royal district courts in *Magyar törvénytár. 1889–1891. törvényczikkek*, [Hungarian Corpus Juris, Acts of 1889–1891] Editor: MÁRKUS Dezső. Budapest, 1897, pp. 320–326. Compare with BOROVSZKY 1914, pp. 260–264.

After the speeches, the disciplinary committee was set up by drawing names. The councils of judges were also established: a civil and terrier, a commercial and bill of exchange, and a criminal council of judges were set up.[57] The ceremonial events were concluded with honours paid to the chairman.[58]

In the afternoon the programme was continued in the city casino with a luxurious ceremonial lunch with the participation of approximately 250 guests. Toasts were given: prefect Viktor Molnár, among others, expressed his grateful thanks to the monarch (Franz Joseph) for his benevolence and kindness. Bishop Sándor Dessewffy drank to the body of the royal appeal court in Temesvár (Timişoara). Andor Paiss toasted to the inhabitants of the city, Imre Vargics parliamentary representative drank to Dezső Szilágyi, Minister of Justice. Among others, Károly Telbisz remembered the merits of Boldizsár Horvát, too, then praised the government and the Prime Minister (Gyula Szapáry).[59]

The appeal court started its effective work on 12 May 1891. Great efforts were made to process the files, the only person who made a somewhat bitter remark was Ernő Szuló, the chairman of the Bar Association: it was unfortunate that judges and barristers were lacking in "collegial sympathy" – he wrote in an editorial and suggested that this should be remedied.[60] In honour of the reform, a new column was started in *Délmagyarországi Közlöny* from 1 June called "Royal appeal court notes" *(Kir. táblai értesítő)*, and on Saturdays a whole page was intended to be dedicated to presenting the work of the appeal court. Endre Grósz local lawyer undertook the editorial tasks.[61]

4. § Epilogue

At the end of the study – instead of concluding a summary – let us quote an eternal thought from the letter written by Dezső Szilágyi to his voters in 1889:

[57] *Council of private law cases No I*: Jenő Horvát, Andor Sey, Pál Burián, József Seyfried, János Scherff, János Ludvig, László Gidró, Mihály Huszka; *Council of private law cases No II*: Ádám Fluck, Andor Jekelfalussy, Béla Ternovszky, József Istvánffy, Gyula Avarffy, Lajos Gál, László Papp, Tamás Dogariu; *Council of criminal law cases*: Andor Paiss, Ábrahám Berlogia, Mihály Huszka, László Papp, János Biró, Tamás Dogariu, László Gidró, Andor Jekelfalussy, Béla Ternovszky, József Istvánffy. There are no any data about Szvetozár Dimitrievits and Zsigmond Kisfaludy. Compare with BOROVSZKY 1914, p. 259.

[58] DK 6 May 1891 (No 103), p. 3.

[59] DK 6 May 1891 (No 103), pp. 3–4.

[60] DK 12 May 1891 (No 107), p. 1; DK 15 May 1891 (No 110), p. 4.

[61] DK 9 May 1891 (No 105), pp. 2–3.

“the unity of law is an immense connection and maintaining force for the state but only if it satisfies the idea of citizens’ equality, if it does not sanction differences by law, if it does not maintain legal walls separating the citizens but, instead, it raises the idea of citizens’ equality and the notion of togetherness over the differences and asserts it, and if this principle is also enforced in the implementation of law and in sharing in the beneficence of state activities.”[62]

[62] FAYER Gyula (Editor): *Szilágyi Dezső beszédei*. *Negyedik kötet*: *Közös ügyek és rokon tárgyak*. [Dezső Szilágyi’s Speeches, Volume 4: Common Relations and Similar Subjects]. Budapest, 1913, p. 157.

A Historical Institution:
Consular Jurisdiction of the Austro-Hungarian Monarchy

1. § Introduction

There are such territories of legal history which have a close contact to not only the ordinary laws and customs of a country but to international law and the legal interactions of states as well. Consular jurisdiction, an institution hardly mentioned today, is specific both in terms of constitutional and legal history and with respect to international jurisprudence. The foundation of the United Nations Organization and the development of modern international relations, as well as the disintegration of colonialism and last but not least the disappearance of a sharp distinction and difference between Christian and non-Christian or "civilized" and "non-civilized" states all resulted in the era of consular jurisdiction coming to an end.

This specially formed, heterogeneous institution was made necessary by the recognition of the states with different cultures and development according to which: the prerequisite to long-lasting international relations and beneficial contact between nations is to form a cultural, ethnic and economic community of interest on both sides. International relations in turn – due to the obvious reason of differences between states – necessitated guarantees. Such was consular jurisdiction as an extraordinary part of consular defence.[1]

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[1] Some international literature of consular jurisdiction: Quincy WRIGHT: *A Model Consular Convention*. In: The American Journal of International Law, Oct. 1948. Vol 42, No 4, pp. 866–868; *Consular Administration of the Estates of Deceased Nationals*. In: The American Journal of International Law, Jan. 1918. Vol 2, No 1, pp. 170–176; Kurt H. NADELMANN: *American Consular Jurisdiction in Morocco and Tangier: International Jurisdiction.* In: The American Journal of International Law, Oct. 1955. Vol 49, No 4, pp. 506–517; Richard YOUNG: *The End of Consular Jurisdiction in Morocco*. In: The American Journal of International Law, Apr. 1957. Vol 51, No 2, pp. 402–406; D. C. M. PLATT: *The Role of the British Consular Service in Overseas Trade, 1825–1914*. In: The Economic History Review, 1936. Vol 15, No 3, pp. 494–512; Peter BYRD: *Regional and Functional Specialisation in the British Consular Service*. In: Journal of Contemporary History, Jan. 1972. Vol 7, No 1/2, pp. 127–145; Kwan HAI-TUNG: *Consular Jurisdiction: Its Place in the Present Clamour for Abolitions of Trades*. In: Pacific Affairs, Jun. 1929. Vol 2, No 6, pp. 347–360; Charles Cheney HYDE: *The Relinquishment of Extraterritorial Jurisdiction in Siam*. In: The American Journal of International Law, Jul. 1921. Vol 15, No 3, pp. 428–430; Crawford M. BISHOP: *American Extraterritorial Jurisdiction in China*. In: The American Journal of International Law, Apr. 1926. Vol 20, No 2, pp. 281–299; *The Joris Case in the Turkish Capitulations*. In: The American Journal of International Law, Apr. 1907. Vol 1, No 2, p. 485; Eldon R. JAMES: *Jurisdiction over Foreigners in Siam*. In: The American Journal of International Law, Oct. 1922. Vol 16, No 4, pp. 585–603; Ermory R. JOHNSON: *The Early History of the United States Consular Service, 1776–1792*. In: Political Science Quarterly,

The European states held the view that it was not reassuring to subject their citizens to territorial jurisdiction. The principal reason for this was the different character, the "barbarism" of Oriental peoples and states.[2] At the same time, maintaining contacts with the same exotic countries being an economic interest, nationals of Western and Central Europe frequently resided "in the Orient" – first in the Turkish Empire, then all over the state formations of Asia and Africa. At the same time the requirement of any kind of jurisdiction on the territory of another state is the fact that the foreign state in question abides this activity in the terms of a treaty.[3]

Two resolutions proposed by Fyodor Fyodorovich Martens, famous university professor in St. Petersburg,[4] were accepted unanimously by the *Institut de droit international* in 1881. According to these, the practice followed in the mixed suits in non-Christian states was unjust, even harmful, to civilized powers. On the other hand it was stated that the extraterritoriality enjoyed by their citizens residing in Oriental countries not only constituted a right but also gave rise to a duty. At the 1882 conference of the *Institut* Martens submitted ideas of organizational reforms, which were accepted with slight modifications a year later. This was when the idea of mixed courts of second instance was

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Mar. 1898. Vol 13, No 1, pp. 19–40; Philip MARSHALL BROWN: *The Emancipation of Egypt*. In: The American Journal of International Law, Jul. 1937. Vol 31, No 3, pp. 469–470; William L. DENNIS: *Extraterritoriality in China*. In: The American Journal of International Law, Oct. 1924. Vol 18, No 4, pp. 781–786; N. WING MAH: *Foreign Jurisdiction in China*. In: The American Journal of International Law, Oct. 1924. Vol 18, No 4, pp. 676–695; H. E. GARLE: *Judicial Reform and the Egypt Settlement*. In: International Affairs, Mar. 1932. Vol 11, No 2, pp. 229–250; Jasper Y. BRINTON: *The Closing of the Mixed Courts of Egypt*. In: The American Journal of International Law, Apr. 1950. Vol 44, No 2, pp. 303–312.

[2] Further examples of international literature: Richard T. CHANG: *The Justice of Western Consular Courts in Nineteenth-Century Japan*. Westport, Conn., 1984; Jasper YEATES BRINTON: *The Mixed Courts of Egypt*. New Haven, 1930; K. M. PANIKKAR: *The Principles and Practice of Diplomacy*. Delhi, 1952, Bombay, 1956; G. E. do NASCIMENTO E SILVA: *Diplomacy in International Law*. Leiden, 1972; Donald E. QUELLER: *The Office of Ambassadors in the Middle Ages*. Princeton, N.J., 1967; Garrett MATTINGLY: *Renaissance Diplomacy*. Boston, 1955, New York, 1988; Ragnar NUMELIN: *The Beginnings of Diplomacy: A Sociological Study of Intertribal and International Relations*. London–New York, 1950; Frank E. ADCOCK – Derek J. MOSLEY: *Diplomacy in Ancient Greece*. London–New York, 1975; Immanuel C. Y. HSÜ: *China's Entrance into the Family of Nations: The Diplomatic Phase, 1858–1880*. Cambridge: Harvard Uni. Press, 1960.

[3] *Consuli bíráskodás*. In: Magyar jogi lexicon öt kötetben. [Consular Jurisdiction. In: Hungarian Legal Lexicon in Five Volumes.] Editor: MÁRKUS Dezső. Volume 2, Budapest, 1899, p. 652.

[4] The most important works of F. F. MARTENS (1845–1909) include (titles in English translation): *Relationship between Russia and the Ottoman Empire during the Reign of Catherine II, Czarina of Russia*. St. Petersburg, 1867; *Consuls and Consular Jurisdiction in the Orient*. St. Petersburg, 1873; *The Oriental War and the Conference of Brussels, 1874–1879*. St. Petersburg, 1879; *Russia and England in Central Asia*. St. Petersburg, 1880; *Russia and China*. St. Petersburg, 1881; *Present Day International Law of Civilized Nations*, 1–2. St. Petersburg, 1882–1883. See also V. V. PUSTOGAROV and W. E. BUTLER: *Our Martens: International Lawyer and Architect of Peace*. Hague, 2000.

raised by the contracting powers, which was later adopted by Hungary as well.[5]

In the 20th century distrust and this large emphasis on the sovereignty of the administration of justice of the European states diminished, and as a result of the effect and guarantee of international – universal and regional – conventions of human rights, and also due to the global economic and social development, consular jurisdiction slowly became history, in accordance with the principle of the *legal equality* of states.[6]

2. § Organizational antecedents

The institution of consular jurisdiction was originally a *commercial court*, established in the principal commercial territories of the early Turkish Empire at the time of the Crusades. It appears from the treaties that the right to consular jurisdiction was regarded such a natural right by the Porte that it was frequently not specified in detail in various treaties. The consul's judicial authority extended to his fellow nationals and to the foreigners under his protection in cases of private law, commerce and criminal law. If only Christian parties were involved in the legal action, the consul proceeded according to domestic law, while if Muslims were also parties to the case, it belonged to the competence of the local authorities. The first commercial and consular treaty in the modern sense was concluded by France and Turkey in 1535, and this capitulation provided the French with the exclusive right to enter into commerce directly with the empire, while other nations could participate in it only through France. The English managed to have the rights of France extended to them in

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[5] LERS Vilmos: *A konzuli bíráskodás intézménye*. [The Institution of Consular Jurisdiction] Budapest, 1904, pp. 296–297; HARGITAI József: *A konzuli intézmény és a konzuli kapcsolatok jogának története*. [The History of Consular Institution and the Law of Consular Relations] Jogtudományi Közlöny, Sept. 1999. Vol 54, No 9, pp. 369–381; NAGY Károly: *A nemzetközi jog, valamint Magyarország külkapcsolatainak története*. [A History of International Law and the Foreign Relations of Hungary] Lakitelek, 1995, p. 92.

[6] M. HUBER: *Die Gleichheit der Staaten*. Stuttgart, 1908; H. WEINSCHEL: *The Doctrine of the Equality of States and its Recent Modifications*. In: The American Journal of International Law, 1951. Vol 45, pp. 417–442; P. J. BAKER: *The Doctrine of the Legal Equality of States*. In: British Yearbook of International Law, 1923–1924, pp. 1–20; W. SCHAUMANN: *Die Gleichheit der Staaten*. Wien, 1957; B. BROMS: *The Doctrine of Equality of States as Applied in International Organizations*. Helsinki, 1959; H. KELSEN: *The Principle of Sovereign Equality of States as a Basis for International Organization*. In: The Yale Law Journal, March 1944. Vol 53, No 2, pp. 207–220; R. P. ANAND: *Sovereign Equality of States in International Law*. In: Recueil des Cours, 1986. Vol 197, Issue 2, pp. 9–228; NAGY Károly: *Nemzetközi jog*. [International Law] Budapest, 1999, pp. 81–84.

1580, and it was the capitulation of year 1675 which laid down England's own right to commerce and consular jurisdiction finally in the Orient.[7]

In the Ottoman Empire – to which the Egyptian viceroyalty, Bulgaria, Serbia and Romania (Wallachia) also belonged – the basis of these rights was constituted for Hungary and for the Austrian provinces by the commercial and maritime treaty concluded by Charles VI, elected Holy Roman Emperor [King of Hungary as Charles (Károly) III, 1711–1740] and by Achmet Chan III, Turkish Sultan (1703–1730) in Požarevac on 27th July, 1718, which was ratified by the conclusion of the peace treaty of Belgrade on 18th September, 1739 and of Sistova on 4th August, 1791. Thereafter, the right to consular jurisdiction in Turkey was secured by Sweden in 1717, Denmark in 1756, Prussia in 1761, Russia in 1774, Spain in 1782, Belgium in 1838, Portugal in 1843, Greece in 1855 and by the United States of America in 1830.[8]

Besides Turkey, consular jurisdiction was practiced by Hungary (and by the Austrian provinces) in Algiers until 1830, in Tripolis until 1835, in Tunis until 1883 (these were annexed by France), and similarly in Annam and in Tongking until 1884 (here France terminated other jurisdictions without opposition from the powers), in Zanzibar until 1907,[9] in Serbia until 1881,[10] in Bosnia and Herzegovina until the occupation by the Austro-Hungarian Monarchy in 1878,[11] in Cyprus until 1879 (a territory occupied and governed by England from 1874) as well as in Romania,[12] Bulgaria,[13] Persia,[14] China,[15] Japan,[16] Siam,[17] Korea[18] and Morocco[19] even after the turn of the 19th–20th century.

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[7] CSARADA János: *A tételes nemzetközi jog rendszere*. [The System of Positive International Law] 2nd edition, Budapest, 1910, p. 365; TEGHZE Gyula: *Nemzetközi jog*. [International Law] Debrecen, 1930, pp. 309–310; HARGITAI 1999, pp. 371–376; *Konzul (consul), Konzulátus (consulatus)*. [Consul, Consulate] In: RÉVAI Nagy Lexikona. Az ismeretek enciklopédiája, [Révai's Great Lexicon. The Encyclopaedia of Knowledge] Volume 12, Budapest, 1915, pp. 8–10.

[8] Az 1891. évi XXXI. törvényczikk indokolása. [Reasons for Act XXXI of 1891] WHR87–92. XXV. (1891) Issue 973, p. 279; and CSARADA 1910, p. 366.

[9] A m. kir. igazságügyministernek 21519/1907. I. M. számú rendelete a Zanzibárban gyakorolt konzuli bíráskodás megszüntetéséről szóló közös külügyminiszteri rendelet kihirdetése tárgyában. [Decree No 21519/1907. I. M. of the Hungarian Royal Minister of Justice on the Promulgation of the Decree of the Common Minister of Foreign Affairs on the Termination of Consular Jurisdiction in Zanzibar] Igazságügyi Közlöny, 28 May 1907 (No 5), pp. 176–177.

[10] A Szerbiával 1881. évi május 6-án Bécsben kötött consulsági egyezmény beczikkelyezéséről hozott 1882. évi XXXV. tc. XIII. cikke. [Article XIII of Act XXXV of 1882 on the Implementation of the Consular Treaty Concluded with Serbia on 6th May 1881, in Vienna]

[11] PALOTÁS Emil: *Az Osztrák-Magyar Monarchia balkáni politikája a berlini kongresszus után (1878–1881)*. [Balkan Politics of the Austro-Hungarian Monarchy after the Congress of Berlin] Budapest, 1982, pp. 34–42.

[12] A berlini szerződés beczikkelyezéséről szóló 1879. évi VIII. tc. VIII. és XLIX. cikke. [Articles VIII and XLIX of Act VIII of 1879 on the Implementation of the Treaty of Berlin]

Various types could be distinguished in the organization of consular jurisdiction as regards the countries – the French, the English and the Russian models. The *French organization* was based on an *Ordonnance* from year 1861 and on an *édit* from year 1778. In accordance with these, the consul proceeded on first instance as a single judge in civil cases of slighter importance and in minor offences, and with two assessors in civil cases with a higher sum in dispute. The domestic court made judgement on second instance and in criminal cases. Appeals from the French consular tribunals in Turkey and in Persia were forwarded to the tribunal in Aix, while from those in the territory of Muscat, China and Siam to the tribunal in Saigon (previously in Pondicherry). A plea of nullity could be raised against the decisions of these two forums before the Court of Cassation in Paris. This type was adopted by Belgium, the German Empire, Italy, the Netherlands and Spain as well.[20]

The organization of the *English consular jurisdiction* was analogous to that of the domestic English courts. On first instance, district consular tribunals consisting of jurors, assessors and the consul adjudicated over British nationals. Appeals were submitted to the supreme court called *Supreme Consular Court for the Dominions of the Sublime Ottoman Porte*, seated in Constantinople, which proceeded on second and at the same time on final instance. Its members were appointed by the English government. A separate supreme high court was established for China in Shanghai and for Egypt in Alexandria. This model was adopted by Greece and – as it will be seen later – also by the Austro-Hungarian Monarchy.[21]

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[13] A berlini szerződés beczikkelyezéséről szóló 1879. évi VIII. tc. VIII. cikke. [Article VIII of Act VIII of 1879 on the Implementation of the Treaty of Berlin]

[14] Based on the treaty concluded on 17th May, 1857 *(Passim).*

[15] A chinai császársággal 1869. évi szeptember 2-án kötött kereskedelmi szerződésről szóló 1871. évi XXXV. tc. XXIX. cikke. [Article XXIX of Act XXXV of 1871 on the Commercial Treaty Concluded with the Chinese Empire on 2nd September, 1869]; JÓZSA Sándor: *Kína és az Osztrák-Magyar Monarchia*. [China and the Austro-Hungarian Monarchy] Budapest, 1966, pp. 41–78.

[16] A japáni császársággal 1869. évi október hó 18-án kötött kereskedelmi szerződésről szóló 1871. évi XXIX. tc. V. cikke. [Article V of Act XXIX of 1871 on the Commercial Treaty Concluded with the Empire of Japan on 18th October, 1869]

[17] A siami királysággal 1869. évi május 17-én kötött kereskedelmi szerződésről szóló 1871. évi XXVIII. tc. IX. és X. cikke. [Articles IX and X of Act XXVIII of 1871 on the Commercial Treaty Concluded with the Empire of Siam on 17th May, 1869]

[18] A Koreával 1892. évi június 23-án kötött barátsági, kereskedelmi és hajózási szerződés beczikkelyezéséről szóló 1893. XXVII. tc. III. czikke. [Article III of Act XXVII of 1893 on the Implementation of the Treaty of Friendship, Commerce and Navigation Concluded with Korea on 23rd June, 1892]

[19] A madridi egyezmény beczikkelyezéséről szóló 1882. évi XIX. tc. V. cikke. [Article V of Act XIX of 1882 on the Implementation of the Treaty of Madrid]

[20] LERS 1904, p. 169; TEGHZE 1930, pp. 311–312.

[21] LERS 1904, p. 172; CSARADA 1910, pp. 376–377; TEGHZE 1930, p. 312.

The *third type* was practiced by *Russia*, its speciality lying in the fact that a consular judicial organization was set up statutorily only for Persia. According to this model, first instance forums existed in the Russian consulates and in the embassy in Tehran. Judgement was made with the participation of assessors. On second instance a special embassy court judged: the chairman was the senior embassy secretary, while influential Russian tradesmen living in Tehran acted as assessors. In other states – particularly in Turkey and in China – the Persian organization was adopted in practice *mutatis mutandis*, without separate legislative measures.[22]

It was Charles III (1711–1740) who established consulates for Hungary and for the Austrian provinces in the Orient,[23] then their number was increased

[22] LERS 1904, p. 173; TEGHZE 1930, p. 312.

[23] *Tractatus commercii initus Passarovicii*. Die 27. Julii 1718. In Nomine Sanctissimae et Individuae Trinitatis. „Art. V. Ad majorem mercatorum imperialium securitatem, quietem reique mercatoriae incrementum Sacra Romano-Caesarea Regiaque Catholica Majestas per suum ministrum pro tempore ad Portam Ottomannicam existentem in maris Mediterranei ditionumque Ottomannicarum emporiis, insulis, ac ubicunque ab aliis exteris nationibus consules, et interpretes instituti sunt, pariter consules, vice-consules, agentes, factores, interpretes datis decretis creare et stabilire queat. Si autem in aliis locis, in quibus hucusque praedictorum nullus morabatur, hujusmodi consules, vice-consules, agentes etc. commercii necessitas requirat, per ministrum alte praefatae Caesareae Regiaeque Majestatis Ottomannicae Portae exponatur; si deinceps praedicto ministro permissio concedatur, congrua diplomata dabuntur, ut denominati consules, vice-consules, agentes, interpretes etc. ab imperii Ottomannici ministris assignatorumque locarum officialibus adjuventur et protegantur iisque in omnibus eventibus assistentia praebeatur. In quocunque Ottomannici imperii loco Caesareorum negotiatorum quispiam e vita discederet, bona illium nullo modo a fisco contrectentur, sed a ministris Caesareis eorumque deputatis integre recipiantur. Casu, quo suae Sacrae Romano. Caesareae Regioaque Majestatis ad Portam Ottomanicam existenti ministro videretur congruum, loco consulum in praedictis locis solos interpretes constituere, hi interpretes non solum neutiquam molestentur, sed iisdem favoribus, privilegiis et protectionalibus, consulibus concessis gaudeant et perfruantur. Vigore hujus almae capitulationis Sacrae Caesareae Regiaque Majestatis consules, vice-consules, interpretes mercatores omnesque eorum in actuali servitio existentes famuli ab omni tributo aliisque impostitionibus liberi et immunes sint. Saerae Romano-Caesareae Regiaeque Majestatis subditi, consules, interpretes, mercatores hominesque in eorum serviitis existentes ob cuncuta sua commercii, emptionis, venditionis, fide jussionis aliarumque rerum negotia judicem accedant illaque peragenda judiciali protocollo inferant, ac ab eodem litteras judiciales, vulgo hugget, dictas, aut validas syngraphas accipiant; orta deinceps controversia, dictae litterae judiciales aut syngraphae, uti etiam praefatum protocollum inspiciatur et juxta legem et justitiam procedatur. Gubernatores aliiquue provinciarum Ottomannicarum officiales cujuscunque dignitatis nemineum praedictorum Caesareorum hominum accusationis aliove praetextu in carcerem detrudere, molestiis et injuriis afficere praesumant. Si vero eorum quispiam in Ottomannico judicio sistendus esset, as scitu consulum praesenteque interprete compareat et per praedictos consules et interpretes ad carcerem Caesareum ducatur. Si cuidam a mercatore Caesareo-Regio quidquam debeatur, creditor debitum suum opera consulum vice-consulum, interpretum a suo debitore et nemine alio praetendat. Saepius dictis consulibus, vice-consulibus, interpretibus, mercatoribus illorumque domesticis et famulis in suis habirationibus liberum Romanae Catholicae religionis exercitium permittatur, exteraeque nationes ad hujusmodi religionis funtiones accedentes nullo prorsus modo impediantur aut molestentur. Lite vel controversia contra Caesareo-Regios consules, vice-consules, interpretes, mercatores etc. exorta, si ea

considerably by queen Maria Theresa (1752). Their superior authority was the Royal Commercial Council in Vienna. After the establishment of the state chancellery, the consulates in the Levant were subordinated to this, then from 1849 to the Ministry of Commerce. Finally, in 1859 control was taken over by the Ministry of Foreign Affairs. At the time of the Austro-Hungarian Compromise (1867), the diplomatic and commercial representation of the empire was referred to the competence of the Common Minister of Foreign Affairs (Article 8 of Act XII of 1867 of Hungary). This was later ratified by the rules of law on the customs and trade union.[24]

In the organization implemented by Austria and Hungary, not only the consul but two *expert assessors* with an advisory vote also made judgement in first instance cases of bill of exchange, commerce and maritime law. They were called *Beirath*s and their standpoint was no more than a simple opinion until homologized, that is made effective by the consul. In this respect the institution of assessors had not so much a judicial but rather an expert character.

In consular tribunals the following system of appeal existed at the time of the occupation of Bosnia and Herzegovina (1878): appeals could be lodged from the consular tribunal in Iasi to the provincial supreme court (*Ober-Landesgericht*) in Lemberg; from the tribunals in Belgrade, Bucharest, Galac, Ibraila, Izmail, Ruse, Tulcea and Vidin to the provincial supreme court in Vienna; and finally from the consular tribunals in Adrianople, Aleppo, Alexandria, Baghdad, Beirut, Cairo, Constantinople, Damascus, Durazzo, Ioannina, Jerusalem, Saloniki, Shanghai, Smirna, Sofia, Suez, Tripolis, Tunis etc. to the *Ober-Lan-*

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summam trium millium asperorum, id est 25 thalerorum excesscrit, in nullo provinciarum tribunali decidi possit, sed ad Portae Ottomannicae judicium remittatur. Si vero controversia inter Caesareo-Regios mercatores orta fuerit, juxta leges et solita eorum constituta a consulibus et interpretibus etc. examinetur et determinetur. Nulla praedictorum mercatorum ad discessum jamjam expedita navis ob litem enascentem detineatur, sed lis et controversia celeriter opera consulum, agentium et interpretum decidatur, et si quispiam Caesareorum aliqua de causa in judicio Ottomannico sistendus foret, is absente interprete ad praedictum judicium comparere non teneatur. Caesareo-Regii mercatores, in quemcunque Ottomannici imperii locum iverint, a provinciarum gubernatoribus judicibus et cunctis officialibus ejusque regni praefectis petitione donativorum immunes sint et hanc ob causam nullo modo molestentur." See the whole text in LERS 1904, pp. 317–323.

[24] A magyar korona országai és Ő Felsége többi királyságai és országai között vám- és kereskedelmi szövetségről szóló 1867. évi XVI. tc. IX. cikke, a magyar korona és országai és Ő Felsége többi királysága és országai közt kötött vám- és kereskedelmi szövetségről szóló 1878 évi XX. tc. IX. cikke, valamint a vám- és kereskedelmi viszonyoknak és ezekkel összefüggő némely kérdések rendezéséről szóló 1899. évi XXX. tc. 1. §-a. [Article IX of Act XVI of 1867 on the Customs and Trade Union between the Countries of the Hungarian Crown and His Majesty's Other Kingdoms and Countries; Article IX of Act XX of 1878 on the Customs and Trade Union between the Countries of the Hungarian Crown and His Majesty's Other Kingdoms and Countries; Article 1 of Act XXX of 1899 on the Settlement of Customs and Trade Relations and Certain Related Issues]

desgericht in Trieste. On third instance it was the supreme high court and court of cassation in Vienna (*Oberster Gerichts- und Cassationshof*) which was responsible for judgement.[25]

Consular tribunals could be two types in character: vested with full jurisdiction or with limited jurisdiction. When Act XXXI of 1891 of Hungary was passed, the number of consular tribunals with full jurisdiction was the following: 1 in China, 1 in Japan, 1 in Morocco, 14 in Turkey, 3 in Egypt, 3 in Bulgaria, 1 in East Roumelia, 1 in Persia, 7 in Romania, 1 in Siam – a total of 33.[26]

In 1904 the consular offices of the following places could judge with *full jurisdiction*: Constantinople, Scutari, Aleppo, Baghdad, Beirut, Ioannina, Saloniki, Durazzo, Smirna, Trabzon, Adrianople, Chania, Jerusalem, Monastir, Üsküb, Prizren, Valona and Tripolis in Turkey; Alexandria, Cairo and Port Said in Egypt; Sofia, Ruse, Vidin and Filibe in Bulgaria; Tangier in Morocco; Shanghai and Tientsin in China; Bangkok in Siam, Tehran in Persia, and Zanzibar city in Zanzibar.[27] From among the forums with *limited jurisdiction* the viceroyalty of Egypt must be pointed out, where competence was regulated with decrees in 1876,[28] 1881,[29] 1882,[30] 1883,[31] 1884[32] and 1889.[33] In 1884 the

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[25] LERS 1904, p. 178; read about the system of Austrian courts in RUSZOLY József: *Európa alkotmánytörténete. Előadások és tanulmányok középkori és újkori intézményekről*. [Constitutional History of Europe: Lectures and Papers on Medieval and Modern Institutions] Budapest, 2005, pp. 393–394; Wilhelm BRAUNEDER: *Osztrák alkotmánytörténet napjainkig*. [Austrian Constitutional History until Present Days] Pécs, 1994, pp. 222–223.

[26] WHR87–92. XXV. (1891) Issue 973, p. 283.

[27] LERS 1904, p. 181. See also TESCHMAYER Gábor: *Az Osztrák-Magyar Monarchia konzulátusai tengerentúli területeken. A dél-afrikai és a Zanzibáron működött osztrák-magyar konzultusok történtéből.* [Overseas Consular Offices of the Austro-Hungarian Monarchy: From the History of the Austro-Hungarian Consular Offices in South Africa and Zanzibar] In: Studia Iurisprudentiae Doctorandorum Miskolciensium IX. Miskolc, 2008, pp. 467–476.

[28] A m. kir. igazságügyministernek 1876. 491. sz. a. kiadott rendelete az egyiptomi alkirályságban létező osztrák-magyar consulságok bírói hatóságának [...] tárgyában. [Decree No 491/1876 by the Hungarian Royal Minister of Justice on the Judicial Authority of Austrian-Hungarian Consulates in the Viceroyalty of Egypt] MRT 1876. Budapest, 1884, pp. 3–9.

[29] A m. kir. igazságügyministernek 6021. számú körrendelete az egyiptomi alkirályságban létező osztrák-magyar consulságok bírói hatóságának [...] meghosszabbítása tárgyában. [Decree No 6021 by the Hungarian Royal Minister of Justice on the Prolongation of the Judicial Authority of Austrian-Hungarian Consulates in the Viceroyalty of Egypt] MRT 1881. Budapest, 1881, p. 48. See also F. F. MARTENS: *The Egyptian Question*. St. Petersburg, 1882.

[30] A m. kir. igazságügyministernek 873. számú rendelete az egyiptomi alkirályságban létező osztrák-magyar consulságok bírói hatóságának [...] tárgyában. [Decree No 873 by the Hungarian Royal Minister of Justice on the Judicial Authority of Austrian-Hungarian Consulates in the Viceroyalty of Egypt] MRT 1882. Budapest, 1882, p. 36.

[31] A magyar kir. igazságügyministernek 3787. szám alatt valamennyi első folyamodású kir. törvényszékhez, kir. ügyészhez és kir. járásbírósághoz intézett körrendelete az egyiptomi alkirályságban

judicial competence of the imperial and royal consulates in Tunis was transferred to the French courts organized pursuant to a French act of 27th March, 1883.[34]

3. § Reform of consular jurisdiction

a) Act XXXI of 1891 of Hungary

The Compromise of Austria and Hungary established an extraordinary connection between the two monarchies in 1867, which is technically described as a real union of states. It meant that both Austria and Hungary were sovereign states but they had three *common relations*: foreign affairs, defense in the case of a war and the finances connected with the preceding areas (the term "Austro-Hungarian Monarchy" is rather a political than a legal expression).[35]

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létező osztrák-magyar consulságok bírói hatóságának [...] meghosszabbítása tárgyában. [Decree No 3787 by the Hungarian Royal Minister of Justice to All First Instance Royal Tribunals, Royal Prosecutors and Royal District Courts on the Prolongation of the Judicial Authority of Austrian-Hungarian Consulates in the Viceroyalty of Egypt] MRT 1883. Budapest, 1883, p. 194.

[32] A m. kir. igazságügyministernek 2566. sz. alatt valamennyi első folyamodású kir. törvényszékhez, kir. ügyészhez és kir. járásbírósághoz intézett körrendelete az egyiptomi alkirályságban létező osztrák-magyar consulságok bírói hatóságának [...] meghosszabbítása tárgyában. [Decree No 2566 by the Hungarian Royal Minister of Justice to All First Instance Royal Tribunals, Royal Prosecutors and Royal District Courts on the Prolongation of the Judicial Authority of Austrian-Hungarian Consulates in the Viceroyalty of Egypt] MRT 1884. Budapest, 1884, p. 100.

[33] A m. kir. igazságügyministernek 4870. szám alatt valamennyi kir. törvényszékhez, kir. ügyészhez és kir. járásbírósághoz intézett körrendelete az egyiptomi alkirályságban létező osztrák-magyar consulságok bírói hatóságának [...] meghosszabbítása tárgyában. [Decree No 4870 by the Hungarian Royal Minister of Justice to All Royal Tribunals, Royal Prosecutors and Royal District Courts on the Prolongation of the Judicial Authority of Austrian-Hungarian Consulates in the Viceroyalty of Egypt] MRT 1889. Budapest, 1889, p. 73.

[34] A m. kir. igazságügyministernek 24.044. számú rendelete a tunisi kormányzóságban működő cs. és kir. consulságok bírói hatóságának [...] átruházása tárgyában. [Decree No 24.044 by the Hungarian Royal Minister of Justice on Transferring the Judicial Authority of Imperial and Royal Consulates in the Regency of Tunis] MRT 1884. Budapest, 1884, pp. 730–731.

[35] This cooperation of the states functioned quite well but it came to a sudden end after World War I (October–November 1918). Nowadays it is common opinion that these five decades – except the years of the world war – were the most successful era in the Hungarian history in the past five hundred (!) years. This time the Emperor of Austria and the King of Hungary was Franz Joseph (1848–1916) and later Charles IV (1916–1918). See as contemporary literature of Franz von DEÁK: *Ein Beitrag zum ungarischen Staatsrecht. Bemerkungen über Wenzel Lustkandl's "Ungarischen-österreichisches Staatsrecht".* Pest, 1865. Read in English: *The Hungarian State 1000–2000. Thousand Years in Europe*. Editor: Gábor MÁTHÉ. The relevant chapters were written by Gábor MÁTHÉ, Ferenc PÖLÖSKEI and János ZLINSZKY. Budapest, 2000, pp. 217–248, 305–342; Jörg K. HOENSCH: *A History of Modern Hungary, 1867–1986*. London–New York, 1988, pp. 20–83. See also RUSZOLY 2005, pp. 388–395, and footnote 66.

The basis of Austrian and Hungarian consular jurisdiction in the age of dualism (1867–1918) was laid down by the *imperial decree* issued on 29th January, 1855[36] (and by numerous related, similarly Austrian sources of law[37]) right until the passing of the acts of 1891. The Hungarian Parliament *(Magyar Országgyűlés)* and the government considered it was time to change the previous organization which did not suit the then public law status, and this met with the agreement of both the Austrian *Reichsrat* and the government beyond the River Leitha. Accordingly, a previously harmonized rule of law was passed in both states of the Monarchy, which put the institution of consular jurisdiction on dualistic foundations for Hungary and for Austria with the consideration of the modern trends, international experience and achievements of the age. The two acts are not entirely identical in text[38] – now the *Hungarian* one is going to be presented.

The day of the entry into force of Act XXXI of 1891 on consular jurisdiction was made dependent on the similar act to be passed by the Austrian *Reichsrat*. This piece of legislation was passed on 30th August, 1891 in Vienna.[39] Thereafter, both acts were sanctioned by the monarch (Franz Joseph) immediately. In spite of this, the Common Minister of Foreign Affairs issued a decree on its entry into force only much later, in 1897,[40] which was promulgated in Hungary by the Minister of Justice.[41] Thus the new rules of consular jurisdiction

[36] Kaiserliche Verordnung vom 29. Jänner 1855. betreffend die Ausübung der Civilgerichtsbarkeit der k. k. Consulate über die österreichischen Untertanen und Schutzgenossen im Osmanischen Reiche. RGBl 1855, Issue 23, pp. 225–227. See also Verordnung der Ministerien des Äussere und der Justiz und des Armee-Ober-Commando's vom 31. März 1855, mit Welcher die Vollzugsvorschriften zu der Kaiserlichen Verordnung vom 29. Jänner 1855, Nr 23 des Reichs-Gesetz-Blattes […], fundgemacht werben. RGBl 1855, Issue 58, pp. 383–397.

[37] The most important ones were the following: Decree of the Minister of Justice dated on 27th October 1856, Decrees of the Minister of Foreign Affairs dated on 29th September 1860, on 17th January and 7th February 1862, and on 25th June 1865. See their further list in MÁRKUS 1899, pp. 657–658; LERS 1904, pp. 166–167.

[38] Gesetz vom 30. August 1891, womit Bestimmungen über die Ausübung der Consulargerichtsbarkeit getroffen werben. RGBl 1891, Issue 136, pp. 342–345; A consuli bíráskodás szabályozásáról szóló 1891. évi XXXI. törvénycikk. In: Corpus Juris Hungarici 1889–1891, Budapest, 1897, pp. 477–482.

[39] See above note 38 and SÁRMAI József: *Az osztrák-magyar konsuli bíráskodás reformja*. [Reform of Austrian-Hungarian Consular Jurisdiction] Ügyvédek Lapja, 10 Jan. 1891 (No 2), pp. 2–3.

[40] Verordnung des Gesammtministeriums vom 30. Juli 1897, womit der Tag bestimmt wird, an welchem das Gesetz vom 30. August 1891 über die Ausübung der Consulargerichtsbarkeit (RGBl Nr. 136) in Wirksamkeit tritt. RGBl 1897, Issue 178, p. 1203.

[41] A m. kir. ministerium 1897. évi 12.970. M. E. számú rendelete a consuli bíráskodásról szóló 1891: XXXI. t.cz. hatályba léptetése tárgyában. [Decree No 12.970 M. E. of 1897 by the Hungarian Royal Ministry on the Entry into Force of Act XXXI of 1891 on Consular Jurisdiction] MRT 1897. Vol 2, p. 1.

and the supreme court in Constantinople operated as from 1st January, 1898.[42] The rule of law was intended to be in force for 10 years. After this period, its applicability was prolonged by the Hungarian Parliament in 1907,[43] 1910,[44] 1912,[45] 1913[46] and 1917.[47] This act kept the consular jurisdiction in force hypothetically until 31st December, 1927 but Act I of 1920 on the Termination of the Austro-Hungarian Monarchy and on the Renovation of the Constitutionality also Act XXXIII of 1921 on the Ratification of the Peace Treaty Concluded in Trianon in 1920 overruled it with all the international treaties of the dual Monarchy. The fees of the consular judicial procedure were regulated by Act XXVI of 1901 in Hungary.[48]

b) Consular jurisdiction on first instance

Section 1 of the act states that consular jurisdiction over Hungarian and Austrian nationals and protected persons shall be practiced abroad by *consular tribunals*. This meant that the new organization was to be regulated in accordance with the previously concluded international treaties. However, as already pointed earlier, consular jurisdiction was not realized in every Oriental country, but in countries where it was implemented, *consular offices* continued to serve as first instance forums. Thereby the earlier conditions and competences were essentially retained, in agreement with the Austrian govern-

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[42] A m. kir. igazságügyminister 1897. évi 43.504. I. M. számú rendelete a consuli bíráskodásról szóló 1891: XXXI. t-czikk hatályba lépésére és a consuli bíróságok szervezési és ügyviteli szabályainak megállapítására vonatkozó rendeletek kihirdetése tárgyában. [Decree No 43.504 of 1897 by the Hungarian Royal Minister of Justice on the Promulgation of the Decrees on the Entry into Force of Act XXXI of 1891 on Consular Jurisdiction and on the Rules of Administration and Procedure of Consular Courts] MRT 1897. Vol 2, pp. 52–90, especially p. 52.

[43] A consuli bíráskodás szabályozásáról szóló 1891: XXXI. tc. hatályának meghosszabbításáról rendelkező 1907. évi LVII. tc. [Act LVII of 1907 on the Prolongation of the Force of Act XXXI of 1891 on Consular Jurisdiction]

[44] A consuli bíráskodás szabályozásáról szóló 1891: XXXI. tc. hatályának újabb meghosszabbításáról rendelkező 1910. évi VII. tc. [Act VII of 1910 on the Further Prolongation of the Force of Act XXXI of 1891 on Consular Jurisdiction]

[45] A consuli bíráskodás szabályozásáról szóló 1891: XXXI. tc. hatályának újabb meghosszabbítása tárgyában alkotott 1912. évi VI. tc. [Act VI of 1912 on the Further Prolongation of the Force of Act XXXI of 1891 on Consular Jurisdiction]

[46] A consuli bíráskodás szabályozásáról szóló 1891: XXXI. tc. hatályának újabb meghosszabbítása tárgyában alkotott 1913. évi LIV. tc. [Act LIV of 1913 on the Further Prolongation of the Force of Act XXXI of 1891 on Consular Jurisdiction]

[47] A consuli bíráskodás szabályozásáról szóló 1891: XXXI. tc. hatályának újabb meghosszabbítása és egyes rendelkezéseinek módosítása tárgyában alkotott 1917. évi XIX. tc. [Act XIX of 1917 on the Further Prolongation of the Force of Act XXXI of 1891 on Consular Jurisdiction and on the Amendment of Certain Provisions Thereof]

[48] A consuli illeték szabályozásáról szóló 1901. évi XXVI. tc. 9. §. [Article 9 of Act XXVI of 1901 on Consular Fees]

ment. The role of mediator was assigned by the act to the Common Minister of Foreign Affairs as consultation with him seemed to be the most practical solution: consular offices operated under his authority.[49]

If consular jurisdiction was introduced in a new foreign state, it was regulated with identical decrees by the Austrian and Hungarian ministries, after a consultation held with the Common Minister of Foreign Affairs. It was an unsettled issue what the term "consultation" should exactly mean: what should be done if the Minister of Foreign Affairs and the national government disagreed and no consensus could be reached? As explained by Dezső Szilágyi, excellent legal expert and Hungarian Minister of Justice (1889–1895),[50] this meant only the hearing of the common minister, whose standpoint had no binding force.[51]

c) The consular supreme court in Constantinople

Decisions made by consular tribunals on first instance both in the cases of Hungarian and Austrian nationals and protected persons could be in need of a review in order to ensure legal security. In contrast with the previous solution, the delegation of the competence of second instance to the superior courts of one state or the other was not appropriate for the dualistic state character. Therefore a superior court had to be organized which was neither purely Hungarian nor purely Austrian in character but consisted of the judges of both states according to the principle of parity.

The greatest achievement of the organizational reform was the *supreme court (főtörvényszék)* set up in Constantinople, which was the forum of jurisdiction *on second instance* and at the same time on last instance. The English example was followed in choosing the location: a country and a city quite close both to the mother country and to the main territories of consular jurisdiction were chosen. By reason of these principles – using the English example – the Turk-

[49] WHR87–92. XXV. (1891) Issue 973, p. 283.

[50] Tamás ANTAL: *Reforms of the Judicial System in the Era of Dezső Szilágyi*. In: Ius et legitimatio, Editor: SZABÓ Imre. Szeged, 2008, pp. 9–16; Tamás ANTAL: *Organisation of the Appeal Court in Timişoara (1890–1891).* In: Studii Şi Cercetări Juridice Europene 2010. Conferenţia Internaţională a Doctoranzilor în Drept, Redactor: Ioana MOGOŞ, Monica STOIAN. Timişoara, 2010, Volumul II (Drept public), pp. 44–55, especially pp. 44–47.

[51] See the debate in the Hungarian House of Representatives in ANTAL Tamás: *A konzuli bíráskodás a dualizmus korában. Az 1891. évi XXXI. tc. létrejötte*. [Consular Jurisdiction in the Age of Dualism: Passing of Act XXXI of 1891] In: Publicationes Doctorandorum Juridicorum, Tomus IV, Szeged, 2004, pp. 10–38.

ish capital offered itself as a self-evident solution as consular jurisdiction practically was of the greatest importance in Turkey.[52]

The supreme court was composed of one chairman, the required number of judges-general *(főbírák)* and the necessary service staff. The post of the chairman was held alternately by a Hungarian and an Austrian national; István Kvassay, former Hungarian consul-general in Constantinople was appointed to be the first chairman.[53] The posts of judges-general had to be filled by an equal number of Hungarian and Austrian nationals. The Minister of Justice of the government from the judge's (chairman's) country was responsible for countersignature upon filling the post. Remuneration was paid not at the expenses of the common finance: it had to be appropriated in the budget of the accrediting state. It ensues from the above that the costs of the supreme court were actually not common.[54]

The members of the consular supreme court enjoyed the legal status of a consul so that they could also benefit from protection, immunity and *exequatur*.[55] The post of chairman or judge-general could be filled only with persons who were Hungarian or Austrian nationals and had already practiced consular jurisdiction for at least 10 years, or who were qualified for the post of judge according to the domestic rules of law. This rule was adopted in view of the fact that the force of the act was temporary and was valid only for 10 years. The years spent in the supreme court qualified as service years with respect to pension claims.[56] The Common Minister of Foreign Affairs was authorized by

[52] WHR87–92. XXV. (1891) Issue 973, pp. 284–285.

[53] István Kvassay (1854–1945) had an extraordinary life and carrier. He achieved one of the highest grades internationally in his profession as a consul, becoming the president of the consular supreme court in Constantinople (1898–1909). Later, during the political crisis of Hungary in 1905, he was one of the candidates for the office of the Prime Minister but finally it was not him who occupied this post. He was an excellent international arbitrageur as well. He left the active political life in 1909. After that he was known as an inventor, too, he was granted nine patents and he created an effective pharmaceutical product against bacterial infections. KRALOVÁNSZKY Ubul: *Külhoni sikerek, itthoni kudarcok. Kvassay István élete*. [Successes Abroad, Faults at Home: István Kvassay's Life] Budapest, 2003; see also: Országos Hírlap, 26 Nov. 1897 (No 7), p. 2.

[54] WHR87–92. XXV. (1891) Issue 973, p. 283; see also: *A consuli bíráskodásról szóló törvényjavaslat*. [Bill on Consular Jurisdiction] Jogi Szemle, 12 Feb. 1891 (No IV/7), p. 205.

[55] About *exequatur*: CSARADA 1910, pp. 347–348; HARGITAI 1999, pp. 372–373; Danilo TÜRK: *A nemzetközi jog alapjai*. [Basics of International Law] Szeged, 2009, p. 137; read also TESCHMAYER Gábor: *A konzulokra, mint állami tisztségviselőkre vonatkozó szabályanyag az Osztrák-Magyar Monarchia időszakában*. [Legal Norms on Consuls as State Officers in the Era of the Austro-Hungarian Monarchy] Manuscript of a planned doctoral dissertation at the Faculty of Law of the University of Miskolc, Hungary *(Passim).*

[56] WHR87–92. XXV. (1891) Issue 973, p. 285.

the act to lay down the detailed statutory rules of administration and organization. The decree was issued in 1897.[57]

The supreme court started its operation on 1st January, 1898. Its name was *Austrian Imperial Royal and Hungarian Royal Consular Supreme Court*,[58] its seal was prepared in a bilingual form.[59] In practice it consisted of one chairman, only one Austrian and one Hungarian judge-general, two deputy judges-general for each, one secretary, two office clerks and two servants. The same rules of qualifications applied to the deputy judges-general as the ones specified by the law, what is more, the secretary could also be a person with a judge's qualification. The persons appointed held the title: "Austrian Imperial Royal Consular Judge-General", "Hungarian Royal Consular Judge-General" (Articles 5–7).

The chairman and the consular judges-general as well as the secretaries, the service staff and the servants were obliged to reside permanently in Constantinople, while the deputies stayed at the seat of the court only during the time of their activity as deputy judges. Deputyship was possible only according to nationality. All the judges and the chairman had to be regarded as persons belonging to the imperial and royal embassy. The chairman's emolument equalled 12 thousand Forints annually, while the judges-general received 8 thousand Forints annually. They were also entitled to reimbursement of travel and moving expenses (Articles 8–12).[60]

The consular supreme court made decisions *on second instance* in all the cases decided by the consular offices on first instance – if a possibility of legal remedy against these decisions was provided by law – and it also proceeded in cases of conflict of competence between subordinate consular tribunals and it appointed a consular tribunal instead of the one hindered in practicing its jurisdiction. Moreover, it supervised the administrative procedure of first instance consular tribunals, expressed opinion about legislation on consular ju-

[57] A cs. és kir. közös külügyministernek 1897. évi július hó 30-ik napján kibocsátott rendelete a consuli bíróságok szervezési és ügyviteli szabályai tárgyában. MRT 1897. Budapest, 1897, Vol 2, pp. 53–90; Verordnung des k. und k. gemeinsamen Ministers des Äussern vom 30 Juli 1897, betreffend die organisatorischen Bestimmungen und die Geschäftsordnung der Consulargerichte. RGBl 1897, Issue 179, pp. 1203–1226. [Decree by the Imperial and Royal Common Minister of Foreign Affairs Issued on 30th July, 1897 on the Rules of Organization and Administration of Consular Courts (in Hungarian and in German)]

[58] In French: "*Cour d'appel consulaire d'Autriche et de Hongarie a Constantinapole*".

[59] There were the following writings on the signet: K. K. Oesterr. u. Kön. Ungar. Consular-Obergericht. Ausztriai cs. kir. és magyar kir. consuli főtörvényszék. MRT 1897. Vol 2, p. 83; RGBl 1897, Issue 179, p. 1215.

[60] MRT 1897. Vol 2, pp. 54–58.

risdiction upon the request of the Common Minister of Foreign Affairs, controlled and evaluated the administration reports issued annually by first instance forums, took measures in the case of delays or insufficiencies and also made a report giving its opinion about the state of consular jurisdiction for the Minister of Foreign Affairs (Articles 13–14).

The supreme court made its decisions in a *council*. This consisted of the chairman, the Hungarian and Austrian judges-general and the clerk *(jegyző)*. The decisions of the court were made in the name of "His Majesty the Emperor of Austria and Apostolic King of Hungary". The decisions were communicated to the parties by the first instance consular tribunals. The supreme court engaged in official correspondence only with the authorities of Austria and Hungary, as well as with those of Bosnia and Herzegovina. It made contact with the Turkish authorities either through the imperial and royal embassy in Constantinople or though the Common Minister of Foreign Affairs (Articles 15–17).[61]

The *language* of business administration of the consular supreme court was German (!), but the documents of the case settled had to be issued in the language of administration on first instance; however, for the nationals of the countries of the Hungarian Crown – at their express request – the documents also had to be issued in the language that was used by them. In the case of petitions submitted by the nationals of the countries of the Hungarian Crown, the language of administration was the same as the language of the petition (Article 18).

The *administrative procedure* of the supreme court was supervised by the Common Minister of Foreign Affairs in agreement with the Austrian and the Hungarian Ministers of Justice. He could have the supreme court examined by a delegated commissioner; the commissioner had a wide sphere of authority to conduct investigations provided that no delay in the administration was incurred, then he made a report. The laying down of the disciplinary rules was postponed to a later time. To my knowledge, these rules were not prepared during the age of dualism. The operation costs were advanced by the common ministry of foreign affairs and were then reimbursed by the two ministries of justice half-and-half, in equal proportions every six months (Articles 19–22).[62]

The decree specified the official duties and tasks of the members of the court – within this, the rules of incompatibility (Article 24), the chairman's scope of

[61] MRT 1897. Vol 2, pp. 58–60.
[62] MRT 1897. Vol 2, pp. 60–62.

authority (Article 25), the secretary's and the administrative staff's tasks (Articles 28–30), leaves of absence (Article 31) and replacement. As far as the latter one is concerned the main principle was that an Austrian judge-general could only be replaced by an Austrian deputy judge-general and a Hungarian judge-general only by a deputy Hungarian judge-general (Articles 33–34).[63] Finally the second chapter of the decree specified the rules of court administration and procedure.

The consular supreme court administered 302 cases in 1899, 266 in 1900, 389 in 1901 and 270 in 1902. These figures also prove that on an annual basis the number of appealed cases was expressly few because the consulates themselves saw to an average number of 12 thousand filed cases annually.[64]

4. § Post Script

The domestication of consular jurisdiction in the Levant and the Far East was a common interest of the developed countries in Europe. Hence consular jurisdiction became a common practice as early as the 19th century. Hungary, however, did not have its own authorities so Hungarian citizens[65] could only turn to the commonly organised consular tribunals and appeal courts on the territories of the Austro-Hungarian Monarchy that were not part of Hungary in fact. The Great Compromise in 1867[66] created a new situation in public law where, from the point of view of public administration and the concept of sovereignty, this practice could not be sustained anymore. The implementation of the reform was significantly hindered by the fact that, according to the Compromise, this was a special common foreign affair so the Hungarians had to

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[63] MRT 1897. Vol 2, pp. 63–67.

[64] LERS 1904, p. 308.

[65] Norbert VARGA: *The Framing of the First Hungarian Citizenship Law (Act 50 of 1879) and the Acquisition of Citizenship*. In: Hungarian Studies, 2004, Volume 18, No 2, pp. 127–151; Norbert VARGA: *The Acquisition and Loss of Citizenship in feudal Hungary*. In: Studii Şi Cercetări Juridice Europene 2010. Conferenţia Internaţională a Doctoranzilor în Drept, Redactor: Ioana MOGOŞ, Monica STOIAN. Timişoara, 2010, Volumul II (Drept public), pp. 858–863.

[66] The list of most important German and Hungarian literature can be found in RUSZOLY József: *A kiegyezés újabb historiográfiája és a jogtörténet*. [Legal History and the Newer Historiography of the Compromise] In: Ruszoly József: Újabb magyar alkotmánytörténet, 1848–1949. Válogatott tanulmányok, [Newer Hungarian Constitutional History: Selected Papers] Budapest, 2002, pp. 120–131; József RUSZOLY: *"Vom Standpunkte der Geschichte des ungarischen öffentlichen Rechts"*. In: Ders.: Beiträge zur neueren Verfassungsgeschichte. (Ungarn und Europa) = Ungarische Rechtshistoriker 3. Budapest, 2009, pp. 235–267. See also the classic book of GALÁNTAI József: *Az 1867-es kiegyezés*. [The Compromise of 1867] Budapest, 1967; and SARLÓS Béla: *Deák és a kiegyezés*. [Ferenc Deák and the Compromise] Budapest, 1987.

draft the laws concerning the consular judicial system and jurisdiction after consulting with the Austrian Government and the Empire Council *(Reichsrat)*.

The ministries of justice of the two countries held deliberations on several occasions and, ultimately, after a six-month period of consultation, the bills (which later became Act XXXI of 1891 in Hungary and Imperial Act passed on 30th August 1891 in Austria) were brought before Parliament. As far as the system was concerned, the bills outlined a fairly simple solution. Its most important innovation was the establishment of a consular supreme court in Constantinople – as it was detailed above –, while the practice at the tribunals of first instance was left virtually intact because this was individually regulated for each country in bilateral agreements.

Whereas consular jurisdiction was only of peripheral importance in the judicial system – the Minister of Justice, Dezső Szilágyi (1840–1901) even called it a legal "anomaly" –, it still sparked off heated political debates between the Hungarian government and the opposition. These debates were interesting as regards both their standard and the professional aspects involved since their subject was the Compromise Act (Act XII of 1867), which was one of the cornerstones of Hungarian public law, as well as the union that resulted from it. Both those who were in favour of independence and the moderate opposition saw the bill as a complete violation of the Hungarian constitution and an infringement of sovereignty. The fundamental question was the legal character and public law status of the supreme court: the official governmental standing point declared it simply as a special "mixed tribunal" but the opposition regarded the fact as it would be a newer common relation between the two states (the field of jurisdiction) which was constitutionally unacceptable for them.[67]

The opposition saw the *obstruction* of the bill in the House of Representatives of the Hungarian Parliament as a victory. Their speakers were idolised, mostly count Albert Apponyi (1846–1933), leader of the moderate opposition.[68] The Liberals were also satisfied with the result as the act was finally passed.[69] It is interesting that it came into force only after a long period of preparation, although a few weeks later the Empire Council of Austria *(Reichsrat)* adopted the corresponding Austrian law, too. Being aware of the fact that it was con-

[67] See above note 51.

[68] KARDOS József: *A legitimista Apponyi Albert gróf*. [Count Albert Apponyi, the Legitimist] In: Auxilium Historiae. Tanulmányok a hetvenesztendős Bertényi Iván tiszteletére, Editors: KÖRMENDI Tamás and THOROCZKAY Gábor. Budapest, 2009, pp. 155–162.

[69] The list of special literature and representatives of the Hungarian liberalism can be found in TŐKÉCZKI László (Editor): *Magyar liberalizmus*. [Hungarian Liberalism] Budapest, 1993, pp. 509–551.

troversial from a public law aspect, the government intended this to be only a provisional solution and tried as well to calm the opposition with this notion. At the end of the day, the provisory was repeatedly renewed and it ceased only with the death of the dual monarchy (1918).[70]

Finally it is worth to cite the explanation of István Kvassay mentioned above on the legal phenomenon under discussion here: "the circumstance which accounts for consular jurisdiction, an institution for practicing law on our citizens and protected persons by our consuls in Turkey and in some other states independently from the territorial sovereignty of the country mentioned, is the fact that this way our citizens and protected persons can be acquitted of the autocracy of jurisdiction organised by non-European style and the pressure of the moral orders of non-Christian world outlook, in which European states cannot find the correlation with other countries that could be the base of equal treatment and the complete acknowledgement of sovereignty and territorial regale towards each other."[71]

Appendix

RGBl 1891, 136.

Gesetz vom 30. August 1891,
Womit Bestimmungen über die Ausübung der Consulargerichtsbarkeit getroffen werden.

Mit Zustimmung beider Häuser des Reichsrates finde Ich anzuordnen, wie folgt:

§.1.

Die Consulargerichtsbarkeit über die österreichischen und über die ungarischen Staatsangehörigen, sowie über die österreichisch-ungarischen Schußgenossen im Auslande wird durch die Consulargerichte ausgeübt.

§.2.

In den Ländern, wo Consulargerichtsbarkeit ausgeübt wird, steht die Ausübung derselben in erster Instanz den Consularämtern zu.

Die Gerichtsbarkeit wird von den bereits bestellten Consularämtern in ihrem bisherigen Wirkungskreise und von den in der Zukunft bestellten Consularämtern in dem ihnen von den beiderseitigen Regierungen einverständlich und nach Einvernehmung

[70] JÁSZI Oszkár: *A Habsburg-Monarchia felbomlása*. [Break-Up of the Habsburg Monarchy] Budapest, 1982; SIKLÓS András: *A Habsburg-Birodalom felbomlása, 1918*. [Break-Up of the Habsburg Empire, 1918] Budapest, 1987; MÁTHÉ 2000, pp. 248–256.

[71] KRALOVÁNSZKY 2003, p. 39.

des gemeinsamen Ministers des Äußern zugewiesenen Wirkungskreise insolange ausgeübt, als ihre Gerichtsbarkeit nicht auf dieselbe Weise ausgedehnt, beschränkt oder eingestellt wird.

§.3.

In Constantinopel wird ein Consular-Obergericht errichtet, welches die auf die Erkenntnisse und Verfügungen der Consularämter bezughabende Consulargerichtsbarkeit in zwiter und letzter Instanz ausübt.

§.4.

Das Consular-Obergericht besteht aus einem Präsidenten, der erforderlichen Anzahl von Oberrichtern und dem nötigen Hilfspersonale.

Die Präsidentenstelle wird mit einem österreichischen oder einem ungarischen Staatsangehörigen derart besetzt, dass einem österreichischen Staatsangehörigen ein ungarischer Staatsangehöriger und umgekehrt folgt.

Die Oberrichterstellen sind in gleicher Anzahl mit österreichischen und ungarischen Staatsangehörigen zu besetzen.

§.5.

Die Stellen des Obergerichts-Präsidenten und der Oberrichter besetzt Seine k. und k. Apostolische Majestät.

Der Vorschlag und die Gegenzeichnung für die Präsidentenstelle erfolgt von jener Regierung, deren Staatsangehöriger an die Reihe kommt, im Einversändnis mit der Regierung des anderen Staatsgebietes und dem gemeinsamen Minister des Äußern; der Vorschlag und der Gegenzeichnung für die Oberrichterstellen aber findet von der Regierung desjenigen Staatsgebietes, dessen Angehöriger vorzuschlagen ist, im Einverständniss mit dem gemeinsamen Minister des Äußern statt.

Die Stellen des Präsidenten und der Oberrichter sind mittels Zutheilung von österreichischen oder ungarischen Staatsbeamten oder von Beamten des gemeinsamen Ministeriums des Äußern und der demselben unterstehenden Ämter zu besetzen.

Die Präsidenten- und Oberrichterstellen können nur mit solchen Personen besetzt werden, welche österreichische, beziehungsweise ungarische Staatsangehörige sind und entweder bereits die Consulargerichtsbarkeit zehn Jahre lang ausgeübt haben, oder, wenn sie österreichische Staatsangehörige sind, nach den für die im Reichsrate vertretenen Königreiche und Länder geltenden Bestimmungen, wenn sie ungarische Staatsangehörige sind, nach den in den Ländern der ungarischen Krone geltenden Bestimmungen zur Ausübung des Richteramtes befähigt sind.

Das übrige Personale wird vom gemeinsamen Minister des Äußern bestellt.

§.6.

Die organisatorischen Bestimmungen, insoferne das gegenwärtige Gesetz hierüber keine Verfügung enthält, und die Geschäftsordnung für die Consulargerichte wird der gemeinsame Minister des Äußern im Einverständnisse mit den Regierungen der beiden Staatsgebiete im Wege der Verordnung erlassen.

Diebei kann auch die Mitwirkung von Beisitzern, die dem richterlichen Status nicht angehören, zu den Entscheidungen der Gerichte angeordnet werden.

§.7.

Die Disciplinargewalt über die Consulargerichte erster Instanz, sowie über das Hilfs- und Manipulationspersonal des Consularobergerichtes wird vom gemeinsamen Minister des Äußern im eigenen Wirkungskreise und durch die ihm unterstehenden Organe ausgeübt. Er erlässt die entsprechenden Vorschriften.

Der Präsident und die Oberrichter des Consular-Obergerichtes können, den Fall einer Veränderung in der Organisation des Obergerichtes ausgenommen, vom Dienste gegen ihren Willen nur auf Grund eines Disciplinarverfahrens enthoben werden. Zur Wirksamkeit des Enthebungsbeschlusses ist die Genehmigung Seiner k. und k. Apostolischen Majestät nothwendig, welche auf Grund der übereinstimmenden Vorträge des gemeinsamen Ministers des Äußern und jener Regierung ertheilt werden kann, über deren Vortrag die Zutheilung des betreffenden Präsidenten oder Oberrichters erfolgt ist. (§.5).

Im Falle einer Enthebung vom Dienste im Disciplinarwege bestimmt die gesetzliche Disciplinarbehörde des enthobenen Präsidenten oder Oberrichters die weiteren Rechtsfolgen der Enthebung.

§.8.

Sowohl die Consulargerichte erster Instanz, wie auch das Consular-Obergericht urtheilen im Namen Seiner Majestät des Kaisers von Österreich und Apostolischen Königs von Ungarn.

§.9.

Bei den Consulargerichten kommen in Bezug auf die österreichischen Staatsangehörigen die für diese Gerichte dermalen geltenden Gestze und sonstigen Vorschriften in Anwendung.

§.10.

Die Regierung bestimmt, welche von den im Geltungsgebiete dieses Gesetzes in Zukunft erlassenen Gesetzen und sonstigen Vorschriften in Betreff der Rechts- und Handlungsfähigkeit der österreichischen Staatsangehörigen, ihrer Familienrechte – einschließlich der väterlichen Gewalt, der Vormundschaft, der Turatel und Pflegschaft und der ehlichen Güterrechte – ferner des Erbrechts, der Verlassenschaften und der Strafsachen solcher Staatsangehörigen bei den Consulargerichten einzuführen sind.

Die Regierung wird hierbei die jeweiligen internationalen und eigenartigen localen Verhältnisse, über welche Aufklärungen vom gemeinsamen Minister des Äußern einzuholen sind, berücksichtigen.

Welche neue Gesetze und sonstige Vorschriften in Betreff der im ersten Absatze nicht angeführten Rechtssachen bei den Consulargerichten einzuführen sind, wird von den Regierungen der beiden Staatsgebite einverständlich nach Einvernehmen mit dem gemeinsamen Minister des Äußern bestimmt.

§.11.

In gleicher Weise (§.10) können die dermalen geltenden oder in Zukunft erschaffenen Gesetze und sonstigen Vorschriften für die Consulargerichte abgeändert, ergänzt oder außer Wirksamkeit gesetzt werden.

§.12.

Die Schußgenossen werden gleich den österreichischen Staatsangehörigen behandelt.

Wenn Schußgenossen bei ihrer Aufnahme in die Schußgenossenschaft beim Consulate die Erklärung abgeben, dass sie sich den Rechtsnormen unterwerfen, welche für die ungarischen Staatsangehörigen verbindlich sind, so kommen für sie die Bestimmungen des Gesetzes in Anwendung, welche für die nach Budapest zuständigen ungarischen Staatsangehörigen gelten.

§.13.

Kompetenzconflicte zwischen einem Consulargerichte und einem Gerichte oder einer Behörde des einen oder des anderen Staatsgebietes der Monarchie werden von den Regierungen der beiden Staatsgebiete einverständlich nach Einvernehmung des gemeinsamen Ministers des Äußern entschieden.

Auch kann in derselben Weise die Delegierung eines Gerichtes, beziehungsweise einer anderen Behörde bestimmt werden.

§.14.

Die Gerichte im Geltungsgebiete dieses Gesetzes einerseits und die Consulargerichte anderseits haben sich gegenseitig in gleicher Weise wie die Gerichte desselben Staatsgebietes untereinander Rechtshilfe zu leisten.

§.15.

Die Regierungen der beiden Staatsgebiete können einverständlich und nach Einvernehmung des gemeinsamen Minister des Äußern die Consulargerichtsbarkeit in jenen fremden Staaten, in welchen sie neu angeführt wird, im Sinne des gegenwärtigen Gestzes im Wege der Verordnung regeln.

§.16.

Die Ausübung der Consulargerichtsbarkeit in einem fremden Staate kann vom gemeinsamen Minister des Äußern im Einverständnisse mit den Regierungen der beiden Staats-gebiete einer befreundeten Macht übertragen werden.

§.17.

Über Ermächtigung Seiner k. und k. Apostolischen Majestät kann der gemeinsame Minister des Äußern im Einverständnisse mit den Regierungen der beiden Staatsgebiete die Ausübung der Consulargerichtsbarkeit in einem fremden Staate im Wege der Verordnung beschränken, provisorisch einstellen oder definitiv aufheben.

§.18.

Die auf Grund des gegenwärtigen Gesetzes erlassenen Verordnungen wird im Inlande der Iustizminister auf die für die Rundmachung von Verordnungen vorgeschriebene Weise, und bei den Consulargerichten der gemeinsame Minister des Äußern verlautbaren.

§.19.

Die gesetzlichen Bestimmungen über die Einschränkung der Consulargerichtsbarkeit in Ägypten und über die Einschränkung und Einstellung der Consulargerichtsbarkeit in Tunis bleiben in Geltung.

§.20.

Das gegenwärtige Gesetz bleibt durch zehn Jahre von dem Tage an gerechnet, an welchem es in Wirksamkeit tritt, in Geltung.

Während dieser Zeit kann das gegenwärtige Gesetz nur dann aufgehoben oder insofern abgeändert werden, als das in dem anderen Staatsgebiete bestehende, denselben Gegenstand behandelnde Gesetz gleichfalls aufgehoben oder in gleichhaltiger Weise abgeändert wird.

§.21.

Das gegenwärtige Gesetz wird im Wirksamkeit gesetzt, wenn auch im anderen Staatsgebiete der Monarchie ein Gesetz erschaffen wurde, welches die Consulargerichtsbarkeit in Übereinstimmung mit dem im gegenwärtigen Gesetze enthaltenen Grundsätzen regelt.

In diesem Falle bestimmt die Regierung im Wege der Verordnung den Tag, an welchem das gegenwärtige Gesetz in Wirksamkeit tritt.

§.22.

Auf Rechtsmittel gegen richterliche Verfügungen, welche vor dem Inkrafttreten des gegenwärtigen Gesetzes bei Gericht ordnungsmäßig überreicht wurden, und eine richterliche Erledigung erfordern, ist das gegenwärtige Gesetz nicht anzuwenden.

§.23.

Mit dem Vollzuge dieses Gesetzes und mit der Rundmachung des Tages der Wirksamkeit dieses Gesetzes ist Mein Iustizminister beauftragt.

Cilli, den 30. August 1891.

Franz Joseph m. p.

Taaffe m. p. Schönborn m. p.

PART II
Municipal Public Administration in Hungary (1919–1944)

The arms of Hungary and the face of the Governor on a coin
in the period of Horthy era

The Institutions of Hungarian Municipal Public Administration between 1919 and 1944

1. § The provision of public law and the act on the reorganization of public administration

During the years following the First World War and the bourgeois revolutions, the issue of reorganizing public administration was among the reform efforts of constitutional law all along,[1] but without major changes taking place *de facto*. At the time of the first National Assembly (*Nemzetgyűlés*, 1920–1922), the parties therein set the reform of municipal-local government administration as one of their aims. In particular, one should point out the need for discontinuing virilism, the practice of granting public law advantages to the largest taxpayers,[2] which arose in city municipalities soon after the revolutions, and which was actually done away with in Budapest in the spring of 1920.[3]

The *Hungarian Jurist Association* also addressed the issue of restructuring public administration: during its meetings held in May and June of the year, the scientific community expressed views which were not unanimous, yet all the speakers agreed on the need for the institutional reform of municipal suffrage, the legal standing of cities and villages, the legal status of county officials, and finally the structure and the scope of authority of administrative jurisdiction.[4]

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[1] See mainly Act I of 1920 on the Restitution of Constitutionality and the Provisional Arrangement of Exercising the Powers of the Head of State, Act II of 1920 on the Election of Miklós Horthy de Nagybánya as Governor, Act VII of 1920 on the Prolongation of the Term of Office of Elected City Officials, Act XI of 1920 on Certain Provisions Concerning State, State Railway and County Officials and Other Employees, Act X of 1920 on the Provisional Regulation of the Procedure for the Ministers' Impeachment, and Act XVII of 1920 on the Amendment of Article 13 of Act I of 1920.

[2] Virilism *(virilizmus)* was an institution introduced in 1872 modelled on the example of Austria and Prussia. It gave direct influence and municipal board membership of their own right to the persons who paid the largest taxes to county and city/village local governments – according to the tax registers compiled annually (Act XLII of 1870, Act XXI of 1886).

[3] Act IX of 1920 on the Reorganization of the Municipal Board of the Capital; for more details see RUSZOLY József: *Alkotmányjogi reformtörekvések az első nemzetgyűlés idején*. [Reform Attempts of Constitutional Law at the Time of the First National Assembly] In: ID.: Újabb magyar alkotmánytörténet, 1848–1949. Válogatott tanulmányok. Budapest, 2002, pp. 215–216.

[4] CSIZMADIA Andor: *A magyar közigazgatás fejlődése a XVIII. századtól a tanácsrendszer létrejöttéig*. [The Development of the Hungarian Public Administration from the 18th Century until the Council System] Budapest, 1976, pp. 348–349.

The first major step in the Horthy era[5] was the program presented to the public by Gyula Ferdinandy, Minister of the Interior, in September 1920. In the government led by Prime Minister Count Pál Teleki,[6] the problems of virilism and women's suffrage caused heated debates, because the Minister intended to maintain the largest taxpayers' automatic rights of membership and representation (that is raw virilism) only in the villages, while combining it with the democratic election principle in municipalities. István Haller, Minister of Religion and Education, did not support the above-mentioned privilege of representation even in this moderate form, whereas Vilmos Pál Tomcsányi, Minister of Justice and Gyula Rubinek, Minister of Trade defended the largest taxpayers' interest, and József Vass, Minister of Food, also considered it necessary to preserve this institution "to a certain extent". Women's suffrage was also opposed vehemently, yet the original proposals were accepted by the Council of Ministers with only minor modifications.[7]

Gyula Ferdinandy submitted his reform plans in three bills to the National Assembly in October 1920. Their most important novelty lay by all means in the intention to introduce moderate virilism, which was sufficient to preserve the representation of members with greater wealth and thereby to ensure a conservative force in the positive sense as well as "good judgment" and gradual progress. However, in contrast with the original concepts, he no longer planned to introduce women's suffrage, thus the municipal suffrage contained therein was more restricted compared to the one in the National Assembly.[8]

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[5] This is the name usually used for the historical period between February 1920 until December 1944, during which, with the Hungarian royal throne being vacant, the powers of the head of state were exercised by Miklós Horthy de Nagybánya (1868–1957) as governor. The decade or so until 1933 was characterized by trying to come to terms with the losses caused by the Great War and the Peace Treaty of Trianon (1920) and by the Entente forced path. After that Hungary gradually drifted under the economic, political and legal influence of the Third Reich. This period is still judged controversially for reasons of occasional and periodic democratic deficit and repeatedly expressed anti-Semitism. See also footnote 9 and ROMSICS Ignác: *Magyarország története a XX. században*. [The History of Hungary in the 20th Century] Budapest, 2010, pp. 151–270; Jörg K. HOENSCH: *A History of Modern Hungary, 1867–1986*. London–New York, 1988, pp. 84–160; C. A. MACARTNEY: *October Fifteen: A History of Modern Hungary, 1927–1945*. Edinburgh, 1956; C. A. MACARTNEY: *Hungary and her Succussors: The Treaty of Trianon and its Consequences, 1919–1937*. London–New York, 1937; Nathaniel KATZBURG: *Hungary and the Jews: Policy and Legislation, 1920–1943*. Jerusalem, 1981.

[6] Count Pál Teleki (1879–1941) became the Prime Minister of Hungary first in 1920, then for the second time in 1939. The tragic-fated politician succeeded in preventing the country from entering the Second World War by means of relative cooperation with the Germans until April 3, 1941, when – not being able to avoid it any more – he committed suicide.

[7] RUSZOLY 2002, pp. 217–218.

[8] RUSZOLY 2002, pp. 218–219.

In spite of their progressive or consensus-seeking nature, the bills failed to win sufficient social support: the counties protested against the proposal concerning them and against the possibly increasing influence of small landowners so fiercely that Ferdinandy's impetus was broken and he withdrew his proposal in December, and then he also resigned from his ministerial office in February 1921. Thus the administrative reforms were compelled to become theoretical, as Count István Bethlen and his government, who came into office after Charles IV's (1916–1918) first attempt to return,[9] postponed the implementation of such significant public law changes until the formulation of the electoral law – which was adopted by the second National Assembly (1922–1926) only in 1925.[10]

As a result of this, municipal cities and counties had to face the undesirable situation in which the municipal boards *(törvényhatósági bizottságok)* were renewed neither normatively nor through general elections in spite of the war having ended. Instead, the mandate of city officials and representative bodies was renewed again for an indefinite period of time by Act VII of 1920: until the municipal boards to be elected pursuant to the anticipated new law were set up and new officials were elected.[11] Act IV of 1921 modified this in such a way that members of the municipal boards could not be elected until the end of 1923, that is the boards continued to operate with their members elected before the World War and only interim elections were held.[12] At the same time, according to the provisions of Act VI of 1915, municipal elections were to have been held in three months after the day of the conclusion of the peace treaty on the basis of the electoral roll of the year 1914.[13] However, Act XXXIII of 1874 should have been applied to this electoral roll as electoral law,[14] which was absolutely impossible in view of the public law changes effected.[15] Therefore, for lack of a better alternative in this inconsistent legal

[9] King Charles IV, the last Hungarian king who was later beatified, abdicated as king of Hungary in November 1918. In 1921, one year after Miklós Horthy was elected governor, he attempted to regain the throne twice – unsuccessfully. It was after this that the National Assembly *(Nemzetgyűlés)* proclaimed the third, final dethronement of the House of Habsburg (Act XLVII of 1921). He died in exile on the island of Madeira (Portugal) in 1922.

[10] CSIZMADIA 1976, pp. 349–356; RUSZOLY 2002, pp. 220–232.

[11] Act VII of 1920 on the Prolongation of the Mandate of City Elected Officials.

[12] Article 9 of Act IV of 1923 on the Amendment of Certain Provisions of Act LVIII of 1912 on City Development.

[13] Act VI of 1915 on Municipal Suffrage. SARLÓS Béla: *Közigazgatás és hatalompolitika a dualizmus rendszerében*. [Administration and Politics of Power in the System of Dualism] Budapest, 1976, pp. 234–239, 244–246.

[14] See Articles 21 and 154–155 of Act XIV of 1913 on the Election of Members of Parliament, and Article 3 of Act XV of 1914 on the Number of Parliamentary Constituencies and their Seats.

[15] A m. kormány 1919. évi 5985. M. E. számú rendelete a nemzetgyűlési, törvényhatósági és községi választójogról. [Hungarian Government Decree No. 5985/1919 on the National Assembly,

situation, the National Assembly and from 1927 the Parliament[16] kept prolonging the term of the *ex lex* mandate of board members and officials – up until 1929.[17]

Thus the long-awaited administrative reform could be started only at the end of the decade:[18] Béla Scitovszky, Minister of the Interior submitted the bill on the reorganization of public administration to the House of Representatives of the Parliament on 4 July, 1928. The bill was drafted by Gusztáv Ladik, State Secretary of the Interior, who had great expertise on public administration, and by his subordinates.[19] Although the joint committee organized from the committees of public law and public administration of the Parliament started the discussion thereof, it could not be finished before the ongoing legislative session was closed, therefore the Minister of the Interior withdrew the proposal in the interim – partly in order to be able to adopt the great number of modifications – and submitted it again to the House of Representatives in the winter

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municipal and village suffrage] MRT 1919. Budapest, 1919, pp. 879–881; a m. kormány 1919. évi 5986. M. E. számú rendelete az összeférhetetlenségnek a nemzetgyűlési tagokra vonatkozó szabályozásáról. [Hungarian Government Decree No. 5986/1919 on the Regulation of incompatibility concerning members of the National Assembly] MRT 1919. Budapest, 1919, pp. 881–883; a m. kormány 1919. évi 5987. M. E. számú rendelete a nemzetgyűlési választók névjegyzékének elkészítéséről és szavazóigazolványok kiállításáról. [Hungarian Government Decree No. 5987/1919 on the Compilation of the National Assembly electoral roll and on issuing voting certificates] MRT 1919. Budapest, 1919, pp. 884–893; a m. kormány 1919. évi 5988. M. E. számú rendelete a nemzetgyűlés tagjainak választásáról. [Hungarian Government Decree No. 5988/1919 on the Election of the members of the National Assembly] MRT 1919. Budapest, 1919, pp. 894–929; a m. kir. minisztérium 1922. évi 2200. M. E. számú rendelete az 1922. évben összeülő nemzetgyűlés tagjainak választásáról. [Ministerial Decree No. 2200/1922 on the Election of the members of the National Assembly to be convened in 1922] MRT 1922. Budapest, 1923, pp. 14–70. See also RUSZOLY József: *Az első nemzetgyűlési választások előzményeihez*. [About the Antecedents of the First National Assembly Elections] In: ID.: Újabb magyar alkotmánytörténet, 1848–1949. Válogatott tanulmányok. Budapest, 2002, pp. 188–203.

[16] After the First World War the provisional, one chambered legislative organ of Hungary was called National Assembly *(Nemzetgyűlés)*. The previous House of Lords was re-established by Act XXII of 1926 and it was given a new name: Upper House *(Felsőház)*. This way between January of 1927 and December of 1944 the national legislative organ was called Hungarian Parliament *(Magyar Országgyűlés)* and was bicameral again. Read more details on the public legal system in *The Hungarian State. Thousand Years in Europe*. Editor: Gábor MÁTHÉ. The relevant chapter was written by Gábor MÁTHÉ and Ferenc PÖLÖSKEI. Budapest, 2000, pp. 257–278; József RUSZOLY: *Institutionelle Grundlagen der Legislation in Ungarn, 1920–1944/45*. In: DERS.: Beiträge zur neueren Verfassungsgeschichte. (Ungarn und Europa) = Ungarische Rechtshistoriker 3. Budapest, 2009, pp. 319–383.

[17] A m. kir. minisztérium 1924. évi 204. M. E. számú rendelete az önkormányzati működés folytonosságának biztosításáról. [Ministerial Decree No. 204/1924 on Ensuring the Continuity of the Operation of Municipalities] MRT 1924. Budapest, 1925, p. 2; Act XXXVI of 1928 on Ensuring the Continuity of Municipal Administration.

[18] On other attempts in the meantime: CSIZMADIA 1976, pp. 358–366.

[19] CHR27–31. XIV. p. 415; WHR27–31. XII. Issue 592, pp. 11–48; CSIZMADIA 1976, p. 384.

session on 20 December, 1928.[20] On this second occasion only the committee of public administration discussed the proposal, as a result of which the report with its opinion was submitted to the plenary assembly of the House of Representatives in February 1929, where the general debate started on 5 March and finished on 9 April,[21] then the detailed debate commenced immediately and ended on 30 April. The third reading was held on 2 May.[22]

The members of the committee of public administration emphasized in their report: "the reorganization of municipal bodies needs to be combined with the idea and the effort – always along the path set by the lessons learned from the past and with the maintaining and strengthening of the municipalities – to involve all the groups of the society who are responsive to the aims and tasks of local governments and are interested in the activities thereof, and to have all conservative forces organized; on the other hand, the willingness and ability of municipal bodies to perform tasks of public administration need to be enhanced."[23] The committee examined the text of the proposal with these maxims of principle in mind, and it finalized its report supporting the proposal with the recommendation of several modifications.[24]

The most fierce disputes were provoked in the committee and plenary debate by the following topics and legal institutions: the question of introducing the representation of religious denominations was raised at the committee meetings, which was adopted only after a heated debate, and the right of the Minister of the Interior to dissolve the municipal boards operating unconstitutionally was also criticized heavily. Several objections were also raised against the planned composition of the four-member *disciplinary court* (committee) chaired by the Minister of the Interior, arguing that the proposal would give way to the predominance of the officials of the Ministry of the Interior. Similarly, the considerable curtailing of the powers of the *administrative committee* was strongly objected to, not only in the Parliament but also in professional journals.[25]

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[20] CHR27–31. XVII. p. 5.

[21] CHR27–31. XIX. pp. 22–23.

[22] CHR27–31. XX. pp. 26, 59–60; CSIZMADIA 1976, pp. 379–381.

[23] WHR27–31. XV. Issue 717, pp. 399–400.

[24] WHR27–31. XV. Issue 717, pp. 400–421, 423–471; *A közigazgatási törvényjavaslat tárgyalásai.* [Discussions of the Bill on Administration] Városok Lapja, 1 February 1929 (No 3), pp. 30–31, 15 February 1929 (No 4), pp. 48–49, 1 March 1929 (No 5–6), pp. 62–64; Cf.: WHR27–31. XV. Issue 717, p. 422.

[25] CSIZMADIA 1976, p. 380.

The opposition in the House of Representatives was against, in particular, the maintenance of virilism and the proportion of the number of the members elected by the largest taxpayers, the too many officials who became members partly from the municipalities and partly from state administration under an official title or as representatives of several professions. The representation of religious denominations was also debated, and the lack of democratic suffrage and the exclusion of women were also opposed to by many. Ernő Bródy called for a separate bill for cities, and Pál Hegymegi-Kiss worded his criticism in the plenary session, too, that the program for the development of cities and villages was absent from the proposal. The latter representative, together with Béla Kun from Hódmezővásárhely, also protested against the extension of the disciplinary powers of the Minister of the Interior and against the excessive powers of the prefects (lord lieutenants).[26]

In the Upper House the basis of the debate was given by the text adopted by the House of Representatives.[27] The committees of public administration, public law and legislation had examined it previously, followed by submitting a joint report on their opinion. In the report (dated 27 May, 1929) the committees of the Upper House held the view that the fundamental principles of the bill were accepted – even if not entirely without criticism – and they made only stylistic modifications or some legal specifications.[28] The speeches delivered concerned mainly the manner of the representation of religious denominations, the secrecy of the election of officials, the government's right of dissolution, the composition of the disciplinary court and the changes planned in the scope of authority of the administrative committee.[29]

The plenary debate in the Upper House took place in June, major criticism was voiced in the speeches with respect to the joint regulation of counties and cities, the new scope of authority of the administrative committee, the lifelong election of officials, the right of dissolution already mentioned several times, and also the inclusion of interest representations and religious denominations.[30] As an interesting and not entirely unfounded idea, István Bezerédj *de lege ferenda* proposed the reorganization of the administrative committee into an administrative court of first instance, whereas Károly Némethy suggested the organization of the mentioned administrative courts in the seats of the five

[26] CSIZMADIA 1976, p. 381.

[27] WHL27–31. IX. Issue 286, pp. 400–450, official reasoning: pp. 451–543.

[28] WHL27–31. IX. Issue 299, pp. 97–114, 115–166.

[29] WHL27–31. IX. Issue 299, pp. 94–95.

[30] CHL27–31. IV. pp. 95–156; PÜSKI Levente: *A magyar felsőház története, 1927–1945.* [The History of the Hungarian Upper House, 1927–1945] Budapest, 2000, pp. 40–42.

appeal courts for consideration, otherwise – also in view of his scholarly activities in this field dating back to several decades[31] – he totally agreed on the necessity of re-forming administrative jurisdiction.[32]

The final vote after the detailed debate was held on 7 June,[33] followed by the exchange of messages between the two chambers until the final text of the law was formulated on 18 June.[34] The almost one-year-long legislative process came to an end on 29 June, 1929 with the promulgation of the third municipal act on the reorganization of public administration.

From the point of view of codification, this rule of law was a piece of legislation creating an odd legal state. It repealed approximately half of the norms of the 1886 *Act on Municipalities* and *Act on Villages*, and replaced them with new ones. At the same time the rules of law maintained in force were not incorporated into the Act of 1929, consequently the administrative norms applying to municipalities were not included in a unified structure in the end. In this way the two pieces of legislation actually constituted a code together which contained the effective legal norms to be applied to the most important questions arising in this specific area. The amendments of Act XXIII of 1886 on the *disciplinary right of civil servants* and to a smaller extent on its procedural rules were also included in the 1929 Act.

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[31] NÉMETHY Károly: *A közigazgatási bíróságról szóló törvény magyarázata*. [The Explanation of the Act on Administrative Jurisdiction] Budapest, 1897; NÉMETHY Károly (ed.): *A közigazgatási eljárás egyszerűsítése I–II*. [The Simplification of Administrative Procedure] Budapest, 1903.

[32] CHL27–31. IV. pp. 79, 92. From the literature on Hungarian administrative jurisdiction see MARTONYI János: *A közigazgatási bíráskodás és legújabbkori fejlődése*. [Administrative Jurisdiction and Its Modern Development] = Magyar Közigazgatástudományi Intézet 8. Budapest, 1932, ID.: *Közigazgatási bíráskodásunk továbbfejlesztése*. [Further Development of Our Administrative Jurisdiction] Budapest, 1944, ID.: *Az ötvenéves közigazgatási bíróság*. [The 50-Year-Old Administrative Jurisdiction] Budapest, 1947, ID.: *A közigazgatási bíráskodás bevezetése, szervezete és hatékonysága Magyarországon (1867–1949)*. [The Introduction, Organization and Efficiency of Administrative Jurisdiction in Hungary (1867–1949)] = Acta Juridica et Politica Szeged, Tomus XX. Fasc 2, Szeged, 1973; STIPTA István: *A közigazgatási bíráskodás előzményei Magyarországon*. [Antecedents of the Administrative Jurisdiction in Hungary] In: Jogtudományi Közlöny, March 1997 (No 3), pp. 117–125, ID.: *Adalékok a pénzügy bíróság működésének történetéhez*. [Data on the History of Operation of the Financial Court] = Acta Juridica et Politica Szeged, Tomus LVII. Fasc 9, Szeged, 1999, ID.: *A pénzügyi közigazgatási bíráskodás hazai története*. [The History of Financial Administrative Jurisdiction in Hungary] = Acta Juridica et Politica Szeged, Tomus LII. Fasc 9, Szeged, 1997, ID: *Die Rechtskontrolle der öffentlichen Verwaltung*. In: DERS.: Die vertikale Gewaltentrennung. Verfassungs- und rechtsgeschichtliche Studien. = Ungarische Rechtshistoriker 2. Budapest, 2005, pp. 95–190.

[33] CHL27–31. IV. p. 157; *A közigazgatási törvényjavaslat felsőházi tárgyalása*. [The Discussion of the Bill on Administration in the Upper House] Városok Lapja, 15 June 1929 (No 13), pp. 163–165.

[34] CHR27–31. XXII. pp. 43, 296–303; WHR27–31. XVII. Issue 794, pp. 336–337; CHL27–31. IV. p. 160.

On the other hand, the law itself and from the aspect of legislative structure can be considered well-thought over and systematic. A progressive feature was that each of its 99 articles (sections) had their own title. Altogether, these rules of law constituted five separate parts in the text of the law: the first one was about the reorganization of local government bodies (Articles 1–45), the second on the organs of legal remedy of the administrative procedure, the hierarchy of public agencies and certain rules of procedure (Articles 46–64),[35] the third on the provisions pertaining to the personal and service relations of officials and other employees in public administration (Articles 65–74), the fourth on the disciplinary rules and procedures against local government officials (Articles 75–94), and finally the fifth one contained miscellaneous and enacting provisions (Articles 95–99). The text of the law was supplemented by three annexes: on the number of the members of the concrete municipal boards as well as the number of the representatives of religious denominations and the number of the members of interest representations in the certain municipal organs.

The Minister of the Interior and the other sectoral ministers were authorized to implement the law. In the spirit of this, the Minister of the Interior issued his first decree on 29 June, 1929, on the ordinances on municipalities and cities of county rank to be urgently adopted, on the compilation of the electoral rolls of virilists and others, on the election of the largest municipal taxpayers, on the recommendations concerning municipal board membership and alternate membership, and on miscellaneous provisions.[36] This was followed on 26 September by a short supplement, which set forth new detailed regulations concerning the election of the virilists, the issue of ballots, the sheets of recommendation and the manner of voting.[37] In the meantime, on 23 August a decree was issued on the election of interest representation members, with provisions regarding the election of delegates to the medical, engineering, legal and notarial chambers, agricultural committees, the national social

[35] LÖVÉTEI István: *A közigazgatási eljárásjog kialakulása*. [The Formation of Administrative Procedural Law] In: Juratissimus Author. Jogtörténeti tanulmányok Nagyné Szegvári Katalin tiszteletére, Ed.: RÁCZ Lajos. Budapest, 2000, pp. 75–77.

[36] A m. kir. belügyminiszter 1929. évi 3000. eln. számú rendelete a közigazgatás rendezéséről szóló 1929: XXX. tc. egyes rendelkezéseinek végrehajtásáról. [Minister of the Interior Decree No. 3000/1929 on the Implementation of certain provisions of Act XXX of 1929 on the Reorganization of Public Administration] MRT 1929. Budapest, 1930, I. pp. 160–176; *A közigazgatás rendezéséről szóló (1929: XXX.) törvény végrehajtása*. [The Implementation of the Act (XXX of 1929) on the Reorganization of Public Administration] Városok Lapja, 1 August 1929 (No 16–17), pp. 190–192.

[37] A m. kir. belügyminiszter 1929. évi 3644. eln. számú körrendelete a 3000/1929. B. M. eln. számú rendelet módosításáról és kiegészítéséről. [Minister of the Interior Circular No. 3644/1929 on Modifying and supplementing the Minister of the Interior Decree No. 3000/1929] MRT 1929. Budapest, 1930, II. pp. 1482–1486.

security body as well as to the chambers of commerce and industry.[38] The ministerial decree on the date of re-electing municipal boards was issued on 4 October, then as an amendment thereof, another one on 11 October, which postponed the day of the election from among all voters to a later time.[39] Finally, on 4 November, the implementing decree regarding the representation of religious denominations and the representation of several professions was also promulgated.[40] As participation in the election was mandatory for the virilists, a decree was issued for the case of default, too.[41]

The first substantial amendment and supplementation of the administrative reform act of 1929 was carried out by the Parliament in 1933. Act XVI of 1933 adopted then contained major amendments to the rules of legal remedy available in the administrative procedure in its first chapter (Articles 1–13) and on the system of the hierarchy of public agencies in the second one (Articles 14–27), and it also changed several other rules of law (Articles 28–43). This new law was received by contemporary legal literature with great appreciation. István Ereky[42] held the view that the reform of legal remedy was one of the most significant administrative changes of modern times in Hun-

[38] A m. kir. belügyminiszternek az igazságügyi, a földmívelésügyi, a népjóléti és munkaügyi és a kereskedelemügyi m. kir. miniszterekkel egyetértve kiadott 1929. évi 3217. eln. számú rendelete az érdekképviseleti törvényhatósági bizottsági tagok választásának szabályozásáról. [Minister of the Interior Decree No. 3217/1929 issued in agreement with the Ministers of Justice, Agriculture, Welfare, Labour and Commerce on the Regulation of the election of interest representation members in municipal boards] MRT 1929. Budapest, 1930, II. pp. 1402–1406; a m. kir. belügyminiszter 1929. évi 3850. eln. számú körrendelete a 3217/1929. B. M. eln. számú rendelet módosításáról és kiegészítéséről. [Minister of the Interior Circular No. 3850/1929 on Modifying and supplementing Decree No. 3217/1929] MRT 1929. Budapest, 1930, II. pp. 1487–1488.

[39] A m. kir. belügyminiszter 1929. évi 3909. eln. számú körrendelete a törvényhatósági bizottságok újjáalakításának időpontjáról. [Minister of the Interior Circular No. 3909/1929 on the Date of re-electing municipal boards] MRT 1929. Budapest, 1930, II. pp. 1488–1489; a m. kir. belügyminiszter 1929. évi 4065. eln. számú rendelete a törvényhatósági bizottságok újjáalakításának időpontjáról. [Minister of the Interior Decree No. 4065/1929 on the Date of re-electing municipal boards] MRT 1929. Budapest, 1930, II. p. 1490.

[40] A m. kir. belügyminiszter 1929. évi 3484. eln. számú körrendelete a vallásfelekezet képviseletéről a törvényhatósági bizottságban. [Minister of the Interior Circular No. 3484/1929 on the Representation of religious denominations in the municipal board] MRT 1929. Budapest, 1930, II. pp. 1496–1497; a m. kir. belügyminiszter 1929. évi 4469. eln. számú körrendelete a törvényhatósági bizottság szakszerűség képviselete címén tagjainak kijelöléséről […]. [Minister of the Interior Circular No. 4469/1929 on the Appointment of the members of the municipal board under the title of representation of several professions (…)] MRT 1929. Budapest, 1930, II. pp. 1497–1498.

[41] A m. kir. belügyminiszter 1930. évi 5099/1929. eln. számú körrendelete a legtöbbadófizető törvényhatósági bizottsági tagok választásánál a szavazás elmulasztásának igazolásáról. [Minister of the Interior Circular No. 5099/1929 of 1930 on the Certification of failing to vote in the municipal board election of the largest taxpayers] MRT 1930. Budapest, 1930, p. 66.

[42] István EREKY (1876–1943) was a prominent administrative jurist and legal historian at the Franz Joseph University of Szeged. His main work is: *Közigazgatás és önkormányzat*. [Public Administration and Local Government] Budapest, [1]1933, [2]1939.

gary. Károly Némethy also voiced the opinion that the state had finally attained desirable, justified and quick public administration: the introduction of one-instance appeal. They agreed that the long-awaited decentralization of administrative procedures was achieved by the act – prepared by Ferenc Keresztes-Fischer, the then Minister of the Interior.[43]

He should have seen to the enactment of the law, too, but only a few articles came into force as of 1 November, 1933.[44] The significant reform of administrative jurisdiction would have been needed for enacting the other rules of law, but the extension of legal protection against state organs did not fit into the concept of "leader state" *(Führerstaat)* propagated by Prime Minister Gyula Gömbös.[45] In this way the major part of Act XVI of 1933 remained only a possibility and did not become a reality.

As to differentiated regulation, important legislation concerning the issue of cities was enacted only in 1937 – apart from the acts on the capital –: this was Act VI of 1937,[46] which concerned only some of the necessary subjects. The new law contained detailed provisions first of all on city planning and construction. It was centered on settlement development; as a prerequisite to this it was made mandatory for each city to draw up plans of city development and planning, and to keep a modern land register. Had World War II not prevented its actual implementation, this new act could have promoted urbanization considerably. However, from 1939, instead of economic and urbanization progress, Hungarian municipal administration (among others)

[43] CSIZMADIA 1976, pp. 431–433.

[44] A m. kir. minisztérium 1933. évi 14.120. M. E. számú rendelete a közigazgatás rendezéséről szóló 1929: XXX. tc. módosításáról és kiegészítéséről alkotott 1933: XVI. tc. egyes rendelkezéseinek életbeléptetéséről és végrehajtásáról. [Ministerial Decree No. 14.120 of 1933 on the Enactment and implementation of certain provisions of Act XVI of 1933 on the amendment and supplement of Act XXX of 1929 on the Reorganization of Public Administration] MRT 1933. Budapest, 1933, III. pp. 2649–2652.

[45] Gyula Gömbös (1886–1936), as Prime Minister of Hungary (1932–1936) attempted to establish a dictatorial state similar to Hitler's Germany, but fortunately he was supported in doing so neither by the governor, nor by the parliamentary parties or the civil society. Despite this, he had a decisive role in putting Hungary under the influence of the Third Reich, which could not be averted by his successors, Kálmán Darányi and Béla Imrédy.

[46] HARRER Ferenc: *Városrendezési politika*. [City Planning Policy] In: A mai magyar város, Editor: MÁRTONFFY Károly. Budapest, 1938, pp. 418–427, ID: *A városrendezésről és az építésügyről szóló törvény*. [Act on City Planning and Construction] In: Városfejlesztés, városrendezés, városépítés, Editor: MÁRTONFFY Károly. Budapest, 1940, pp. 303–315; CSIZMADIA Andor: *A magyar városrendezési törvény*. [The Hungarian Act on City Planning] Katolikus Szemle, 1 April 1937 (No 4), pp. 204–212.

was influenced by the act on national emergency power and its implementing decrees.[47]

Thus the history of public administration between the World Wars is divided into two clearly distinguished periods; the first is characterized by the legal continuance of the institutions of the period of dualism in essentially the same form, while the second one – as a consequence of Act XXX of 1929, Act XVI of 1933 and Act VI of 1937 – is marked by more rational and more modern institutions.[48] Formally, this era of public administration lasted until 1950, until the establishment of the socialist council system, though after 1945 it was only a shadow of itself.

2. § Major local organs of municipal administration

Besides municipal acts and ministerial decrees, locally adopted ordinances[49] can give us information about the organization of municipal administration. In the following, the municipal system between the two World Wars is going to be presented through the example of the city of municipal rank of Hódmező-vásárhely.[50]

a) Municipal board

In Hódmezővásárhely, the municipal board *(törvényhatósági bizottság)* representing the community of the city numbered 240 members until the reform of year 1929, and 174 thereafter. Until 1929, one half of it consisted of citizens who paid the greatest amount of direct state tax in the territory of the

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[47] See Articles 141–170 of Act II of 1939 on National Defence and the Ministerial Decree No. 8100/1939 on the Enactment of emergency power in time of war or in the case of imminent danger of war. MRT 1939. Budapest, 1940, pp. 1266–1267.

[48] CSIZMADIA 1976, pp. 371–421; MAGYARY Zoltán: *A magyar közigazgatás racionalizálásának programja*. [The Program for the Rationalization of Hungarian Public Administration] = Magyar Közigazgatástudományi Intézet 4. Budapest, 1932.

[49] LADIK Gusztáv*: A szabályrendeletek. Önkormányzati testületeink szabályrendelet-alkotási joga*. [Ordinances: The Right of Local Government Bodies to Formulate Ordinances] Budapest, 1912.

[50] ANTAL Tamás: *Hódmezővásárhely törvényhatósága (1919–1944). Fejezetek a magyar városigazgatás történetéből*. [The Municipality of Hódmezővásárhely (1919–1944): Chapters from the History of Hungarian City Administration] = Dél-alföldi évszázadok 27. Szeged, 2010, ID: *Hódmezővásárhely szervezési és működési szabályzatának ügye a két világháború között*. [The Rules of Organisation and Operation of Hódmezővásárhely between the two World Wars] In: A Hódmezővásárhelyi Szeremlei Társaság évkönyve 2010, Ed.: KOVÁCS István and VARSÁNYI Attila. Hódmezővásárhely, 2011, pp. 161–173.

municipality, while the other half was constituted by members elected by the electorate, and several local officials as well as the leader of the royal economic inspectorate had membership, too. This was refined by the 1929 administrative reform in such a way that in addition to the virilists elected for five years and to the members elected from among all the citizens with suffrage for ten years, the representatives of several professions and religious denominations were also included, similarly to persons elected for interest representation organs, life members, and board members who were members by course of law, by virtue of their office status (Articles 2–21 of Act XXX of 1929).

The elected board members won their mandate through municipal elections held in the constituencies (boroughs). The constituencies had last been marked out before the administrative reform in 1903, and this was taken over by the organizational ordinance of 1913, too. The number of boroughs in Hódmezővásárhely was eight until 1929, then twelve,[51] and 16,252 electors lived in the city in 1939. From 1929 the so-called *individual chambers* and *interest representation organs* (royal chamber of notaries, chamber of lawyers, chamber of engineers, association of doctors, agricultural committee, chamber of commerce and industry) also held elections.

From 1929 raw *virilism* was replaced by a *moderate* one, which meant that the automatic allocation of the mandates of the largest taxpayers gave way to election from among themselves. Accordingly, three groups of virilists elected twenty regular and ten alternate members each.[52]

Under the title of several professions, it was generally the heads of state organs, such as the head of the royal financial directorate, head of the local police station of the royal state police, the forest inspector, the district head of

[51] The constituencies were formed by the ordinances of the age of dualism on account of the introduction of the municipal system. See e.g. the coloured map of Vásárhely in 1904. MAKÓ Imre: *A házszámozás története Hódmezővásárhelyen*. [The History of Numbering Houses in Hódmezővásárhely.] In: A Hódmezővásárhelyi Szeremlei Társaság évkönyve 2009, Ed.: VARSÁNYI Attila. Hódmezővásárhely–Budapest, 2010, pp. 24–25.

[52] See footnote 2 above and: a m. kir. belügyminiszter 1929. évi 3000. eln. számú rendelete a közigazgatás rendezéséről szóló 1929: XXX. tc. egyes rendelkezéseinek végrehajtásáról. [Minister of the Interior Decree No. 3000/1929 on the Implementation of certain provisions of Act XXX of 1929 on the Reorganization of Public Administration] MRT 1929. Budapest, 1930, pp. 161–163, 166–167; a m. kir. belügyminiszter 1930. évi 5099/1929. eln. számú körrendelete a legtöbbadófizető törvényhatósági tagok választásánál a szavazás elmulasztásának igazolásáról. [Minister of the Interior Circular No. 5099/1929 of 1930 on the Certification of failing to vote in the municipal board election of the largest taxpayers] MRT 1930. Budapest, 1930, p. 66.

the national social security institution and the royal animal health advisor who gained membership. Clergymen became members *on behalf of the Churches*.

As a rule, a member of the municipal board could only be a man who had already reached 30 years of age, paid direct state tax or communal taxes, and could read and write. However, a woman could be elected, too, if she had at least secondary school education. The municipal membership ceased in case of reasons for exclusion.[53]

The municipal board operated in the form of a *general assembly (közgyűlés)*. An ordinary general assembly was held preferably on every second Wednesday of the month, with the exception of the months of July and August, but after 1929 only once in a quarter. An extraordinary general assembly could be convened by the prefect in his own scope of authority or as a result of a general assembly decision at any time, and by the mayor only in exceptional cases, when the prefect was prevented from doing so. Extraordinary general assemblies were usually held on prominent occasions, such as the inauguration of new prefects, the dedication of the freedom of the city to honorary freemen or the commemoration of anniversaries. From among the ordinary general assemblies the ones held in October and May were of greater significance as the following year's budget was discussed in the former one and the closing account in the latter one. As a rule, the chairman of the general assembly was the prefect, or if he was prevented from attending, the mayor.

The competence of the general assembly encompassed the formulation of local ordinances, the establishment of administrative districts and constituencies; the right of action regarding traffic routes, public utilities and community work; contracting loans, the acquisition and alienation of municipal capital; budgetary right, the organization of financial inspections; the election of some officials and certain members of the administrative committee; the setting up of specialized committees; the supervision of officials, the exercising of disciplinary powers over them;[54] the substitution of the suspended mayor; the regu-

[53] Ordinance on the reasons for exclusion from membership in the city municipal board of Hódmezővásárhely, 1930 (*Passim).*

[54] A m. kir. belügyminiszter 1930. évi 43. eln. számú rendelete a közigazgatás rendezéséről szóló 1929: XXX. törvénycikk fegyelmi rendelkezéseinek életbeléptetéséről és végrehajtásáról. [Minister of the Interior Decree No. 43/1930 on the Enactment and implementation of the disciplinary provisions of Act XXX of 1929 on the Reorganization of Public Administration] MRT 1930. Budapest, 1930, pp. 82–90; a m. kir. belügyminiszter 1930. évi 44. eln. számú rendelete a fegyelmi eljárás során szükséges kihallgatásokról. [Minister of the Interior Decree No. 44/1930 on the Hearings during the disciplinary proceedings] MRT 1930. Budapest, 1930, pp. 90–95; HENCZ Aurél: *Felsőfokú közigazgatási szakemberképzés Magyarországon, 1848–1948*. [Higher Education for Experts in Public Ad-

lation of the officials' salary and their retirement, and the establishment and termination of office posts. It was responsible for the administration of all matters of public law nature as well as the management of the city's wealth, including the cases of expropriation.[55] It also ordered public health measures,[56] maintained monuments, levied duties and custom duties as part of its competence. Similarly, the conclusion of contracts, the regulation of leases, the commencement of major lawsuits to be filed by the municipality, the approval of agreements, making foundations, the settlement of boundary issues with neighbouring settlements and the exercise of certain guardianship rights were also included in its competence.[57] This organ was also entitled to dedicate the freedom of the city to honorary freemen.[58] In addition, it arranged all the cases which were delegated exclusively to the competence of the general assembly by legislative acts or decrees, and also the ones which the general assembly wanted to have on account of their importance.

The *decisions* were taken by the absolute majority of those present. The meetings were public, but upon the request of the chairman or at least twenty board members closed meetings could be held. The decisions were always made in a public meeting. The decisions adopted could not be modified by the same general assembly. The private parties concerned could appeal against the decisions within 15 days, and legal remedy against ordinances could be sought with the competent minister within 15 days of promulgation.

The agenda of the general assembly was made up by the subjects. This had to include the mayor's reports, interpellations, motions, matters ensuing from the law or decrees or other community matters, preparations for elections, the announcement of the results thereof, the circulars of other municipalities, matters related to the city capital, the reports and minutes of delegated committees, and other administrative matters in its competence as well as

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ministration in Hungary, 1848–1948] = Dissertationes ex Bibliotheca Universitatis de Attila József Nominatae 3. Szeged, 1981, pp. 144–255.

[55] Article 3 of Act XLI of 1881 on Expropriation and Article 10 of Act LVIII of 1912 on the Development of Cities. RUSZOLY József: *A kisajátítás törvényi szabályozásának története Magyarországon (1836–1881).* [The History of the Statutory Regulation of Expropriation in Hungary (1836–1881)] In: ID.: Tíz tanulmány a jog- és alkotmánytörténet köréből. Szeged, 1995, pp. 53–88; József RUSZOLY: *Gesetze über die Enteigung in Ungarn, 1836–1944*. In: DERS.: Beiträge zur neueren Verfassungsgeschichte. (Ungarn und Europa) = Ungarische Rechtshistoriker 3. Budapest, 2009, pp. 549–592.

[56] Article 160 of Act XIV of 1876 on Public Health.

[57] Articles 176, 178, 287, 288, 290, 298 and 302 of Act XX of 1877 on Guardianship Matters.

[58] MAKÓ Imre: *Hódmezővásárhely díszpolgárai 1944 előtt*. [Honorary Freemen of Hódmezővásárhely before 1944] In: A Hódmezővásárhelyi Szeremlei Társaság évkönyve 2003, Ed.: KOVÁCS István and KRUZSLICZ István Gábor. Hódmezővásárhely–Budapest, 2004, pp. 66–92.

private petitions. In addition, independent motions not connected to the agenda could also be submitted. In the extraordinary general assembly neither interpellations nor individual motions could be put forward to the plenary assembly.

The language of consultation was Hungarian everywhere. The order was maintained by the chairman regarding both the members and the audience. When the discussion was over, the question was put for decision by the chairman on the basis of the proposal made by the city council *(városi tanács)*, and from 1929 by the petit assembly *(kisgyűlés)*. Votes were not necessarily counted: the resolutions were told by the majority of the orators in the actual case unless the chairman or at least 10 members required giving the votes by rising or remaining seated. A roll call vote could be proposed by twenty members in writing. In the event of a tie vote, the chairman's vote was decisive, otherwise he did not vote. A roll call vote was compulsory in specific cases. The result of a vote by open ballot was counted by the keeper of the minutes. In the case of a secret ballot, an election committee was ordered. The implementation of the general assembly decisions was normally seen to by the city council (after 1929 by the mayor's office).[59]

The general assembly *elected the following city officials* for six, after 1929 for ten years: the mayor, the councillors, the city clerk *(főjegyző)*, the chief official legal counsel *(tiszti főügyész)*, the police superintendents (until the nationalisation of the police in 1921), the second city clerk *(aljegyző)*, the assessors of the board of guardians *(árvaszéki ülnökök)*, the official legal counsel *(tiszti alügyész)*, the police magistrate *(községi bíró)*, the chief teller *(főpénztárnok)* and the public guardian *(közgyám)*. The deputy mayor (from 1929), the physicians, the veterinarians, the junior administrative draftsmen, the junior police draftsmen, the finance officers and the police officers (until 1921) in particular were elected for life.[60] The city officials were paid for their work from the local budgetary estimations and after retiring they had the right to pension, too.

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[59] See Articles 6–36 of the text of the Organizational Ordinance of 1913 of Hódmezővásárhely and its Amendments published in a unified structure in 1928 in: ANTAL 2010, pp. 176–185. Cf.: RUSZOLY József: *Szeged szabad királyi város törvényhatósága, 1872–1944*. [The Municipality of the Free Royal City of Szeged, 1872–1944] = Tanulmányok Csongrád megye történetéből XXXV. Szeged, 2004, pp. 122–136.

[60] See Article 234 of the original text of the 1913 organizational ordinance mentioned in the previous footnote in: ANTAL 2010, p. 67.

b) Specialized committees of the municipal board

In order to discuss more important issues and to put forward proposals, the general assembly could organize permanent specialized committees *(szakbizottságok)* and in certain cases special *ad hoc* delegations. The committees had mainly a consultative role. Each committee was headed by a chairman – who was usually a councillor – whose work was helped by a keeper of the minutes. After the discussion of the issue in question, the statements were made according to the opinion of the majority of the members present, but the minority could form a dissenting opinion. The opinion was summarized and presented to the general assembly in the form of a *report*. The specialized committees were usually elected by the general assembly from among its own members for three years. Any member of the municipal committee could be a member in a specialized committee.

In the era – albeit not simultaneously – almost *twenty specialized committees* operated in Hódmezővásárhely. Let me now mention only the more important ones: the central committee *(központi választmány)*,[61] which organized the elections; the confirming committee *(igazoló választmány)*, which compiled the annual electoral roll of the virilists; the permanent reviewing committee *(állandó bíráló választmány)*,[62] which administered legal remedies; and also the public health committee *(közegészségügyi bizottság)*, the legal affairs committee *(számonkérő szék)*, the architectural committee *(építészeti bizottság)*, the comptroller committee *(számbíráló bizottság)* and the financial committee *(pénzügyi bizottság)*.

c) Municipal petit assembly

The so-called petit assembly *(törvényhatósági kisgyűlés)* was introduced into the organization of the municipality by Act XXX of 1929 as a new institution and collegial organ, at the same time significantly modifying the scope of authority of the municipal board.

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[61] Articles 7–13 of Act V of 1848 on the Election of the Members of Parliament Based on People's Representation; Act XXXIII of 1874 on the Amendment and Supplement of Act V of 1848 and the Transylvanian Act II of 1848; Act XVIII of 1876 on the Amendment of Certain Provisions of Act XXXIII of 1874 on the Election of the Members of Parliament; Articles 3–4 of Act XV of 1899 on the Jurisdiction on Parliamentary Elections; Articles 25–36 of Act XIV of 1913 on the Election of the Members of Parliament; Articles 15–23 of Act XXVI of 1925 on Parliamentary Elections; Articles 11–18 of Act XIX of 1938 on Parliamentary Elections.

[62] MEZNERICS Iván – TORDAY Lajos: *A magyar közigazgatás szervei, 1867–1937.* [The Organs of Hungarian Public Administration, 1867–1937] Budapest, 1937, p. 60.

The members of the petit assembly were: the mayor, the deputy mayor, the city clerk, two city councillors elected by the general assembly of the municipal board to be the members of the petit assembly, the chief official legal counsel, the chief medical officer, and in Hódmezővásárhely twenty members of the municipal board. Three-quarters of the latter members were elected by the general assembly of the municipal board from among its own members and one quarter was appointed by the prefect from among the members of the municipal board for five years.[63] The largest tax-payers (virilists), the persons elected by all the voters and the municipal board members of interest representations also had membership in the petit assembly. A person who was the member of the municipal board to represent several professions or on account of his official post could neither be elected nor appointed to be the member of the petit assembly. The presence of at least seven members who were not officials was required for the petit assembly to have a quorum.

The municipal *petit assembly* had the following *statutory powers*: on first instance, it proceeded in matters of public interest in which previously the municipal board had the right of action, but which were not delegated there any more in the new law; on second instance, it decided on matters of public interest in which earlier the municipal board was entitled to decide on second instance; and finally it prepared the matters to be submitted to the general assembly of the municipal board.

The monthly meetings started with the urgent and topical speeches permitted by the chairing prefect, and continued with the discussion of the items on the agenda. The speakers presented the cases and the proposals for decision, then a general and detailed debate was started. The petit assembly made decisions with simple majority, by standing up if requested by three members, or – in specific cases – by a roll call vote if requested in writing by five members. The voting was open but could also be made secret. The chairman had no vote in that capacity, but he had to decide in case of a tie vote.[64]

As the petit assembly consisted of a much lower number of members than the municipal board, it was easier for the prefect to enforce the government's political interests in the former one than in the latter board.

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[63] ANTAL 2010, pp. 72–73.

[64] Concerning the rules of procedure, number and interval of the meetings of the petit assembly of Hódmezővásárhely, city of municipal rank, 1931 *(Passim)*. See also the regulations on the petty assembly of Szeged, city of municipal rank, in RUSZOLY 2004, pp. 138–142, 276–277.

d) Administrative committee

The administrative committee *(közigazgatási bizottság)* established by law in 1876[65] – which did not have a local government character but was rather a *mixed* state and municipal organ – had, among others, the following members: the prefect, the mayor, the city clerk, the deputy mayor, the official legal counsel, the chairman of the board of guardians, the chief physician, the tax inspector and ten members of the municipal general assembly, who were elected for two years in a rotation system. State officials and municipal officials could not be elected. The committee was chaired by the prefect – or by the mayor in case he was prevented from attending – and the keeper of the minutes was the city clerk of the municipality.

The committee took action in all the *administrative matters* which were referred into its scope of authority by law; it exercised disciplinary powers in the designated cases and decided in certain cases of appeal. In the interest of general administration it took measures so that the administrative branches in the territory of the municipality were well harmonized, and the media of administration supported each other and operated in a compatible manner. Its high priority tasks included the levying, collecting, administering and recovering of certain taxes pursuant to acts on administering public taxes,[66] the construction and good maintenance of municipal roads and bridges, the supervision of public schools,[67] the control over certain post and telegraph matters, the examination of the conditions in prisons and detention centres, the matters of catering and health conditions in them. Its other responsibilities were specified by separate sectoral rules of law.[68]

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[65] Act VI of 1876 on the Administrative Committee and Act XX of 1882 on its amendment contained the detailed rules of this organ.

[66] Acts XXI of 1868, VII, LIV, LV of 1870, LXIV, LXVI of 1871, XXXVIII of 1872, XXXIX of 1873, XL of 1874, XV of 1876, XVIII of 1877, XLIV of 1881, XXVIII of 1889, XXVI of 1896, XI of 1909, XXIII of 1920, VII of 1923, IV of 1924 on levying and collecting several public taxes and fees.

[67] Act XXVIII of 1876 on Public School Authorities.

[68] E.g. Article 40 of Act VI of 1876 on the Administrative Committee; Article 116 of Act XIII of 1876 on the Relationship between Servants and Masters; Articles 157, 158 of Act XIV of 1876 on Public Health; Articles 213–218 of Act XX of 1877 on Guardianship Matters; Act XXIII of 1886 on the Disciplinary Proceedings against Administrative Officials, Supporting and Handling Personnel; Articles 75–94 of Act XXX of 1929 on the Reorganization of Public Administration; Act I of 1890 on Public Roads and Duties; Act XII of 1894 on Agriculture and Rural Policing; Act II of 1898 on the Regulation of the Legal Relationship between Employers and Agricultural Workers.

The administration of matters and the organization of the committee in Hódmezővásárhely were regulated in detail by an ordinance issued in 1877,[69] and later a decree by the Minister of the Interior specified the details of administration.[70] With the coming into force of the 1929 administrative reform, several responsibilities of the administrative committee ceased, such as: official scope of authority on first instance, and from that time onwards the first official of the municipality (the mayor or in the counties the sub-prefect) proceeded in the cases previously belonging there, in which the administrative committee had been appointed as first instance authority by some rule of law; and its appellate jurisdiction, which was transferred to the petit assembly or again to the first official of the municipality.

However, the disciplinary authority of the administrative committee, the second instance authority of the guardianship appeal delegation, and the authority of certain "special forces" of the administrative committee as first instance authorities were left intact.[71] In practice most of the times it held sessions in the form of specialized sub-committees.

e) The city council and the departments

The city council *(városi tanács)* was the main executive organ of the city municipality both on behalf of state administration and the local government, and at the same time an independent administrative authority in all the matters which were referred into its scope of authority by acts or ordinances, and which were not reserved either for the general assembly or for any other authority.

According to the resolutions of the general assembly, it led and managed the city's economic matters, managed the city's assets and income and its records, saw to the proper handling of the funds and financial reserves under the

[69] Rules of administrative procedure of the administrative committee of Hódmezővásárhely, city of municipal rank, 1877 *(Passim)*.

[70] A m. kir. belügyminister 1902. évi 127.000. számú rendelete. Ügyviteli szabályzat a közigazgatási bizottságok részére. [Minister of the Interior Decree No. 127.000/1902: Rules of administrative procedure for administrative committees.] MRT 1902. Budapest, 1902, pp. 1419–1491.

[71] A m. kir. minisztérium 1930. évi 7890. M. E. számú rendelete a közigazgatási bizottság különleges alakulatairól. [Minister of the Interior Decree No. 7890/1930 on the Special forces of the administrative committee] MRT 1930. Budapest, 1930, pp. 842–845. CSIZMADIA Andor: *A „közigazgatási bizottság" a polgári állam szervezetében*. [The "Administrative Committee" in the Organization of the Bourgeois State] In: Jogtörténeti tanulmányok II. A dualizmus korának állam- és jogtörténeti kérdései, Ed.: Csizmadia Andor. Budapest, 1968, pp. 117–138.

supervision of the municipality and prepared certain matters for discussion by the general assembly. Its key tasks included admission to and dismissal from the official list of the citizens of Hódmezővásárhely,[72] keeping record of schoolable persons, the control of the associations in the territory of the municipality,[73] and first instance the official cases of agriculture and rural policing. It proceeded on second instance in compensation cases of servants, hospitals, misdemeanor, industry and animal health. It issued various official certificates, dealt with the poor, was responsible for maintaining the city roads, for organizing censuses, for any work and transport to be performed for the city. It was also responsible for not exceeding the budget; it had to manage in a manner which constantly ensured the liquidity of the municipality.

The chairman of the council was the prefect or the mayor in case he was prevented from attending, in matters to be submitted to the general assembly, and the mayor in other matters. In Hódmezővásárhely meetings were usually held every Wednesday and Saturday. In addition to the already mentioned, its members were the city clerk *(főjegyző)*, the chief police commissioner *(rendőrfőkapitány)* until 1921, the chief official legal counsel *(tiszti főügyész)* and the councillors *(tanácsnokok)*.

From 1885, the council performed its duties by means of a rapporteur system.[74] Meritorious matters not reserved for other authorities, matters concerning municipal assets and management, the preparation of matters to be submitted to the general assembly and matters requiring agreement on principle were dealt with at *council meetings*. In minor matters not needing a decision on the merits, the competent council member proceeded on behalf of the council, in concert with the mayor, *outside a council meeting*. First the rapporteur's opinion was heard, then a majority decision was made. The council resolutions could be appealed against to the administrative committee or the general assembly, or possibly to the competent minister, depending on the subject. The council was assisted in its work by the city clerk's office, particularly by the city clerk and the second city clerks *(aljegyzők)*.

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[72] The Ordinance of the City of Hódmezővásárhely on the Fees Collectible for Admission to the Official List of Citizens of the City, 1942. In: ANTAL 2010, pp. 119–120.

[73] A m. kir. belügyministernek 1873. ápr. 29-én 1394. sz. a. kelt [...] rendelete az egyesülések ellenőrzése tárgyában. [Minister of the Interior Decree No. 1394 of 29 April 1873 (...) on the Control of associations] MRT 1873. Budapest, 1873, pp. 131–134; az 1508/1875. B. M. eln. számú körrendelet az egyletek tárgyában. [Minister of the Interior Circular No. 1508/1875 on Associations] MRT 1898. Budapest, 1898, I. pp. 244–248.

[74] *Várospolitika, közigazgatás*. [City Policy, Public Administration] In: Hódmezővásárhely története II. Part 1. Editor-in-chief: SZABÓ Ferenc. The chapter was written by KRUZSLICZ István Gábor. Hódmezővásárhely, 1993, p. 391.

Various *departments (ügyosztályok)*, headed by the councillors, were responsible for preparing the matters which were referred into the council's scope of authority and had to be arranged by discussion, and also for administering matters outside the council meeting. These were the following in the city council of Hódmezővásárhely: 1. Domestic, economic and public construction department; 2. Financial and remuneration department; 3. Engineering and construction department; 4. Legal department; 5. Public education department; 6. Military and public charity department; 7. Tax department; 8. Policing department.[75]

The city council as a corporate body was abolished by Act XXX of 1929, in consequence of which an institution dating back to hundreds of years in the history of Hungarian cities disappeared.[76] Its duties were taken over by the *mayor as a personal authority.* Thereafter the departments worked as part of his office – essentially in an unchanged structure.

f) Board of guardians

Orphan- and guardianship over persons living in the city was taken care of by the permanent board of guardians *(árvaszék)*. It was organized with the membership of one chairman – who was at the same time in charge of the sixth council (later mayor's) department – and assessors, the delegates elected by the municipal board and the official legal counsel. Additional personnel members included the public guardian *(közgyám)*, the comptroller, the teller and the fund controller. The chairman and the assessors had to have a degree in law. The decisions of the board of guardians were made in public meetings, as a body and with a majority. Until 1929, it operated on the same level in the institutional hierarchy of the city municipality as the council.

Its competence included, among others, the remittance of the sums and loans needed for the maintenance and upbringing of orphans, and it also managed the money deposited in the orphan's fund and the wards' assets. It promoted the placement of destitute orphans and foundlings with benefactors. It made

[75] MAKÓ Imre: *Hódmezővásárhely város levéltára, 1691–1950*. [The Archives of the City of Hódmezővásárhely] = A Csongrád Megyei Levéltár kiadványai. Segédletek IV. Szeged, 1994, pp. 100–104.

[76] For the antecedents see BLAZOVICH László: *Városok az Alföldön a 14–16. században*. [Cities in the Great Plain in the 14th–16th Century] = Dél-alföldi évszázadok 17. Szeged, 2002, pp. 117–144. Cf.: *Közigazgatási és egyéb hatalmi szervek*. [Administrative and Other Organs of Power] In: Szeged története 4, Ed.: SERFŐZŐ Lajos. The chapter was written by FÖLDVÁRINÉ KOCSIS Luca. Szeged, 1994, pp. 278–289.

each guardian give account, and it declared majority upon request and in case the conditions were satisfied. It made a reserve fund from the interest earned from the wards' capital.[77]

g) The government's commissary: the prefect

The prefect *(főispán)* was the local (regional) representative of the national executive power; this activity in the counties can essentially be traced from the time of the foundation of the state.[78] However, in the administrative system of the bourgeois era – despite all the protests – a similar one-person organ was organized in the cities of municipal rank,[79] who was appointed by the governor in the Horthy era and was subordinated directly to the Minister of the Interior. Thus the prefect working in Hódmezővásárhely was also a state officer representing the central government – the council of ministers or the competent ministers – therefore the ordinances on municipal organization usually did not concern him. The 1929 reforms left his previous powers for the most part intact, and even extended them latently.

[77] For details see the Ordinance on the board of guardians of the city of Hódmezővásárhely, 1904 *(Passim)*.

[78] INÁNTSY-PAP Elemér: *A főispán történelmi őse*. [The Prefect's Historical Ancestor] Városi Szemle, 1943 No 4, pp. 575–612. From major literature on the history of counties: GYÖRFFY György: *A magyar nemzetségtől a vármegyéig, a törzstől az országig*. [From the Hungarian Ancestries to the County, from the Clans to the Country] Századok, 1958 No 1–4, pp. 12–87, No 5–6, pp. 565–615; KRISTÓ Gyula: *A vármegyék kialakulása Magyarországon*. [The Development of Counties in Hungary] Budapest, 1988; EREKY István: *Tanulmányok a vármegyei önkormányzat köréből*. [Studies on Local Government in the Counties] Budapest, 1908; EREKY István: *A magyar helyhatósági önkormányzat*. [The Hungarian Municipal Government] Budapest–Keszthely, 1908; HOLUB József: *A királyi vármegyék eredete*. [The Origin of Royal Counties] Budapest, 1938; STIPTA István: *Törekvések a vármegyék polgári átalakítására*. [Attempts at the Bourgeois Transformation of Counties] Budapest, 1995; ECKHART Ferenc: *Magyar alkotmány- és jogtörténet*. [Hungarian Constitutional and Legal History] Budapest, ²2000, pp. 103–113, 222–226; VASS György: *A megye közjogi helyzetének alakulása a királyi vármegyétől a modern területi önkormányzatig*, I–II. [Changes in the Public Law Situation of the County from Royal Counties to Modern Local Government] Magyar Közigazgatás, January 2006 (No 1), pp. 17–25, March–April 2006 (No 3–4), pp. 248–253.

[79] VARGA Norbert: *A főispáni tisztség bevezetése Debrecen és Szeged szabad királyi városokban a köztörvényhatósági törvény alapján*. [The Introduction of the Prefect's Office in the Free Royal Cities of Debrecen and Szeged Pursuant to the Act on Municipalities] In: Ünnepi tanulmányok Máthé Gábor 65. születésnapja tiszteletére, Ed.: MEZEY Barna and RÉVÉSZ T. Mihály. Budapest, 2006, pp. 606–624, ID: *A közigazgatási reform és a helyi politika viszonya Debrecenben és Szegeden (1870–1872)*. [The Administrative Reform and Local Politics in Debrecen and Szeged (1870–1872)] Debreceni Szemle, 2007 No 4, pp. 465–475; STIPTA István: *A főispáni hatáskör törvényi szabályozása (1870, 1886)*. [Statutory Regulation of the Prefect's Powers (1870, 1886)] In: Degré Alajos emlékkönyv, Ed.: MÁTHÉ Gábor and ZLINSZKY János. Budapest, 1995, pp. 299–312.

His task in the widest sense was to control the municipal government in the territory of the city and to guard the interests of state administration mediated by the municipality. The prefect was obliged to annually examine the official procedures and case management of the city officials, he could order an investigation against a negligent or guilty official and suspend him from his office for this period, and he could also appoint a temporary substitute for him – with the exception of the mayor. He could submit a justified memorandum to the government if the mayor did not consider a government decree legally enforceable. Upon the request of the sectoral minister or in his own scope of authority, he could issue instructions, as part of his controlling and supervising activity, to the mayor – or through him to the municipal media – and he could also call on them to report directly. If the mayor had scruples, he could make a submission to the Minister of the Interior within 24 hours (guarantee complaint). On the other hand, he was also entitled to submit a general assembly resolution which violated any law, decree or national interest for revision to the competent minister. He could also initiate administrative court proceedings against the resolution of the municipal board, petit assembly and administrative committee if it infringed the law.[80] The prefect could directly order the officials who were needed to execute higher law. If the city found the government's or the prefect's procedure injurious, it could seek legal remedy in the House of Representatives of the Parliament (in the National Assembly between 1920 and 1926).

The prefect was a key figure in the life of the municipality in other matters, too.[81] For example, he controlled the financial management,[82] presided over the administrative committee, the general assembly of the city and from 1929 the petit assembly as well – he himself appointed a part of the members of the latter one – and the permanent and reviewing committees. He could initiate disciplinary investigation against the city veterinarian,[83] he had the right of appeal against decisions made in disciplinary cases[84] and public health cases;[85] he could order the substitution of suspended municipal officials,[86] and he also

[80] Articles 84, 86, 93, 94 of Act XXVI of 1896 on the Hungarian Administrative Jurisdiction.

[81] FÁY István: *A főispán szerepe a városigazgatásban*. [The Prefect's Role in City Administration] In: A mai magyar város, Ed.: MÁRTONFFY Károly. Budapest, 1938, pp. 210–213.

[82] Articles 16, 22 of Act XXVIII of 1889 on the Changes in the Structure of Financial Administration.

[83] Article 20 of Act XVII of 1900 on the Nationalization of Veterinary Public Service.

[84] Articles 10, 11 of Act XXIII of 1886 on the Disciplinary Procedures against Administrative Officials and the Members of the Supporting and Handling Personnel.

[85] Article 158 of Act XIV of 1876 on Public Heath.

[86] Article 4 of Act XXIII of 1886 on the Disciplinary Procedures against Administrative Officials and the Members of the Supporting and Handling Personnel.

had the right of disposal in cases of the refusal of distraint for non-payment of taxes.[87]

He received his salary from the state,[88] but at the same time the prefect's supporting personnel was appointed by the municipality, and similarly it was the municipality which bore the costs of the prefect's office. As a state officer, the prefect was essentially the local representative and enforcer of current governmental interests.

h) The mayor

The mayor *(polgármester)* was the number one elected official of the city municipality. He was elected by the general assembly of the municipal board with a secret ballot for six, later for ten years. His legal equivalent in the county municipalities was the sub-prefect *(alispán)*.

In his scope of authority, he executed government regulations, enforced the prefect's legal instructions, signed the documents issued on behalf of the municipality, gave orders to the city officials and the supporting personnel, could apply disciplinary penalty and take supervisory measures. He made a detailed quarterly report about the state of the municipality and his own activity to the prefect and the municipal board, he arranged for the exact preparation of the general assembly through the council (petit assembly after 1929). In case the prefect was prevented from attending, he presided over the general assembly of the municipal board, as well as the administrative committee, the reviewing committee and – with the exception of the appointing committee – all the committees which were normally chaired by the prefect. He was the chairman of the central committee[89] and the epidemic committee[90] in his own right. He received the decrees, reports, letters and petitions addressed to the public, the administrative committee and the council. He had to hold an inspection in every branch of administration and in

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[87] Articles 80–82 of Act XI of 1909 on Administering Public Taxes; Article 87 of Act VII of 1923 on Administering Public Taxes.

[88] Article 21 of Act IV of 1893 on the Regulation of Remuneration for State Officials, Non-Commissioned Officers and Servants […]; Article 2 of Act VII of 1900 on the Supplement of Certain Provisions of Act IV of 1893. Cf.: MAKAY Dezső: *Főispán*. [Prefect] In: Magyar jogi lexikon hat kötetben, Ed.: MÁRKUS Dezső. Budapest, 1900, III. pp. 691–692.

[89] Articles 7–12, 22–25 of Act V of 1848 and Article 18 of Act XXXIII of 1874 on the Amendment and Supplement of the Act V of 1848 and Transylvanian Act II of 1848. The latter acts on parliamentary elections mentioned in footnotes No. 14 and 15 also regulated the legal status of the central committee.

[90] Article 164 of Act XIV of 1876 on Public Heath.

the funds at least twice a year. He attended to the requests for citizenship.[91] The mayor determined the work schedule in specialized offices *(ügyosztályok)* and assigned the councillors to each department. He supervised the correct implementation of public health rules in the territory of the municipality. He checked tax registration and was also responsible for fishing[92] and hunting[93] matters, public roads and duties,[94] and the possible ordering out of armed forces. In addition, he controlled the *filing* and *publishing offices*.

From 1929, in his absence or in case he was prevented from acting, his powers were exercised by the permanent deputy mayor, who was elected by the municipal board from among the city clerk and the councillors.

i) The city clerk

The city clerk *(városi főjegyző)* was also one of the elected officials of the municipality. Besides his duties ensuing from council membership, he also prepared the biannual reports on the activities of the administrative committee, and in case the mayor was prevented from attending, he was the rapporteur of matters belonging to the scope of authority of municipal administration in the administrative committee. He supervised the proper keeping of the filing, indexing and registering books and also the office order, work according to the rule, the proper execution of office copying and deliveries in the *city clerk's office* and in the fifth – so-called public education or city clerk – council, then mayor's department. He also exercised supervision over the *publishing office (kiadó hivatal)*. He kept a register about the committees delegated by the general assembly and made a report on them to the mayor.

He also participated in the general assembly meetings; he signed the resolutions made there and the minutes, he saw to addressing the latter ones to the Minister of the Interior. Similarly, the city clerk was responsible for the

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[91] A m. kir. belügyministernek 584. sz. a [...] intézett körrendelete a magyar állampolgárság megszerzéséről és elvesztéséről szóló 1879. évi L. t.-czikk végrehajtása tárgyában. [Minister of the Interior Circular No. 584 (...) on the implementation of Act L of 1879 on Acquiring and Losing Citizenship] MRT 1880. Budapest, 1880, pp. 3–11. VARGA Norbert: *Az állampolgárság fogalmának kialakulása a magyar közjogban*. [The Development of the Concept of Citizenship in Hungarian Public Law] = Acta Juridica et Politica Szeged, Tomus LXXI. Fasc 16, Szeged, 2008, pp. 491–517, ID.: *The Dismissal and the Loss of Hungarian Citizenship in Accordance with Act 50 of 1879*. In: Studii Şi Cercetări Juridice Europene 2009, Redactor: Ioana MOGOŞ, Monica STOIAN. Timişoara, 2009, pp. 880–886.

[92] Act XIX of 1888 on Fishing.

[93] Act XXIII of 1883 on Weapon Tax and Hunting Tax.

[94] Act I of 1890 on Public Roads and Public Duties.

minutes of the confirming and reviewing committees, the administrative committee, the interim specialized committees and the several delegations. An important task of his was to formulate the resolutions of the main organs of the municipality, the memoranda and the petitions, and also to prepare the documents to be issued on behalf of the city's municipality. The city clerk kept a record of the effective municipal decisions and ordinances, including the rules of organization and operation. If he was also elected deputy mayor before 1929, he also had the right to substitute the number one official of the city. The mayor could assign other certain matters or matter types to the city clerk on account of the greater number of matters in his competence.

The 1929 reforms did not affect the earlier provisions concerning the city clerk for the most part, consequently the provisions of the 1886 Act on Municipalities were essentially maintained, with the integration of the city clerk's office into the mayor's office because of the abolishment of the former city council.[95]

j) Police magistrates' court

Police magistrates' court judgement *(községi bíráskodás)* in minor civil cases was made in Hódmezővásárhely by the police court magistrate (a second city clerk) elected by the municipal board.[96] Administratively he was subordinated to the general assembly and the mayor. His official work was assisted by an amanuensis, who also acted as an executive.

Mainly the following civil cases belonged to the scope of police magistrates' court judgment: writs commenced for monetary claims not exceeding 50 forints (100 *pengő*s from 1927), actions for movable assets or performance of work if the sum in dispute did not exceed 50 forints (100 *pengő*s), and claims arising from interest, life annuities and obligation of support up to 50 forints (100 *pengő*s) provided that the obligation was founded on a court decision, an agreement, a notarial document, or otherwise if the debtor did not dispute it. In addition, it also had field policing and game-damage cases with a smaller sum in dispute, writs concerning the handing over of immovable property and

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[95] Article 69 of Act XXI of 1886 on Municipalities; Article 44 of Act XXX of 1929 on the Reorganization of Public Administration.

[96] ANTAL Tamás: *A magánjogi községi bíráskodás Magyarországon, különös tekintettel Hódmezővásárhelyre (1877–1944).* [Police Magistrates' Court Judgement in Private Law Cases in Hungary, with Special Regard to the City of Hódmezővásárhely (1877–1944)] In: A Hódmezővásárhelyi Szeremlei Társaság évkönyve 2011, Ed.: KOVÁCS István and PRESZTÓCZKI Zoltán. Hódmezővásárhely, 2012, pp. 25–40.

taking back leases, as well as libel suits and market court cases. No procedure could be taken in other cases, not even with voluntary submission. The rules of the Code of Civil Procedure on district court procedures had to be applied in the suit, with small modifications. [97]

k) Registry office

Civil registration (public register of births, marriages and deaths) was carried out in separate registration districts *(anyakönyvi kerületek)* pursuant to Act XXXIII of 1894. The registrars and their deputies, who qualified as public office holders, were appointed by the Minister of the Interior after hearing the administrative committee. They were directly supervised by the mayor. The deputies' position was honorary, no pension or payment was due to them. From 1927 the whole territory of the municipality constituted one registration district as in 1926 the state character of the registry offices *(anyakönyvi hivatalok)* was abolished by the Minister of the Interior[98] and registration was made a task of the city. Thereafter the current city clerk became the registrar and his deputies were officials appointed by the council.

l) Other local organs and institutions

Other organs of the municipality included first of all the official legal counsel's bureau *(tiszti ügyészi hivatal)*, which was officially responsible for the private law matters of the city, and also the municipal engineering office *(mérnöki hivatal)*, the comptroller's office *(számvevői hivatal)*, the city cashier's office *(pénztári hivatal)* and the tax office *(adóhivatal)*,[99] the filing

[97] Act XXII of 1877 on Minor Lawsuits; Articles 755–766 of Act I of 1911 on the Code of Civil Procedure; a m. kir. belügyminiszternek és a m. kir. igazságügyminiszternek 1914. évi 197.100. B. M. számú rendelete a községi polgári bíráskodásra vonatkozó eljárási szabályok tárgyában. [Minister of the Interior and Minister of Justice Decree No. 197.100/1914 on the Rules of procedure applying to police magistrates' court judgement] MRT 1914. Budapest, 1914, pp. 2688–2720; a m. kir. belügyminiszternek és a m. kir. igazságügyminiszternek 1914. évi 197.200. B. M. számú rendelete a községi polgári bírósági ügyvitel szabályainak megállapítása tárgyában. [Minister of the Interior and Minister of Justice Decree No. 197.200/1914 on the Rules of administration applying to police magistrates' court judgement] MRT 1914. Budapest, 1914, pp. 2721–2732.

[98] A 68113/1926. számú belügyminiszteri rendelet az állami anyakönyvi kerületek szervezetére és személyi ügyeire vonatkozó körrendeletek […] tárgyában. [Minister of the Interior Decree No. 68113/1926 (…) on the Organization and personnel matters of state registration districts] Budapesti Közlöny, 16 February 1927 (No 37), p. 1.

[99] The scope of authority of the tax office was considerably extended by the tax reform of 1926. See the official compilation of statutory regulations on the administration of public taxes (year 1927,

office *(iktató hivatal)*, the publisher's office *(kiadó hivatal)*, the delivery office *(kézbesítő hivatal)*, the city clerk's office *(jegyzői hivatal)* and the city archives *(levéltár)*. Until 1921, the police headquarters *(rendőrfőkapitányi hivatal)* also worked as a local organ.

Other institutions qualifying as city institutions in Hódmezővásárhely included the city public library, the city museum, the industrial apprentice school, the construction apprentice school, the industrial girls' apprentice school, the merchant apprentice school, the drama group, the city old people's home, the public hospital, the epidemic hospital and the fire department.

No. 600) and the decree of the Minister of Finances on its implementation (year 1927, No. 60000/VIIa). MRT 1927. Budapest, 1927, pp. 2530–2989.

PART III
Soviet Type Public Administration in Hungary (1950–1990)

The arms of Hungary in the periods of Rákosi era and Kádár era

Local Soviets and Councils in the Ex-Socialist European States with Special Regard to Hungary (1950–1989/90)

1. § The place of soviets in the state of the Soviet Union

When the tsarist police opened fire on the crowd demonstrating in Saint Petersburg on January 9th, 1905, nobody could have thought that not only would a new revolution soon start in Russia, but the beginnings of the soviets *(советы)*, the new units of future regional public administration, would also begin to develop. Initially, they emerged without any intention to establish a state or to exercise power. At the time of the strikes held on May 1st, the workers set up strike committees organized by the Russian Social-Democratic Labour Party, or to be more precise inspired by its Bolshevik wing. The first of these was established in a textile industry plant in Ivanovo-Voznesensk. Similar workers' soviets were then organized one after the other in industrial centers.[1]

Meanwhile, the first State *Duma* (1905–1906) did not regard the workers' councils as possible organs of public administration at all, and neither did the Russian Fundamental Law, promulgated on April 23, 1906, consider them as constitutional state-forming factors.[2] It is important to remark that the first workers' soviets were originally organized in Russia not as units of public administration but as organizations inspired by revolutionary hopes, which also carried out *de facto* local tasks of public administration until the arrival of the tsarist forces. However, the memory of these early soviets was preserved among the workers: the financial and personal losses and deprivation suffered in World War I resulted in another strike in Saint Petersburg on February 23rd

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[1] PERÉNYI József – DOLMÁNYOS István: *A Szovjetunió története I. Oroszország története 1917-ig*. [The History of the Soviet Union: The History of Russia before 1917] Budapest, 1994, pp. 294–299; MENYHÁRT Lajos: *Európa a századfordulón*. In: Európa története, Editor: GUNSZT Péter. Budapest, 1995, pp. 326–328.

[2] Marc SZEFTEL: *The Russian Constitution of April 23rd, 1906. Political Institutions of the Duma Monarchy*. Bruxelles, 1976; Szergej Juljevics VITTE: *Egy kegyvesztett visszaemlékezései*. [Memories of a Man out of Favour] Budapest, 1964, pp. 571–625; KOVÁCS István (Editor): *Az októberi dekrétumok és az első szovjet alkotmány*. [The Decrees of October and the First Soviet Constitution] Budapest, 1980, pp. 18–20; see also С. В. ЮШКОВ: *История государства и права СССР*. Часть первая. Москва, 1950, pp. 584–631.

(March 8th by the Russian calendar), 1917, on the International Women's Day, which once again led to a revolution, this time under organized control.[3]

The workers there established the soviets, the new revolutionary institutions of power, early in the first days. The novelty of the soviets, in comparison with those of 1905, was that similar organizations were soon elected in most of the plants, and city soviets were also established to govern their activities. The (city) soviet of Saint Petersburg held its first session on the evening of February 27th. The Saint Petersburg soviet tried to control the city as a revolutionary governmental organ.[4] Although the capital was practically under its control, on March 2nd power was handed over to the provisional bourgeois government led by A. F. Kerensky and G. Y. Lvov, in spite of the protests of the Bolsheviks.[5]

Nonetheless, the revolutionary events soon spread to the provinces, and workers' and peasants' soviets sprang up across the country. The situation of so-called dual power arose in this way: the dual state power of the bourgeois forces and the soviets, followed by the struggle between the two. Vladimir Ilyich Lenin, who was aware of the provisional nature of this historic situation, forecast the future in his April Theses: the new Russia would be "not a parliamentary republic but a republic of soviets of workers', agricultural laborers' and peasants' deputies throughout the country, from top to bottom." In the spring of 1917 both the city soviets, which were elected on the basis of plant and professional principles, and the soviets of peasant deputies and their committees, which were based primarily on the regional principle, were established. Later regional and national centers were organized on the basis of these soviets.[6] This was done in order to ensure something that was later laid down in the declaration issued by the Second All-Russian Congress, one day after the "socialist revolution," on October 26th: "from now on all power is vested with the soviets."[7]

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[3] KUN Miklós: *1917. Egy év krónikája*. [1917: Chronicle of One Year] Budapest, 1988, pp. 15–35; ЮШКОВ 1950, pp. 644–653.

[4] DOLMÁNYOS István: *A Szovjetunió története II, 1917–1966*. [The History of the Soviet Union II, 1917–1966.] Budapest, 1989, pp. 7–8.

[5] DOLMÁNYOS 1989, pp. 11–13.

[6] KOVÁCS 1980, pp. 21–25, DOLMÁNYOS 1989, pp. 26–27.

[7] Munkás- és parasztküldöttek valamennyi kormányzósági és járási szovjetjének. (October 26, 1917) [For all the soviets of the worker and peasant deputies] In: KOVÁCS 1980, p. 87. For concrete example see: Dekrétum a központi városi duma feloszlatásáról. (November 16, 1917) [Decree on the dissolution of the Central City Duma of Petrograd] In: KOVÁCS 1980, pp. 137–138, see also pp. 47–48.

It should also be mentioned that a decree was passed by the All-Russian Central Executive Committee on the right to recall the deputies, a characteristic of the soviet-type system of representation, as early as November 21st (December 4th by the Russian calendar). This right applied not only to the members of the Constituent Assembly, but also to organs of representation elected in cities and in *zemstvos*, the forms of local government that had existed in Russia since the state reforms under Alexander II (1855–1881).[8]

Finally, the people's commissar for interior affairs issued a general call for the transformation of local public administration on December 24th, 1917 (January 6th, 1918 by the Russian calendar). It confirmed that "the organs of local power are the soviets, to which all the institutions of administration, economy, finance and culture-education shall subject themselves. The organization of central and local power in this manner is merely an organizational expression and reinforcement of the political fact that power in the country rests with the proletariat and semi-proletariat." All the organs of local administration were to be replaced by regional, provincial and district soviets, as well as county and rural soviets in order to cover the entire territory of the country. It was thought that "the coherent, all-homogeneous organization – the Republic of the Soviets" could be accomplished in this manner.[9]

At the same time the council of people's commissars also provided for the legal status of soviets. They were declared to be entirely independent in local matters, but it was added that in the course of the fulfillment of their tasks they had to proceed pursuant to the resolutions of the superior soviet. A high-priority function was the execution of the legal acts of the central power (the council of people's commissars and the central executive committee) and the dissolution of organizations which were considered counter-revolutionary. As regards the internal structure of the soviets, the executive committee and the presidency were mentioned.[10]

The development of power exercised by the soviets could have been impeded by actually holding a Constituent Assembly. It was therefore dissolved on the

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[8] Dekrétum a küldöttek visszahívásának jogáról. (November 21, 1917) [Decree on the right of recall of the deputies] In: KOVÁCS 1980, pp. 140–141.

[9] A belügyi népbiztos felhívása a helyi önkormányzatok megszervezéséről. (December 24, 1917) [Call of the people's commissar for interior affairs on the organization of local governments] In: KOVÁCS 1980, pp. 168–169.

[10] A belügyi népbiztos utasítása a szovjetek jogairól és kötelességeiről. (December 24, 1917) [Instruction of the people's commissar for interior affairs on the rights and duties of the soviets] In: KOVÁCS 1980, pp. 173–174.

second day of its convocation, on January 6th, 1918.[11] In any case, the traditional parliamentary form of government was declared to have outlived its purpose and to be absolutely incompatible with the aim of achieving socialism, as "not national institutions, but only class institutions (such as the soviets) were capable of overcoming the resistance of the propertied classes and of laying the foundations of socialist society."[12]

Finally, on July 10th, 1918 *the first Soviet constitution* described the public law organization of Soviet Russia as an already existing organization of regional and state organs of power.[13] Its fundamental proposition was the establishment of a dictatorship of the urban and rural proletariat and the poorest peasantry for the purpose of creating a world without either a division into classes or a state of autocracy (Sections 9 and 10). In this system of public law the soviets were organized on a regional basis and operated in a *hierarchical system*. On a higher level congresses were recognized as organs of representation, which could be rural, county, provincial and regional. Their members were elected indirectly through the soviets of deputies. The latter category included the elected organs of cities and other settlements. In these the deputies' mandate lasted for three months.

In addition to the soviet bodies, *executive committees (исполнителъные комитеты)* also operated both on a higher, regional level (congress) and on a settlement level. Congresses were convoked by the executive committees at least twice a year for regions, every three months for provinces and counties, and once a month for rural districts. If the congresses were not in session, their scope of authority belonged to the executive committees. The system operated in a similar way in city and settlement soviets: executive organs were elected from among the members by the soviets of deputies in order to ensure continuous operation (Sections 53–60). In addition to soviets, special sections of administration had to be organized for the purpose of performing duties (Sections 60–63).

Theoretically, the *right to vote* was enjoyed by the following citizens of both sexes over the age of 18: all those who acquired the means of livelihood

[11] KUN 1988, pp. 656–677.

[12] Dekrétum az alkotmányozó nemzetgyűlés feloszlatásáról. (January 6, 1918) [Decree on the dissolution of the Constituent Assembly] In: KOVÁCS 1980, pp. 180–182.

[13] Az Oroszországi Szocialista Föderatív Köztársaság alkotmánya (alaptörvénye) [Constitution of the Russian Socialist Federative Republic] In: KOVÁCS 1980, pp. 217–246; RUSZOLY József: *Európa alkotmánytörténete*. [The Constitution History of Europe] Budapest, 2005, pp. 526–553; HORVÁTH Pál: *Bevezetés az egyetemes jogtörténet forrásaiba*. [Introduction to the Sources of General Legal History] Budapest, 1996, pp. 304–321; DOLMÁNYOS 1989, pp. 87–90.

through labor that was seen as productive and useful to society and employed no help for the purpose of making profits; soldiers of the army and navy of the soviets; and citizens of the two preceding categories who in any degree lost their capacity to work. At the same time, the constitution expressly excluded several social strata from exercising the right to vote. These strata included big capitalists, big landowners and private merchants, employees and agents of the former tsarist police and gendarme corps, the members of the House of Romanov and clergy of all denominations (Sections 64–65).

This institutional system of the soviet-type public administration did not change essentially in the subsequent constitutions, either. It represented a special version of regional level state administration with mixed elements of the autonomy of self-government and normative central state control. After the establishment of the Soviet Union (December 30, 1922), *the second Soviet constitution* was promulgated on January 31st, 1924. With regard to content, it only contained provisions concerning the operation of the federal state organs and the legal status of the member republics.[14] The institutions of local and regional soviets were not mentioned.

The *1936 Constitution*,[15] which necessarily served as a model for people's democracies in Eastern-Central Europe after 1945, defined the public law framework of soviets as units of public administration in the chapter entitled "The local organs of state authority". According to this, the organs of state authority in territories, regions, autonomous regions, areas, districts, cities and rural localities were the soviets of working people's deputies. The deputies were elected by the working people for a term of two years. Their scope of authority was determined by the federal laws of the Soviet Union and by the member republics' own laws.

The executive and operative organs of the soviets continued to be the executive committees, which consisted of a chairman, vice-chairmen, a secretary and members. The executive organs of the soviets were in *double subordination*. They were accountable both to the soviet which had elected them and to the executive committee of the respective superior soviet (Articles 94–101). In

[14] A Szovjet Szocialista Köztársaságok Szövetségének alaptörvénye (alkotmánya). (January 31, 1924) [Constitution of the Federation of Soviet Socialist Republics] In: KOVÁCS István (Editor): *A Szovjetunió szövetségi alkotmányai*. [Federative Constitutions of the Soviet Union] Budapest, 1982, pp. 129–147.

[15] A Szovjet Szocialista Köztársaságok Szövetségének alkotmánya (alaptörvénye). (December 5, 1936) [Constitution of the Federation of Soviet Socialist Republics] In: KOVÁCS 1982, pp. 201–224; HORVÁTH Pál: *A szocialista jogtípus fejlődéstörténete*. [The History of the Development of the Soviet-Type Law] Budapest, 1987, pp. 69–73; DOLMÁNYOS 1989, pp. 228–230.

this way, in 1950 approximately 83.200 local soviets with almost 1,5 million local deputies operated in the Soviet Union.[16]

The last, *1977 Soviet federal constitution*[17] was considerably more developed and organized in structure than the earlier ones, and the legal status of the soviets was also regulated in more detail. In Chapter 12 this constitution also emphasized the principle that the soviets of people's deputies constituted a single system of bodies of state authority. This comprised all the soviets of people's deputies: the Supreme Soviet of the USSR, the Supreme Soviets of Union Republics, the Supreme Soviets of Autonomous Republics, the Soviets of People's Deputies of Territories and Regions, the Soviets of People's Deputies of Autonomous Regions and Autonomous Areas, and the Soviets of People's Deputies of districts, cities, city districts, settlements and villages. The deputies of the supreme soviets received their mandate for a term of five years, while local soviets were elected for two and a half years. The soviets of people's deputies set up standing commissions, executive-administrative bodies and people's control bodies (Articles 89–92). The executive bodies of soviets were still the executive committees, which had to report on their work

[16] SZENTE Zoltán: *Európai alkotmány- és parlamentarizmustörténet, 1945–2005*. [The History of European Constitutions and Parliamentarianism, 1945–2005] Budapest, 2006, p. 135. Concerning the soviets of the age, see: A. A. ASZKEROV: *Az államhatalom helyi szovjet szervei*. [The Local Soviet Organs of the State Authority] Állam és Igazgatás, 1949/5–6, pp. 303–311, 1949/7–8, pp. 442–456; KOVÁCS István: *A szovjetek a Szovjetunió politikai alapja*. [The Soviets are the Political Basis of the Soviet Union] Állam és Igazgatás, 1950/6–7, pp. 436–450; I. TRAJNYIN: *A tanácsok – a szocialista forradalom politikai alapja*. [Soviets – The Political Basis of the Socialist Revolution] Állam és Igazgatás, 1950/1, pp. 8–21, 1950/2, pp. 97–107, 1950/3, pp. 149–154, 1950/4–5, pp. 325–330; I. G. MAREJEVA: *A helyi szovjet ellenőrzése az igazgatási szervek felett*. [The Supervision of the Administrative Organs by the Local Soviet] Állam és Igazgatás, 1951/9–10, pp. 547–556; A. V. LUZSIN: *A dolgozók küldötteinek városi szovjetjei és a vb. tevékenységével kapcsolatos alapvető módszerek*. [Fundamental Methods Connected with the Soviets of the Cities and the Executive Committees] Állam és Igazgatás, 1955/11, pp. 675–680; J. A. TYIHOMIROV: *A helyi államhatalmi szervek további fejlődésének néhány kérdése a Szovjetunióban*. [Some Questions of the Further Development of the Local Organs of State Authority in the Soviet Union] Állam és Igazgatás, 1960/8, pp. 581–594; *Törvény a szovjet képviselők és tanácstagok jogállásáról*. [Act on the Legal Status of the Representatives and Deputies of the Soviets] Állam és Igazgatás, 1973/3, pp. 259–266; *Az OSzSzSzK törvénye a dolgozók küldötteinek városi, városi kerületi szovjetjeiről*. [Act of the RSSFR on the Workers' Soviets of Cities and City Districts] Állam és Igazgatás, 1973/6, pp. 544–561; *Az OSzSzSzK törvénye a dolgozók küldötteinek járási szovjetjéről*. [Act of the RSSFR on the Rural District Soviet of Workers' Deputies] Állam és Igazgatás, 1973/6, pp. 562–565.

[17] A Szovjet Szocialista Köztársaságok Szövetségének alkotmánya. (October 7, 1977) [Constitution of the Federation of Soviet Socialist Republics] In: KOVÁCS 1982, pp. 231–282; HORVÁTH 1987, pp. 202–203, 222–229.

at least once a year to the soviets that elected them, to the executive committee of the superior soviet, and to the citizens (Articles 149, 150).[18]

Elections were held *pro forma* on the basis of universal, equal, and direct suffrage by secret ballot, and the elected deputies could be *instructed*. These instructions had to be considered both by the soviets and by the people's deputies in them during their work, in accordance with the state interest of the time. Deputies, who did not justify the confidence of their constituents, could be *recalled* at any time by decision of a majority of the electors (Articles 95–107).

2. § Characteristics of local administration in European people's democracies

During the five years following World War II, state systems called people's democracy and regarded ideologically as "the revolutionary democratic dictatorship of the proletariat and the peasantry" were established in Central and Southern European states belonging to the Soviet sphere of interest. This led to the spread of public administration of the soviet and workers' council type, and the *mutatis mutandis* adoption of the soviet model. Thus on the Eastern side of the iron curtain council systems developed that bore many similarities, partly did away with the national self-governments of the bourgeois era, and operated not as representative bodies but with the participation of the deputies of mass organizations, which were like people's fronts in character.[19]

Albania

The Constituent Assembly elections were held in Albania on December 2nd, 1945. The convention assembled on January 11th, 1946 and adopted a decision to transform the sate into a people's republic. Soon after, on March 14th,

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[18] HORVÁTH 1987, pp. 224–225; ÁRVAY Árpád: *A helyi szovjetek tevékenységének pártirányítása*. [The Control of the Party on the Activities of the Local Soviets] Állam és Igazgatás, 1978/8–9, pp. 738–746.

[19] General literature of the period: Ferenc FEJTŐ: *Histoire des démocraties populaires*. Paris, 1952, augmented edition: *Histoire des démocraties populaires. 1. L'ère de Staline (1945–1952), 2. Après Staline (1953–1963)*. Paris, 1969, 1979, 1992, 1998, 2006 (in Hebrew: Tel-Aviv, 1954; in Italian: Firenze, 1955; in Spanish: Barcelona, 1971; in English: New York–London, 1971; in German: Köln, 1973; in Japanese: Tokyo, 1978; in Hungarian: Budapest, 1991); William E. BUTLER: *Soviet Law*. London, 1983, 1988; William E. BUTLER: *Russian and Soviet Law. An Annotated Catalogue of Reference Works, Legislation, Court Reports, Serials and Monographs on Russian and Soviet Law (Including International Law)*. Zug, 1976; William E. BUTLER: *Collected Legislation of the Union of Soviet Socialist Republics and the Constituent Union Republics*. New York, 1998; HEKA László: *A szláv államok jogrendszerei*. [The Legal Systems of Slavic States] Szeged, 2008.

the first Albanian constitution was adopted, while the second constitution was passed after several amendments on December 28th, 1976.[20]

According to the 1976 Constitution,[21] the units of Albanian regional public administration were *people's councils (këshill popullor)*, which directed all social life in the political, economic, and social-cultural fields and the socialist judicial order and reconciled local interests with the general interests of the state. The people's councils were elected for a term of three years from among the candidates of the people's front (Democratic Front of Albania).

The people's council adopted the local financial plan and budget. From its members it elected the executive committee and the commissions of the council. It directed and controlled the activity of the people's councils at lower levels, and in order to achieve this it issued ordinances and decisions within its competences. A higher people's council could dissolve a lower people's council, order a new election, or abrogate its unlawful or irregular acts (Articles 92–95). The members of the people's councils enjoyed immunity within the territorial unit under the administration of the people's council.

The executive committee was the executive and administrative organ of the people's council. Between sessions of the people's council the executive committee exercised the rights and duties of the people's council, and it had to render account of its activity and report on the implementation of the decisions of the people's council. Albanian executive committees also operated in double subordination. They were dependent on the people's council on the one hand and on the next higher administrative executive organ on the other. The work of the people's council was assisted by specialized organs (Articles 92–100).

Bulgaria

The first elections after World War II were held in November, 1945, and the Great People's Assembly, which carried out constitutional tasks, was sum-

[20] KOVÁCS István (Editor): *Az európai népi demokráciák alkotmányai*. [Constitutions of the European People's Democracies] Budapest, 1985, pp. 65–66.

[21] The text of the constitution of 1976 can be found in KOVÁCS 1985, pp. 67–83; see commentary in HORVÁTH 1987, pp. 299–300, 335; Barbara JELAVICH: *A Balkán története. 20. század*. [A History of Balkan: The 20th Century] Budapest, 2000, pp. 290–292, 329–335; ÉRCHEGYI József: *Az Albán Népköztársaság államrendje*. [The State of the People's Republic of Albania] Állam és Igazgatás, 1951/1–2, pp. 100–108; SZAMEL Lajos: *Az albán népi tanácsok szervezetének és működésének új szabályozása*. [The New Regulation of the System and Functioning of the Albanian People's Councils] Állam és Igazgatás, 1951/3–4, pp. 211–216.

moned. This activity was a relatively long process in Bulgaria, as the first constitution was adopted only on December 4th, 1947. The second one was promulgated much later, on May 18th, 1971.[22]

Pursuant to the 1971 Constitution,[23] the territory of the People's Republic of Bulgaria was divided into municipalities, capital districts and districts. *People's councils (народни съвети)* were the organs of state authority and people's self-government. In principle, their members were driven by the interests of the entire nation as such, by the interests of districts and municipalities as well as by the interests of the population in the constituency. The councils implemented the policy of the state in their own area of competence, in addition to which they made decisions on issues of local interest. In the course of their work, people's councils both passed and enforced resolutions. They controlled the development of the economic, social-health, public service, and cultural and educational conditions in their area. It was laid down as a principle that this activity would be performed with the consideration of all national and local interests and through the sectoral and regional planning of the complex development of the respective unit of public administration.

As part of their legislative activity, people's councils issued resolutions, decrees, regulations and directives. Sessions were held at least four times a year by district councils and at least six times a year by municipal and capital district councils. The Constitution also provided for the possibility to hold a referendum on issues of major significance.

The councils could elect and dissolve executive committees *(изврши одбори)* as operative organs, in addition to which they set up standing and temporary committees as well as specialized administrative organs. The executive committees of higher councils had the right to suspend, or even to abrogate, the implementation of the unlawful or irregular acts and measures of

[22] KOVÁCS 1985, pp. 87–88.

[23] The text of the constitution of 1971 can be found in KOVÁCS 1985, pp. 89–112; see commentary in HORVÁTH 1987, pp. 292–293, 321–326; JELAVICH 2000, pp. 276–290, 318–323; TOLDI Ferenc (Editor): *Az európai népi demokratikus országok területi beosztása és tanácsi szervezete*. [The System of Councils and the Regional Divisions of the European People's Democratic Countries] Budapest, 1977, pp. 21–36; NIEDERHAUSER Emil: *Bulgária története*. [The History of Bulgaria] Budapest, 1959, pp. 209–224; Dimitâr KOSZEV – Hriszto HRISZTOV – Dimitâr ANGELOV: *Bulgária története*. [The History of Bulgaria] Budapest, 1971, pp. 219–271; GYULAI Lajos: *A helyi tanácsok reformja Bulgáriában*. [The Reforms of the Local Councils in Bulgaria] Állam és Igazgatás, 1970/5, pp. 451–458; Mihajlov DOBROMIR: *Közigazgatási reformok Bulgáriában*. [Administrative Reforms in Bulgaria] Állam és Igazgatás, 1979/6, pp. 510–518.

lower-level councils. In any case, higher people's councils had the right to abrogate the legal acts of lower councils (Articles 109–124).

Czechoslovakia

In Czechoslovakia, the Constituent National Assembly was elected on May 26th, 1946. It finally adopted the new constitution on May 9th, 1948, at the same time repealing the 1920 constitution and generally all the rules of law which were in conflict with the new constitution and with the spirit of people's democracy. This fundamental source of law was later amended by several so-called constitutional laws until July 11th, 1960, when a new constitution was adopted by the National Assembly. The latter was modified to a greater extent by Constitutional Act No 143/1968, which transformed the socialist republic from a unitarian state into a federation. This was supplemented by Constitutional Act No 144/1968, which contained provisions on the status of ethnic minorities. These three rules of law together formed the constitution of Czechoslovakia.[24]

According to the 1960 Constitution,[25] the organs of state authority and administration were regional, district, and community (city) *national committees (národní výbory)*, the members (representatives) of which were elected by the people initially for four and later for five years. The representatives could be recalled and were at the same time accountable to their electors. The national committees were meant to fulfill their duties with the continuous and active participation of the workers. Representatives took an oath and pledged to comply with the people's will at the first session of the national committee.

Economic, cultural, health and social development was controlled, organized and ensured according to plan by the national committees in their respective area. Their primary duties included the satisfaction of the workers' material and cultural needs, the protection of socialist property, and the "socialist or-

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[24] KOVÁCS 1985, pp. 115–117.

[25] The text of the three constitutional acts can be found in KOVÁCS 1985, pp. 118–181; see commentary in HORVÁTH 1987, pp. 282–285, 309–314; TOLDI 1977, pp. 39–67; SZENTE 2006, pp. 122–124; Rudolf TRELLA – Jaroslav CHAVONEC: *A Csehszlovák Szocialista Köztársaság új államjogi elrendezése*. [The New Constitutional System of the Socialist Republic of Czechoslovakia] Bratislava, 1971; TRÓCSÁNYI László: *Új jogszabály a csehszlovák nemzeti bizottságokról*. [A New Law on the Czechoslovakian National Committees] Állam és Igazgatás, 1955/1–2, pp. 79–87; *A nemzeti bizottságok albizottságai Csehszlovákiában*. [The Sub-Committees of the National Committees in Czechoslovakia] Állam és Igazgatás, 1962/4, pp. 312–315; FONYÓ Gyula: *A csehszlovák községi tanácsok munkájáról*. [About the Work of the Czechoslovakian Local Councils] Állam és Igazgatás, 1966/5, pp. 435–450; *Törvény a csehszlovák nemzeti bizottságokról*. [Act on the Czechoslovakian National Committees] Állam és Igazgatás, 1967/10, pp. 942–958.

der" of society, as well as the implementation of the acts and the enforcement of the rights of socialist organizations. In the course of their work, they had to comply with the development plan of the national economy. They had to manage the material and financial means necessary for the realization of the planned tasks in a responsible manner.

The national committees observed the principle that the interests of the whole nation of the Socialist Republic of Czechoslovakia came before partial and local interests, and that through their overall activity they taught the citizens to fulfill their obligations towards society and the state in a conscious and voluntary way. For this purpose, the committees could pass decrees and set up a council, specialized committees and other organs. The council *(rada)* coordinated the work of the other bodies and institutions of the national committee. The members of the council were elected by the national committee from among its own members. The specialized committees were initiating, supervising and executive bodies, organized according to sectors of administration. Higher-level national committees exercised control over lower-level ones, while being obliged to respect their competences and responsibilities to the fullest extent. The higher-level committees had the right to abrogate the unlawful resolutions of their lower-level counterparts, too (Articles 86–96).

The German Democratic Republic

The problems faced by Germany after World War II, namely its division into zones of occupation and the suspension of its sovereignty, were settled in the spirit of the Cold War, and the country, or rather German countries, became an expression of the global duality of democratic capitalist states and socialist people's democracies.

Accordingly, the German Democratic Republic was founded on October 7th, 1949 out of the Soviet zone of occupation (i.e. the five eastern provinces: Saxony, Brandenburg, Mecklenburg, Saxony-Anhalt and Thuringia). The constitution proclaimed then declared the country to be the socialist state of workers and peasants. The second East-German constitution was passed on March 26th, 1968, and it was confirmed with a referendum on April 6th.[26]

[26] KOVÁCS 1985, pp. 343–346; J. NAGY László: *Az európai integráció politikatörténete*. [A Political History of the European Integration] Szeged, 2003, pp. 39–43; Norman M. NAIMARK: *The Russians in Germany: A History of the Soviet Zone of Occupation, 1945–1949*. Cambridge, 1995; NAGY Károly: *A nemzetközi jog, valamint Magyarország külkapcsolatainak története*. [A History of International Law and the Foreign Affairs of Hungary] Lakitelek, 1995, pp. 84–87.

In the GDR, pursuant to the 1968 Constitution,[27] locally operating, elected bodies of state authority were called *local people's representations (örtliche Volksvertretungen)*. These were established in administrative districts, rural counties, cities, city districts, communes and associations of communes. Their activity was primarily intended to augment and protect socialist property, continuously improve working and living conditions, promote the social and cultural lives of citizens and their communities, increase their knowledge of the socialist state and its laws, ensure law and order, strengthen socialist legitimacy, and protect civil rights.

Local people's representations made resolutions which had a binding force not only on their bodies and institutions but also on other people's representations, communes and citizens in their area. As an executive body, a council *(Rat)* and standing committees were elected, mostly from among the deputies, for performing the tasks. Thus in the system of the public administration of the GDR, contrary to the usual terminology the council meant not the elected representative body itself, but the executive committee. Consequently, it was responsible in its activities to the local people's representation and was subordinated to the higher council. The standing committees (as not only deputies could be members) made it possible for citizens to participate in the preparation and implementation of local resolutions. Local people's representations could form associations for the fulfillment of their duties (Articles 81–84).

Poland

The Polish elections for the Constituent National Assembly were held on January 19th, 1947. They resulted in the victory of the Democratic Bloc (the people's front). An act referred to as the "Small Constitution", or *Mala Konstitucja*, concerning the supreme organs of the republic was passed by the *Sejm*

[27] The text of the constitution of 1968 can be found in KOVÁCS 1985, pp. 347–372; see commentary in HORVÁTH 1987, pp. 281–282, 304–309; TOLDI 1977, pp. 145–174; SZENTE 2006, pp. 119–121; Horst LIPSKI: *A leninizmus alkalmazásának tapasztalatai a Német Szocialista Egységpártban*. [The Experiences of the Adaptation of Leninism in the German Socialist United Party] In: A népi Magyarország negyedszázada, [The Quarter of a Century of the People's Hungary] Editor: BLASKOVITS János. Budapest, 1972, pp. 211–214; Heinrich August WINKLER: *Németország története a modern korban II*. [The History of Germany in the Modern Age, II.] Budapest, 2005, pp. 113–441; ALT Guidó: *Államigazgatási reform a Német Köztársaságban*. [Administrative Reform in the German Republic] Állam és Igazgatás, 1952/10, pp. 571–576; ALT Guidó: *Az NDK továbbfejleszti államigazgatását*. [GDR Develops Its Public Administration] Állam és Igazgatás, 1953/7–8, pp. 411–416; CSOLLÁK Gábor – PUSZTAI Ferenc: *Tanácsi munka az NDK-ban*. [Labour of Councils in the GDR] Állam és Igazgatás, 1969/4, pp. 332–343; *A Német Demokratikus Köztársaság törvénye a helyi tanácsokról*. [Act of the German Democratic Republic on the Local Councils] Állam és Igazgatás, 1973/12, pp. 1110–1141.

(the Polish Parliament) on February 19th, 1947. A separate act on the citizens' fundamental rights was passed on February 22nd. In 1950 an independent act was adopted on national councils, the organs of local power, as well as on the organization of the administration of justice. The uniform constitution was formulated only on July 22nd, 1952. After several amendments, the quasi new text of the constitution in a uniform structure was promulgated on February 10th, 1976.[28]

In accordance with the 1976 Constitution,[29] *national councils (rady narodowe)* were the allegedly the working people's local organs of state authority in large villages, towns, districts of larger cities, and voivodeships. These expressed the workers' will and, in accordance with the intention of the legislators, promoted constructive initiatives in order to enhance the nation's strength and prosperity and develop its culture. They directed social, economic and cultural development in the areas proper to them and also exerted an influence on all public administrative and economic units. They saw to satisfying the population's needs, fought against all manifestations of absolutism and bureaucracy suffered by the citizenry, and organized the institutions of social control. The national councils had the right to determine the social-economic plan and budget of the voivodeship, town, district or large village on the basis of the proposals of the local organs of public administration.

The corporate activity of the national councils was exercised in sessions, which were organized and prepared for by the presidency. The voivods or

[28] KOVÁCS 1985, pp. 317–320.

[29] The text of the constitution of 1976 can be found in KOVÁCS 1985, pp. 321–340; see commentary in HORVÁTH 1987, pp. 285–291, 314–320; SZENTE 2006, pp. 121–122; TOLDI 1977, pp. 103–141; Adam LOPATKA: *A helyi hatalmi és igazgatási szervek reformjának befejezése a Lengyel Népköztársaságban*. [Completing of the Reforms of the Organs of Local Power and Administration in Poland] Jogtudományi Közlöny, 1976/10, pp. 557–565; *A Lengyel Népköztársaság 1983. évi törvénye a tanácsok és a területi önkormányzat rendszeréről (1983. VII. 20.)*. [Act of 1983 of Poland on the System of Councils and Territorial Self-Government] Budapest, 1984; Janusz GOŁEBIOWSKI: *A szocializmus építésének általános törvényszerűségei és sajátos vonásai Lengyelországban*. [General and Special Characteristics of the Development of Socialism in Poland] In: A népi Magyarország negyedszázada, Editor: BLASKOVITS János. Budapest, 1972, pp. 167–172; Norbert KOLOMEJCZYK: *A párt vezető szerepének egyes kérdései a szocializmus építésében Lengyelországban*. [Some Questions of the Leadership of the Party in the Development of the Socialism in Poland] In: A népi Magyarország negyedszázada, Editor: BLASKOVITS János. Budapest, 1972, pp. 173–178; Norman DAVIES: *Lengyelország története*. [The History of Poland] Budapest, 2006, pp. 837–928; HORVÁTH János: *A lengyel népi tanácsok életéből*. [From the Life of the Polish National Councils] Állam és Igazgatás, 1954/6–7, pp. 379–385; HORVÁTH János: *A Lengyel Nemzeti Front és a lengyel népi tanácsok*. [The Polish National Front and the Polish National Councils] Állam és Igazgatás, 1955/1–2, pp. 88–91; FARKAS Ottó: *A lengyel népi tanácsok munkájáról*. [About the Work of the Polish National Councils] Állam és Igazgatás, 1970/1, pp. 52–63; *Törvény a lengyel nemzeti tanácsokról*. [Act on the Polish National Councils] Állam és Igazgatás, 1974/3, pp. 250–271.

town presidents or town leaders, district leaders and large village leaders were specifically one-person executive and operative bodies. At the same time, the *voivods* and the presidents of towns with voivodeship rank represented the government in their respective area of competence. They were all accountable to the national council operating on the given level. The latter were also assisted in their duties by various standing committees.

The national council had the right to abrogate a lower-level national council's legal act if it was deemed unlawful or incompatible with the political line of the state (Articles 43–54).

Romania

The first Romanian elections were held in 1948, following the proclamation of the people's republic. The Great National Assembly, which was convened at the time, adopted the first socialist constitution on April 13th, 1948. This was followed by the adoption of another constitution on September 24th, 1952, which was in effect until 1965. On August 21st, 1965 the third Romanian constitution was ratified, the most important amendment of which was the introduction of the institution of the President of the Republic in 1974.[30]

Pursuant to the last fundamental law of the Socialist Republic of Romania,[31] *people's councils (consilii populare)* functioned as the local bodies of state authority charged with management of the local activities of public administration. Within this framework, they ensured economic, social, cultural, and city policing and community management development, as well as the protection of socialist property, the protection of the citizens' civil rights, and the maintenance of law and order. Their principal duties included accepting the

[30] KOVÁCS 1985, pp. 375–376.

[31] The text of the constitution of 1965 can be found in KOVÁCS 1985, pp. 377–402; see commentary in HORVÁTH 1987, pp. 293–295, 326–332; TOLDI 1977, pp. 177–194; SZENTE 2006, pp. 128–129; JELAVICH 2000, pp. 323–329; Gheorghe ȚUȚUI – Ionel NICOLAE: *Átalakulások Románia társadalmi felépítésében*. [Transformations in the Romanian Sociaty] In: A népi Magyarország negyedszázada, Editor: BLASKOVITS János. Budapest, 1972, pp. 197–209; Catherine DURANDIN: *A román nép története*. [The History of the Romanian Nation] Budapest, 1998, pp. 321–449; *A román néptanácsok életéből*. [From the Life of the Romanian People's Councils] Állam és Igazgatás, 1954/6–7, pp. 388–392, 1954/10–11, pp. 600–604; FNÉ: *A Nagy Nemzetgyűlés és a népi tanácsok működésének néhány időszerű kérdése a Román Népköztársaságban*. [Some Questions of Functioning of the Great National Assembly and the People's Councils in Romania] Állam és Igazgatás, 1955/5, pp. 293–297; FNÉ: *Néptanácsi választások a Román Népköztársaságban*. [Council Elections in the People's Republic of Romania] Állam és Igazgatás, 1956/4, pp. 249–253; FONYÓ Gyula: *A román községi néptanácsok működéséről*. [Functioning of the Romanian People's Councils of Communes] Állam és Igazgatás, 1966/8, pp. 749–761.

local economic plan and budget, giving their exoneration to closed accounts, and electing and possibly recalling the executive committee. Given the hierarchical nature of the system, higher-level people's councils supervised the resolutions of the lower-level councils, and it was also the right of the people's councils to elect and recall judges, people's assessors, and county public prosecutors. The councils consisted of representatives *(reprezentanți)*, who had a mandate for a term of five years in the counties and in Bucharest and a term of two and a half years in cities, communes, municipalities and the districts of Bucharest.

The executive committees and executive offices *(comiteturi executive, birouri executive)* were local operative bodies subordinated to the councils. They had a general scope of authority in the regional units of public administration where the people's council had been elected. The former operated in the counties, in Bucharest, in its districts and in the municipalities, while the latter worked in cities and communes. As part of their main tasks, they executed acts and law-decrees, the decrees of the Council of Ministers, and the other regulations of the higher bodies, as well as the resolutions of the people's council. They prepared the drafts of the local economic plans and budgets and also implemented them after their acceptance by the council. Moreover, they supervised the work of the executive committees or executive offices of the people's council subordinated to the people's council which had elected them.

These executive bodies were also entitled to make resolutions as part of their activities. They were responsible to the people's council, to the higher executive committee or office of the people's council, and ultimately to the Council of Ministers, both as a body and individually. They were assisted in their work by specialized organs of administration (Articles 86–100).

Yugoslavia

In Yugoslavia, where monarchy had been abolished *de facto*, the Provisional People's Assembly *(Skupština)*, which also carried out constitutional tasks, assembled as early as August, 1945 and declared the country a democratic, federal state. The actual Constituent Assembly was opened on November 29th, 1945 and it *de jure* decided on the declaration of the people's republic. The first constitution was adopted on January 30th, 1946, the second on April 7th, 1963 and the third on February 21st, 1974.[32]

[32] KOVÁCS 1985, pp. 53, 185–189; Rondo CAMERON: *A világgazdaság rövid története*. [A Short History of World Economy] Published by Maecenas Kiadó, no place, 1994, pp. 450–451.

The 1974 Constitution,[33] which was unusually lengthy even by West European standards (consisting of 406 Articles), regarded regional administration as a form of self-management *(samoupravljanje)*. This was due to the workers and citizens in settlements, in parts thereof or in several combined settlements. Self-management was interpreted as a collective right and obligation for the purpose of enforcing common interests and satisfying needs. Local communities had to be formed with local statutes and by-laws had to be adopted, which, among others, laid down the rights and obligations of administrative bodies and individual organs.

Communes *(opštine)* represented the basic self-managing social-political community. The communities carried out the tasks of exercising power and administering other social issues, unless otherwise provided for by the Constitution. Their tasks specifically included creating the conditions necessary for the productive lives of workers and citizens and the fulfillment of the material, social, cultural and other common needs in terms of self-management. They ensured the enforcement and protection of human and civil liberties, rights and obligations and the realization of the equality of nations and nationalities. The financial management of the communes was independent and there were possibilities for local referenda.

The principal organs of the self-managing activity of social-political communities were the *representative bodies (predstavnička tela)*. These were characteristic of the basic self-managing communities organized on a personal, corporate, and regional basis, and therefore of local communes as well. These bodies were composed of delegates, who were elected by the workers for a term of four years by direct, secret ballot. Delegates could also be recalled. Delegates were nominated in the framework of a front-like organization called the Socialist Alliance of the Working People. The members of higher community representative bodies were decided upon by the councils of the representative bodies of communes on the basis of a ticket.

[33] The text of the constitution of 1974 can be found in KOVÁCS 1985, pp. 190–314; see commentary in HORVÁTH 1987, pp. 295–299, 332–340; TOLDI 1977, pp. 71–100; SZENTE 2006, pp. 126–127; JELAVICH 2000, pp. 335–351; HEKA László: *Szerbia állam- és jogtörténete*. [The Constitution and Law History of Serbia] Szeged, 2005, pp. 207–223; TOLDI Ferenc: *A jugoszláv alkotmánytörténet áttekintése*. [A Summary of the Yugoslavian Constitutional History] Állam- és Jogtudomány, 1967/1, pp. 45–78; DALLOS Ferenc: *Jegyzetek Jugoszláviáról*. [Records on Yugoslavia] Állam és Igazgatás, 1956/9, pp. 556–565; FONYÓ Gyula: *Az igazgatás néhány új vonása Jugoszláviában*. [Some New Aspects of the Administration in Yugoslavia] Állam és Igazgatás, 1965/3, pp. 272–276; HORVÁTH Albert: *A jugoszláv községi szkupstinák működéséről*. [Functioning of the Yugoslavian Commune Skupstinas] Állam és Igazgatás, 1968/9, pp. 827–837.

Various *councils (veća)* were formed within the representative bodies. They made resolutions independently, with equal rights or at the joint session of all the councils in matters belonging to their scope of authority. Such organs included the associated council of labor, the council of local communities, the council of communes, and the council of social policy. Thus essentially a specific, dual-structure system of local representation was realized in Yugoslavia, following the organization of the federative People's Assembly *(Skupština)*. The tasks of the executive organ were exercised by the executive council *(izvršno veće)*, which was accountable to the representative body. The officers of the self-managing organs were also elected for a term of four years, and they could be re-elected once (Articles 114–151).

3. § Fundamental institutions of the council system on the example of Hungary

a) The theory of socialist representation in short

After 1945, the soviet-type council system and the regional and national representation established on its basis constituted a new alternative to the institution of popular representation in the socialist countries. In both cases the corporate bodies (which were generally referred to as people's councils; or local people's representations in the GDR, national committees in Czechoslovakia and representative bodies in Yugoslavia) were comprised not of representatives who had been elected in accordance with the rules of plural party systems, but *deputies* who were elected through social-political mass organizations *(people's fronts)*. The reason for this was simply that, with the exception of the GDR and Poland, there was no multiparty system in these countries,[34] yet political systems of a state party character also tried to give the impression that the elections expressed the true will of the people, so candidates were nominated not by the party itself but formally by an organ which had the character of a people's front[35] but which was essentially the equivalent of the party.

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[34] BIHARI Ottó: *Képviseleti rendszer*. [System of Representation] In: Állam- és jogtudományi enciklopédia, [Cyclopedia of State and Law Sciences] Editor: SZABÓ Imre. Budapest, 1980, Vol. II, p. 986.

[35] The reason for this was that "it was a typical endeavour to exclude the working population from bodies of representation through legal regulations or by means of some other manipulations." Some authors, acting along the lines of the ideological guidelines of the era, especially in the 1950s, went as far as declaring universally that "bourgeois elections are the means of falsifying the true will of the people". BIHARI 1980, p. 984; KOVÁCS István: *A burzsoá alkotmányosság válsága*. [The Crisis of Bourgeois Constitutionality] Budapest, 1953, pp. 180–203.

The legal status of the members of the councils elected in this way also differed substantially from that of the representatives of local governments in the bourgeois or contemporary sense. First of all, with the exception of Czechoslovakia and Romania, they were usually not called representatives but *people's deputies*. As a rule, the mandate of the deputy as a representative was not independent. In principle they could be recalled after their election in each country. This greatly limited their freedom to act. Furthermore, they were dependent on the political leadership. At the same time a hidden right of instruction was also provided for the electors through the obligation to report regularly *(imperative-limitative mandate)*. This, in itself, would not have been a problem but for the fact that in reality the deputies' work was appraised by the party, which also exercised the right of recall.[36]

The operative and executive bodies of the councils were collegial bodies called *executive committees*. A different term (council) was used in the GDR and Czechoslovakia, but these should not be mistaken for representative bodies either. The only exception was Poland, where these duties were carried out by voivods, town presidents, district leaders and large village leaders as one-person bodies. In each country the committees were elected indirectly, that is by the council from among its own members, generally on the basis of the nomination of the people's front. As a rule, the executive committees were under *double subordination*. They were responsible both to the council which had elected them and to the executive committee of the superior council body. As a result, they did not always have autonomy to make decisions even in local matters. Their resolutions could be abrogated at any time by the regional bodies higher up in the hierarchy.[37] Although most constitutions tried to mitigate this by stating that control could be exercised only in the case of a violation of the law, considerations of expediency were not uncommon. For instance, the Polish constitution laid down *ex pressis verbis* that the superior council could abrogate the resolution of a lower council body if it was deemed incompatible with the political line of the state, and the latter was determined by the state party at all times.

Thus it is obvious that *no vertical division* of the branches of power existed. Furthermore, the states of the people's democracies expressly denied their raison d'être. The system of state institutions was regarded as a unified and undivided system in which control was exercised by the working people and

[36] BIHARI Ottó: *Az államhatalmi-képviseleti szervek elmélete*. [Theory of the Organs of State Authority and Representation] Budapest, 1963, pp. 137–154; BIHARI Ottó: *A tanácsok államhatalmi jellege*. [State-Power Characteristics of the Councils] Állam és Igazgatás, 1965/4, pp. 358–370.

[37] BIHARI 1963, pp. 228–231.

peasants through the state party, which was the sole oracle of social interests. At most, the *differentiation of state tasks* was recognized.[38] It follows from the foregoing that even in the 1970s and 1980s councils were not real organs of self-government, in spite of the fact that the states tried to maintain this fiction by emphasizing the principle of *democratic centralism*.[39] This did not mean that every decision was made centrally, on a national level (there were local, politically neutral matters), only that the possibility of such in the sense of public law was provided in each issue. This revealed the true totalitarian nature of the system.

As people's organs, the councils were part of this system. They adopted several functions and solutions from the despised, so-called bourgeois law, at the same time adding to it the ideology of misinterpreted Marxism, which never made mention of a *de facto* dictatorial and totalitarian state in its utopia. Councils were defined as the regional institutions of central, unified state power, which, in addition to managing local matters, invariably enforced the political aims and principles formulated by higher state and non-state organs.[40] It is essential, as we stand after the close of the first decade of the 21st century, to further our understanding of the system of councils and its complex operation. Political slogans notwithstanding, it constituted an unavoidable part of the 20th century history of Eastern-Central Europe immediately preceding the present constitutional systems.[41]

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[38] BEÉR János: *A helyi tanácsok kialakulása és fejlődése Magyarországon (1945–1960).* [The Evolution and the Development of Local Councils in Hungary (1945–1960)] Budapest, 1962, pp. 5–9; BEÉR János – KOVÁCS István – SZAMEL Lajos: *Magyar államjog*. [Hungarian State Law] Budapest, ^{2}1964, pp. 200–219; SZAMEL Lajos: *A Magyar Népköztársaság államszervezetének kialakulása és fejlődése*. [The Evolution and Development of the Organism of the State of the People's Republic of Hungary] In: 20 év. Tanulmányok a szocialista Magyarország történetéből, Editor: SZABÓ Bálint. Budapest, 1964, pp. 325–328; KOVÁCS István: *A szocialista alkotmányfejlődés új elemei*. [New Elements of the Development of the Socialist Constitutions] Budapest, 1962, pp. 384–385; BEÉR János: *Az államhatalmi szervezet egysége a Magyar Népköztársaságban*. [The Unity of the Organism of the State Authority in Hungary] Állam és Igazgatás, 1960/4, pp. 258–271; BEÉR János: *Helyi tanácsaink államhatalmi jellege*. [State-Power Characteristics of Our Local Councils] Állam és Igazgatás, 1951/11–12, pp. 593–606.

[39] BERÉNYI Sándor – MARTONYI János – SZAMEL Lajos: *Magyar államigazgatási jog. Általános rész*. [Hungarian Administrative Law: General Studies] Budapest, 1971, pp. 138–153.

[40] There are special studies on the interpretation of socialist ideology and the analysis of the soviet-type public administration from the inside in the legal journal published in Moscow from the year of 1939, under the title *Советское Государство и Право* [Soviet State and Law]. Sources in English include the books of William E. BUTLER: *Basic Legal Documents of the Soviet Legal System*. New York, ^{3}1992; *Russian Law*: *Historical and Political Perspectives*. Leyden, 1977; and William E. BUTLER – Peter B. MAGGS – John N. HAZARD: *The Soviet Legal System: Fundamental Principles and Historical Commentary*. New York, 1977.

[41] The main constitutional reforms of the countries mentioned were adopted in 1989 and 1990. In most of them the introduction of democratic legal institutions took place peacefully, with the excep-

b) The main legal institutions of the local councils in Hungary

Of the countries under discussion, Hungary was the only one to ratify only one constitution during the era of people's democracy, namely Act XX of 1949. The most extensive amendment was made by the Parliament (National Assembly) in 1972. Another interesting fact is that formally it was in force until 2012, although the content was fundamentally changed in 1989.[42]

In terms of public administration, the territory of the People's Republic of Hungary was divided into counties *(megyék)*, rural districts *(járások)*, cities *(városok)* and communities *(községek)*, of which rural districts were abolished entirely in 1984. County, rural district, city, community and city district councils were delegated by the Constitution as the local organs of state authority. The members of the local councils were elected by the eligible voters in the given area for a different term in each cycle. The detailed rules pertaining to *local councils (helyi tanácsok)* were laid down by separate acts in Hungary, too. Among these, the first council act was passed by Parliament in 1950, the second in 1954 and the third in 1971.[43] The greatest novelty in the Act of 1971 was that the self-administrative function of the councils was emphasized, at least in principle.[44]

Scope of authority and competence of the council

The scope of authority of the councils widened and developed throughout the entire period under discussion, both in practice and on the level of normativity, and the Council Act of 1971 defined them in an extremely detailed manner. The rules of authority were usually not listed or repeated in the council's or-

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tion of the revolution in Romania (Christmas of 1989) and the civil war in the former Yugoslavia (1991–1995, 1996–1999). The German Democratic Republic ceased to exist with the reunion of the German states in 1990. Czechoslovakia split into two sovereign states on the first day of 1993.

[42] Lajos IZSÁK: *A Political History of Hungary, 1944–1990*. Budapest, 2002; István KUKORELLI: *A Historical Outline of Hungarian Constitution and State: 1949–1989*. In: The Hungarian State 1000–2000. Thousand Years in Europe, Editor: Gábor MÁTHÉ. Budapest, 2000, pp. 440–453; Jörg K. HOENSCH: *A History of Modern Hungary, 1867–1986*. London–New York, 1988, pp. 161–220, 221–284.

[43] Act I of 1950, Act X of 1954 and Act I of 1971 on the Local Councils.

[44] See the system of councils by the Council Act of 1971 with diagram illustrations in M. Tamás HORVÁTH: *The Structure of the Hungarian Local Government*. In: The Reform of Hungarian Public Administration, Editor: Klára TAKÁCS. Collection of Studies, Published by the Hungarian Institute of Public Administration in 1991 in English and French Language. Budapest, 1991, pp. 81–90, especially pp. 82 and 86; István BALÁZS: *Vers une administration publique moderne et democratique*. In: The Reform of Hungarian Public Administration, Editor: Klára TAKÁCS. Collection of Studies, Published by the Hungarian Institute of Public Administration in 1991 in English and French Language. Budapest, 1991, pp. 51–69, especially p. 53.

ganizational rules. Instead, in these matters reference was usually made to superior rules of law.

Accordingly, *at the beginning of the era*, the responsibilities of the councils included in particular the management of local economic, social and cultural activities, the execution of acts and higher decrees, the direction and control over subordinate organs of state authority and state administration, the promotion of the protection of state order and public property, the protection of the workers' (the population's) rights, local economic plans and budgets and the supervision of their execution, the direction and control of the work of local economic companies, the support of the workers' (the population's) cooperatives, the election and possibly the recall of the members of the executive committee, the setting up of council commissions and the judgment of legal remedies filed against the resolutions of the executive committee.[45]

The *second council act*, while maintaining these stipulations, supplemented the list. Thus several responsibilities were added to the scope of activity of the councils, including tasks relating to health care and social matters, the establishment of companies and organs to address local needs, the monitoring and appraisal of the operation of economic and other organs not subordinated to the councils, the election of the judges and lay assessors of courts, the protection of socialist rule of law and the consolidation of civil discipline, the protection of civil constitutional rights, and the enforcement of the rights of nationalities.[46]

The *third council act*, while observing the new, local-government style objectives of the system,[47] added further tasks to the authority of the councils, including tasks related to regional and settlement development, the provision and supervision of housing, and communal and commercial supply. The settlement arrangement plan was drawn up and supply institutions could be established, including budgetary firms. It was a significant step forward that the rule of law laid down the possibility, at least in theory, to manage the available financial means independently, within the framework of the accepted budget. The right to establish several institutions was extended by the right to organize

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[45] Article 27 of the Council Act of 1950.

[46] Article 6 of the Council Act of 1954.

[47] The Council Act of 1971 emphasized the self-governing nature of local councils, which was also indicated by terminating the legal subordination and super-ordination between council bodies. However, this applied neither to the executive committees nor to the party organs, which meant that no self-government in the true sense of the word could be realized. County council organs could instruct the city and village council organs even in individual cases.

institutions supplying the catchment area of the settlement. The town council was entitled to set up institutions of secondary education or institutions providing medical or social care.[48]

Lawmaking constituted an essential authorization awarded by all the acts to the councils. They were authorized to pass *council decrees and resolutions* and granted the right to review the resolutions of executive committees. For instance, during the 40 years of its existence, the council of Szeged passed 154 decrees. The most prolific period was the last decade of the communist era.[49]

The two manners of exercising authority, *direct and transferable powers*, were both included in all three acts. The latter manner merits particular attention from a legal perspective for the reason that the council, provided that a rule of law[50] allowed it, could delegate the exercise of some of its powers to the executive committee, and in relation to this it was entitled to instruct the committee, or to abrogate or alter its resolutions. At the same time, certain powers could not be delegated. These included the establishment and the direction of the council organization, the drawing up of the development programs, the medium-term financial plan and budget, the defining of the main directions of the activity of the local council, the approval of the settlement arrangement plan, the execution of elections and appointments belonging to the council's scope of authority, the passing of council decrees and the right to elect lay assessors[51] – by Articles 4 and 5 of the Organizational and Operational Rules

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[48] Articles 9–18 of the Council Act of 1971.

[49] SZILÁGYI György: *Ahogy a Torony alatt láttam és megéltem… Szemelvények Szeged XX. századi közigazgatás-történetéből*. [As I Experienced under the "Tower": Extracts from the History of the Public Administration of Szeged in the 20th Century] Szeged, 2003, pp. 118–172; ANTAL Tamás: *A tanácsrendszer és jogintézményei Szegeden (1950–1990)*. [The System of Councils and Its Legal Institutions in Szeged (1950–1990)] Szeged, 2009, pp. 153–179.

[50] In the period under study, the following qualified as rules of law in Hungary: acts *(törvények)*, law-decrees *(törvényerejű rendeletek)*, decrees *(kormány rendeletek)* and resolutions *(kormány határozatok)* of the Council of Ministers (Government) and council decrees *(tanácsi rendeletek)*. Of these, law-decrees may need some explanation. As between 1949 and 1988 the one chambered Hungarian Parliament *(Magyar Országgyűlés)* held sessions only for a few days of the year, it could not pass any legislation of merit. The Presidential Council of the People's Republic *(Népköztársaság Elnöki Tanácsa)* was authorized by the constitution to substitute statutory norms by law-decrees. In the hierarchy of legal sources these were on the same level as acts until 1987, thus they could even amend them. Although the Presidential Council had to present these legal sources to Parliament subsequently and in principle Parliament had the right to raise objections, it never did so. See Article 6 of Act XI of 1987 on Legislation.

[51] Lay assessors *(ülnökök)* embodied lay and collective judgment in Hungarian courts. Generally, judicial councils consisted of one professional judge and two lay assessors. Judges had the decisive role in the process of making decisions. The system of assessors is not of Hungarian origin, it developed from the German Schöffengericht. F. BATTENBERG: *Schöffen, Schöffengericht*. In: Handwörtherbuch zur Deutschen Rechtsgeschichte, IV. Hrsg.: Adalbert ERLER und Ekkehard KAUFMAN.

of 1984 in Szeged.[52] The regional competence of the council covered its own administrative area, or given villages (so-called peri-urban villages) in specifically defined cases.

Legal status of council members

The council was a corporate body in character. Its members obtained their assignment as *deputies (küldöttek)* through elections. In terms of public law, deputies cannot be equated with representatives. The most important difference lay in the *dependent, imperative nature* of a deputy's mandate. A deputy could be instructed or even recalled by his/her electors. Thus in principle, after being elected, deputies legally depended on their electors or in reality rather on the party. The rules of the elections were laid down in various acts or law-decrees, and also in the supplementary decrees of the Council of Ministers (government) and in the resolutions of the Presidential Council of the People's Republic,[53] as a new rule of law was adopted by Parliament or by the Presidential Council prior to almost every council election.[54]

In accordance with these rules, elections for council members were held in 1950, 1954, 1958, 1962, 1967, 1971, 1973, 1980 and 1985. The mandate of the last elected council was prolonged by Act XXXIV of 1990 until September 23rd, 1990, that is until the actual change-over to the system of local governments. In the course of the democratic transformation of 1989/90, councils were abolished and replaced with autonomous local governments by Act LXV

Berlin, 1990, Columns 1463–1469; Markus Dirk DUBBER: *The German Jury and the Metaphysical Volk: From Romantic Idealism to Nazi Ideology*. In: The American Journal of Comparative Law, 43/2 (1995), pp. 230–231.

[52] Decree 1/1984 of the Council of Szeged, City of County Rank, on the Organizational and Operational Rules of the Council. In: Szeged Megyei Városi Tanács Közlönye, 31 March 1984. No 3, pp. 3–40; hereinafter referred to as OOR 1984.

[53] The Presidential Council of the People's Republic *(Népköztársaság Elnöki Tanácsa; NET)* was a collegial head of state in Hungary between 1949 and 1989. This meant that the rights of head of state were exercised not by one person (e.g. President of the Republic) but by this body, which consisted of 21 members: a chairman, two deputy chairmen, a secretary and 17 members who were elected by the Hungarian Parliament *(Magyar Országgyűlés)* from among its own delegates. Consequently, the members were necessarily members of Parliament as well, with the restriction that a member of the Council of Ministers could not be a member of the Presidential Council at the same time. Essentially, it also functioned as a substitute for Parliament. As such, it was entitled to issue law-decrees on its own, with the requirement of subsequent submission to Parliament, and it could also pass other decrees and resolutions. ÁDÁM Antal: *A Népköztársaság Elnöki Tanácsa*. [The Presidential Council of the People's Republic] Budapest, 1959; ANTAL 2009, pp. 130–131.

[54] Law-decree 31 of 1950, Act IX of 1954, Law-decree 22 of 1954, Act III of 1958, Act V of 1962, Act III of 1966, Act I of 1970, Act VI of 1976, Act III of 1983 and Act XI of 1989. For a detailed description of these elections see SZILÁGYI 2003, pp. 58–75; KUKORELLI 2000, pp. 449–450.

of 1990. The introduction of the Act on Local Governments labeled the council system as a "dead end in history", notwithstanding the fact that this piece of legislation was drawn up on the basis of the draft of the fourth council act. While it has been and continues to be frequently criticized, it is still in effect.[55]

The council members' work was regarded by the second and the third council acts as an honorable public activity based on the electors' confidence. The council members' mandate, which could be won through nomination by the Patriotic People's Front *(Hazafias Népfront)*[56] and election by the citizens, was partly dependent in nature, as they could not be instructed in particular cases but could, in principle, be recalled by their electors. The number of the town council members changed regularly in each election. In Szeged, for example, their number was the highest between 1954 and 1958 (185 members) and the lowest between 1967 and 1971 (87 members).

The *council members' rights* included the following: the right to participate in lawmaking (council decrees, resolutions), the right to hold any council office and to participate in the work of the commissions, the right to represent the council, the right to put forward issues and proposals of public interest, the right to convene the meeting of the local electors and to give opinion on the drafts of the decisions of specialized organs of administration if they had a major impact on living conditions, rights and obligations of the citizens living in their constituency.[57]

At the same time, *council members were required* to represent the interests of the residents in their constituencies, take an active part in the work of the council, conduct themselves in a manner worthy of public activity and the electors' confidence, contribute to the strengthening of state and work discipline, protect the purity of public life and the property of the state, ensure the

[55] Act LXV of 1990 on Local Governments and Act LXIV of 1990 on Election of the Members of Local Governments and the Mayors. These acts will be in effect no longer than January 1st, 2013.

[56] The Patriotic People's Front (and its predecessor, the Hungarian Independent People's Front) functioned as a sort of socialized counterpart of the state party (the Hungarian Workers' Party, then as of 1957 the Hungarian Socialist Labour Party) as of 1954 to make it appear as if elections were not entirely one-party in Hungary. Officially, it constituted the "mass foundation" of the councils. In reality, although it served as an umbrella organization for several social organizations, it was a political organization controlled by the party, which, among exercising other powers, nominated the members of Parliament and the council members. No opposing candidate could be nominated until 1971, and votes against the candidate of the People's Front were usually regarded as invalid. For more details see: *A magyar Népfront története*. [The History of the Hungarian People's Front] Chief Editor: KÁLLAY Gyula. Volume 2, Budapest, 1977, pp. 178–488.

[57] Article 37 of the Council Act of 1971, Article 7 of Law-Decree 23 of 1983, Article 40 of OOR 1984.

enforcement of the rights of the citizenry, observe the rules of legality and "socialist coexistence" in an exemplary manner, maintain direct and regular contact with the population, and enforce the assignments of the electors. Each council member had to report to his/her electors concerning the fulfillment of his/her obligations and the work performed at least once a year, and they cooperated with the residential and street committees[58] set up in their constituencies.[59] Another major entitlement of the council members was the right to submit interpellations at council meetings.[60]

The *council members' activity* can be reconstructed on the basis of the minutes taken at council meetings. While in the 1950s the speeches made at the meetings almost exclusively approved, welcomed and supported everything, later, particularly from the time of the new economic mechanism onwards,[61] an activity of greater merit unfolded. The members could voice their constructive opinions within reasonable limits. In Szeged, this culminated in the recall of the executive committee in 1988. Incidentally, the entire era was characterized by stereotyped speeches which were comprised of clichés and reminisced about the "liturgical" events of the past. Such notable events were particularly the arrival of the Soviet army in 1944/45, which was obligatorily referred to as liberation in Hungary, and the seizure of power by the Soviets in 1917 in Russia. Further frequently mentioned topics included the glorification of the Soviet Union, Stalin and subsequent leaders, references to the social class war, the fight against exploitation, criticism of the capitalist world economy, the personality cult and the praise of the Hungarian party leaders, and the repeat-

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[58] Street committees *(utcai bizottságok)* were officially the population's unprompted social organs of representation. Their activity, as was the case with other, similarly mass-social institutions of the era, was of a nature of mass movement and organization as they performed tasks of mobilization, information and opinion survey in the framework of the People's Front. At the same time they represented the interests of the citizenry as well as organized social labor and saw to the adherence to the rules of the blocks of flats. In addition, they also made the citizens' direct surveillance possible for the secret services. ANTAL 2009, pp. 163–169; RÉVÉSZ Béla: *A titkosszolgálatok a politikában és a politológiában*. [Secret Services in Politics and Politology] = Acta Juridica et Politica Szeged, Tomus LXX. Fasc. 13, Szeged, 2007.

[59] Article 38 of the Council Act of 1971, Articles 40–41 of the OOR 1984.

[60] Article 29 of OOR 1984.

[61] The New Economic Mechanism between 1968 and 1974 aimed to realize the major transformation of the Hungarian economy under directive plan instructions and to establish "simulated market conditions". It had significant results. Economic performance increased drastically, as did the standard of living and the pace of urbanization. The economy of Hungary became the most prominent among the socialist countries in Central Europe. This period was nicknamed "goulash communism". BEREND T. Iván – RÁNKI György: *A magyar gazdaság száz éve*. [Hundred Years of the Hungarian Economy] Budapest, 1972, pp. 227–304; BEREND T. Iván: *A magyar gazdasági reform útján*. [The Way of the Hungarian Economic Reform] Budapest, 1988, pp. 177–366; BEREND T. Iván: *A szocialista gazdaság fejlődése Magyarországon, 1945–1975*. [Development of Socialist Economy in Hungary, 1945–1975] Budapest, 1979, pp. 142–156.

edly emphasized development and superiority of socialism. Karl Marx's name was often cited in the service of these aims, notwithstanding the fact that the realities of socialist rule in Hungary had little to do with true Marxism.[62]

The more educated members of the councils and the council organization analyzed and assessed the activity of the organs of the Szeged town council more and more frequently in the last two decades leading up to 1989/90, since an effort was always made to include, in addition to the children of members of the working class, a few intellectuals or possibly scholars (scientists) among the council members.

Corporate activity of the council

The council held meetings as required, but not fewer than four times a year. For example, during the 40 years of its existence, the council of Szeged held 173 ordinary and 34 extraordinary meetings.[63]

The council meetings were convened by the executive committee on the basis of the pre-determined *annual work schedule*, but it was also possible to convene a meeting if proposed by one-fourth of the council members or if ordered by the Council of Ministers (government) or the executive committee of the superior county council. Each council meeting was held according to the *agenda* accepted by those present. The draft thereof was prepared by the executive committee, with the consideration of the proposals made by the city committee of the party and the county council of trade unions. The council members could also make proposals concerning the subject of the agenda.[64]

As a rule, the meetings were public, but a closed meeting could also be ordered, especially when cases of incompatibility were discussed. The meeting was opened by the council president (the chairman of the executive committee) and the meeting was usually presided over by him/her as well.

Customarily, first the reports on the implementation of previously passed resolutions were heard, put forward and presented by the council president (the chairman of the executive committee). Thereafter, the agenda was decided and

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[62] See arguably his most important work: Karl MARX: *Capital. A critique of political economy: The process of capitalist production*. Translation from the German by Samuel Moore, Edward Aveling; edited by Frederick Engels; amplified according to the 4th German edition by Ernest Untermann. New York, 1906.

[63] For the statistics thereof see: SZILÁGYI 2003, pp. 114.

[64] Article 17 of OOR 1984.

each item was discussed. The rapporteur presented the written submission and the proposal for the resolution and then answered the questions, remarks and motions for amendment put to him/her during the debate. If no one else requested to speak, the chairman brought the question to a vote, which could be made with a "yes", "no" or abstention. In case of a tie vote, the chairman's vote was decisive. The voting was normally open; however, a secret ballot was held when the council president (the chairman of the executive committee), his/her deputy and the members of the executive committee were elected, or when cases concerning the incompatibility of council members were decided. Normally, a resolution could be passed with the majority vote of the council members present. In the case of a qualified vote, the legal norm was deemed to be adopted with the supporting votes of the majority of all the council members. Minutes were taken and the decrees and resolutions adopted were published first in extracts, then from 1971 *in extenso* in the official paper of the council.[65]

The *adoption of decrees* was one of the major council rights. This could happen on the basis of a superior rule of law or a measure of a superior organ, or it could be initiated by the council itself with a view to settling local social conditions.[66] When decrees affecting a wide range of the population were prepared, the draft was presented in consultation centers[67] as well. In consequence of the hierarchical nature of the council system,[68] the decree adopted

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[65] Articles 23–28, 30, 33 of OOR 1984.

[66] TAMÁS József: *A tanácsok rendeletalkotási joga*. [The Right of Councils to the Adoption of Decrees] Állam és Igazgatás, 1956/6, pp. 348–355; BESNYŐ Károly: *A tanácsrendelet-alkotás időszerű kérdései*. [Actual Questions of the Adoption of Council Decrees] Állam és Igazgatás, 1959/4, pp. 285–295; SZILÁGYI György: *A tanácsrendeletek felülvizsgálata Szegeden*. [The Revision of Council Decrees at Szeged] Állam és Igazgatás, 1968/8, pp. 742–750.

[67] Consultation centers *(tanácskozási központok)* functioned as a form of manifestation of "socialist democracy" in the period of the third council act. These were established in the wake of the recognition of the social-political importance of work in one's dwelling area. As de-concentration centers in given areas of the city, they served as places for consultation for the district party leadership and People's Front committee, the city council members, resident and street committees and inhabitants interested in public matters. In reality their work had little importance.

[68] The hierarchy of the council system was based on the principle of *democratic centralism*. This meant that each council and council organ could be instructed by the superior organs of state authority or state administration, which in turn were controlled by the analogous party organs. Therefore, however, as much as the third council act attempted to cease this obvious system of dependence, real local governments did not exist at that time, either. The possibility to instruct executive committees existed throughout the entire period, which is why it was possible, if deemed necessary, to control local decisions by the metropolitan government and party organs. This was also the reason for the administrative patronage: the authority of the superior executive committees to approve decrees and resolutions. KISS László: *A tanácsi szervek politikai (párt) irányításának néhány kérdése Magyarországon*. [Some Issues of the Political (Party) Control of Council Organs in Hungary] In: Emlék-

had to be submitted to the executive committee of the superior council for supervision and approval.[69]

Council commissions

In order to fulfill its tasks more efficiently, the council set up permanent and temporary commissions *(szakbizottságok)*. The commissions were established and their members were elected by the statutory meeting of the council, but it could decide to set up further commissions or terminate or restructure the existing ones. As of 1971, it was compulsory to set up a rules commission and a finance commission, in addition to which the establishment of other commissions could also be provided for by the organizational rules.[70]

The *tasks of these organs* varied in character, but they included making proposals, offering opinions, and preparation, supervision and coordination. In the course of addressing these tasks, they participated in formulating and executing council plans and tasks, gave opinions concerning proposals of great importance, supervised the work and development of the different specialized organs and economic council companies, as well as the activity of non-council organs. They also organized the participation of the population in carrying out council tasks.[71]

The members of the commission could be nominated by the city committee of the Patriotic People's Front or by any council member, after which they and their chairmen were elected by the council itself. Each commission consisted of at least three members. The chairman and the majority of the members had to be council members. Other members could be nominated by local social and state organs or cooperatives, too. The commissions operated in a collegial form, and sub-commissions could also be set up to address certain matters.[72]

The concrete tasks of the commissions were laid down in the organizational and operational rules. According to the OOR of 1984, the *following commissions operated in Szeged*: rules commission, auditing commission, city development and technical commission, production and supply commission, com-

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könyv Ádám Antal egyetemi tanár születésének 70. évfordulójára, Editor: PETRÉTEI József. Budapest–Pécs, 2000, pp. 134–136; BERÉNYI–MARTONYI–SZAMEL 1971, pp. 428–432.

[69] Article 36 of OOR 1984.

[70] Article 65 of OOR 1984.

[71] Articles 56–59 of the Council Act of 1971. UTTÓ György: *A tanácsi szakbizottságokról.* [About the Council Commissions] Állam és Igazgatás, 1980/11, pp. 988–1005.

[72] Articles 72–74 of OOR 1984.

mission of culture and youth policy, commission of health and social policy and commission of law and administration.[73] In 1984 a *peri-urban commission* was set up by the Szeged council and by the councils of the neighboring settlements with a view to planned and efficient cooperation.

The executive committee and its functionaries

The duties of the executive committee of the council *(végrehajtó bizottság; vb.)* as a general executive and operative organ[74] included the implementation of rules of law, the harmonized enforcement of national and local public interests, the preparation of council meetings and the organization of the implementation of its decrees, the direction of specialized organs, the supervision of council companies, the direction of administrative council institutions and cooperation with non-council organs. This committee worked in *double subordination*. On the one hand, it was subordinated to the council which had elected it, and on the other hand to the superior executive committee. Its members were the chairman of the executive committee, who as of 1971 bore the title council president, his/her deputies (deputy council presidents), members elected by the council from among its own members, and the secretary of the committee. The members were elected after being nominated by the Patriotic People's Front.[75] In Szeged the executive committee of the council was made up of some 11–15 members (the number varied in different cycles).

The *major duties* of the executive committee were to prepare for the council meetings, control and organize the implementation of the council decrees and resolutions, and assist the work of the council members and its commissions. As part of its special powers, it coordinated and supervised the activity of the specialized organs and ensured professional and quick administration. It called the leaders of specialized organs to account. It could annul or modify any regulation issued by the specialized organs if it violated a rule of law or the perceived or alleged interests of the population and the party. Finally, it made decisions in matters of appointment concerning these organs. Moreover, it also appointed the leaders of the council companies and institutions. It could submit a proposal to the superior executive committee (e.g. in the case of Szeged

[73] Article 70 of OOR 1984.

[74] SÁRI János: *A tanács végrehajtó bizottsága és tisztségviselői*. [The Executive Committee of the Council and Its Functionaries] Budapest, 1979; FÜRCHT Pál: *A tanács és a végrehajtó bizottság kapcsolata*. [The Connection of the Council and the Executive Committee] Állam és Igazgatás, 1974/12, pp. 1125–1134.

[75] Article 17 of the Council Act of 1950, Article 31 of the Council Act of 1954, Article 41 of the Council Act of 1971.

to the executive committee of Csongrád county) and to the superior specialized organs.[76] Its assignment lasted for the same duration of time as that of the council that had elected it.

The executive committee held its meetings as scheduled in the work plan, but at least once a month. The *annual work plan* prepared by the secretary contained the date of the meetings, the planned agenda and deadlines, the annual control plan and also individually determined action plans.[77] The meetings were convened by the chairman of the committee (or council president as of 1971). However, it also had to be convened if proposed by the council itself, ordered by the executive committee of the superior council or the Council of Ministers, or initiated by one third of its members.

The *meetings of the committee (vb. ülések)* were not public. Its members, the local and superior committee of the party, the executive committee of the county council, the leader of the city public prosecutor's office and the police, the chairman of the local committee of the Patriotic People's Front and finally the presidents of the councils (chairmen of the executive committees) of the neighboring settlements had to be invited for the discussion of matters concerning them. In matters related to their duties, the chairmen of the council commissions and the leaders of the specialized organs were also entitled to be invited and attend.[78]

The meeting of the executive committee was presided over by the chairman [chairman of the executive committee *(vb. elnök)*, later council president *(tanácselnök)*], or if unable to attend, by his/her deputy. Generally, the president's account was discussed at the beginning of the meeting. It included the presidential decisions made between two meetings and the reasons underlying them, the report on the tasks performed and the manner of their execution (and in the case of any failure to complete a task, the reason for this failure and the person responsible), and other major measures and public events. The rules

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[76] Articles 41–43 of the Council Act of 1971.

[77] See it on two concrete examples: PAPÓS Mihály: *Szeged Városi Tanács VB ülési jegyzőkönyveinek témakatalógusa, 1971–1990.* [Lists of Agenda of the Official Minutes of the Executive Committee of the Council of Szeged, 1971–1990] Szeged, 1996; PAPÓS Mihály: *Szeged Városi Tanács VB ülési jegyzőkönyveinek témakatalógusa, 1950–1970.* [Lists of Agenda of the Official Minutes of the Executive Committee of the Council of Szeged, 1950–1970] Szeged, 2000; URI SÁNDORNÉ (Editor): *Tárgysorozati jegyzék Debrecen Megyei Jogú Város Végrehajtó Bizottsága jegyzőkönyveinek kutatásához, 1950–1989.* [Lists of Agenda for the Research of the Official Minutes of the Executive Committee of the Council of Debrecen, City of County Rank, 1950–1989] Debrecen, 2009.

[78] Articles 48–54 of OOR 1984.

pertaining to council meetings were to be applied *mutatis mutandis* to the order of the meetings. The majority of the members had to be present for the meeting to have a quorum. The resolutions were passed with the majority decision of the members present. Minutes were taken, which had to be submitted to the executive committee of the superior council and the Council Office of the Council of Ministers.[79]

The executive committee was led by the chairman of the executive committee (or council president), who at the same time was the highest ranking functionary in the entire council apparatus. The third council act abolished the term *chairman of the executive committee (vb. elnök)* and introduced the term *council president (tanácselnök)*.[80] This expressed the legal status of the position more closely, and at the same time it also reflected the name adopted in public use at the time. A council president could only be a confidant of the party.

The *chairman (president)* was responsible for the preparation of the council meetings via the secretary of the executive committee. He/she presided over them, organized the implementation of the resolutions and decrees, and represented the council. He/she coordinated and assisted the work of council commissions, supervised the execution of the proposals made by the commissions, and informed them concerning major council tasks. The chairman (president) also convened and presided over the meetings of the executive committee, controlled and ensured the implementation of the resolutions, and gave an account of this to both the committee and the council. He/she also informed the latter of the annual activity of the executive committee. His/her tasks included the coordination of the work of council officials. In the course of this he/she could instruct and request reports from them. He/she supervised specialized organs, called their leaders to account, instructed them, and guided the personnel work.[81]

The chairman of the executive committee (council president) was elected on the nomination of the local committee of the Patriotic People's Front or any council member. Similarly, his/her recall could be initiated by the committee

[79] Articles 55–57 of OOR 1984. The technical supervision of the council organization was carried out in the government by the Department of Government Secretariat for Local Councils, and as of 1971 by the Council Office of the Council of Ministers *(Minisztertanács Tanácsi Hivatala)* as a special organizational unit in the government. BEÉR János: *A helyi tanácsok kialakulása és fejlődése Magyarországon (1945–1960).* [The Evolution and the Development of Local Councils in Hungary (1945–1960)] Budapest, 1962, p. 417; BEÉR–KOVÁCS–SZAMEL 1964, p. 325.

[80] See Article 51 of Act I of 1971.

[81] Article 59 of OOR 1984.

of the People's Front, the executive committee of the superior council, or the members of the local council. The council itself made the decision with the majority vote of the council members. Such an event only happened in exceptional cases, for instance in 1988 in Szeged, when the entire executive committee was recalled.[82]

There were two *deputy chairmen* of the executive committee *(deputy council presidents)*, who were appointed by the council. Their main task was to assist the chairman (council president) in his/her work. Accordingly, they participated in directing the council organs. Their duties associated with the supervision of the specialized organs were distributed according to the sectors of administration. At the same time, they performed their own tasks. One of them dealt with matters of planned economy, finance and labor force management and city development, the other with matters related to education, community culture, health and sports activities.[83]

The *secretary of the executive committee (vb. titkár)* also assisted the work of the council, the executive committee, and its chairman (council president). He/she had a considerable amount of administrative work to do in connection with the preparation of the meetings and the promulgation of the resolutions, and also in relation to the legal supervision of the official administration by specialized organs and council offices. He/she maintained contacts with several council and non-council organs (e.g. the public prosecutor's office, the court and the police). If he/she noticed that any regulation made by the council or by its organs violated the law, he/she was obliged to report this.[84]

The quality of the *council apparatus* has been the subject of considerable subsequent criticism, and duly so, as during the first decade significant problems arose in the work of the specialized organs of the council. This was rooted in the phenomenon known as *cadre policy*. Political (background) reliability was the only factor considered when selecting and replacing senior and middle executives. In consequence, not only were the members of the council bodies often entirely unqualified and unsuited to their tasks, but even posts as head of department were filled by people lacking the relevant skills. It took at least a

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[82] *Csongrád megye tanácsainak tisztségviselői*. [Functionaries of the Councils of Csongrád County] Editor: BLAZOVICH László. Szeged, 2007, p. 34. For their and many other people's biographies see: *A munkásmozgalom Csongrád megyei harcosainak életrajzi lexikona*. [Biographical Cyclopedia of the Main Fighters of the Working-Class Movement in Csongrád County] Chief Editor: ANTALFFY György. Szeged, 1987.

[83] Articles 60–62 of OOR 1984.

[84] Articles 63–64 of OOR 1984.

decade to reconcile the requirements of professional competence and political reliability.[85] In consequence, several operational anomalies arose in this period. The original profession and qualification of leading council executives was also typical. In Szeged, for instance, among the leading council executives one found a wood technician, a tailor's assistant, an onion gardener, a factory worker, an iron turner, a tiling assistant and an agricultural laborer.

In time the regime realized the resulting difficulties and employed considerably better educated officials. A significant outcome of this was that as of 1971 only a lawyer and as of 1982 only a specialist lawyer could hold the post of the secretary of the executive committee, even on village councils. It is worth emphasizing, however, that there were prominent intellectual experts in this period, too, whose devoted, self-sacrificing work made the administrative machinery work in spite of the many difficulties.

Specialized organs of the executive committee

The tasks of specialized administration within the scope of authority of the council were performed by the specialized organs of the executive committee *(vb. szakigazgatási szervek)* and by the council offices *(tanácsi hivatalok)*. The organizational rules of 1984 defined the following specialized organs in Szeged: department of health, department of construction and transport, department of administration, department of industry, department of commerce, department of food and agriculture, department of labor, department of culture, department of finance, department of personnel and further education, department of planning, supervisory department of physical education and sports, secretariat of economics, secretariat of organization and law.[86] The internal structure of each organ was determined by the executive committee. The council had and frequently exercised the right to change the structure.[87]

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[85] DALLOS Ferenc: *Helyes munkaszervezéssel javítsuk végrehajtó bizottságaink munkáját*. [Let us Improve the Work of Executive Committees with the Proper Organization of Work] Állam és Igazgatás, 1950/8–9, pp. 507–515; BODOVSZKY Gyula: *Emeljük a végrehajtó bizottságok munkájának színvonalát*. [Let us Raise the Level of Work of Executive Committees] Állam és Igazgatás, 1952/7, pp. 350–356; ZAGYVA Imre: *A tanácsi végrehajtó bizottsági vezetők képzésének néhány problémája*. [Some Problems of the Training of the Leaders of the Executive Committees of Councils] Állam és Igazgatás, 1960/11, pp. 853–857; FARKAS Ottó: *A végrehajtó bizottságok vezetői képzésének néhány kérdése*. [Some Issues of the Training of the Leaders of Executive Committees] Állam és Igazgatás, 1963/12, pp. 908–918; KÁROLYI József: *A végrehajtó bizottságok vezetőinek szakmai és politikai továbbképzése*. [Professional and Political Further Education of the Leaders of the Executive Committees] Állam és Igazgatás, 1967/7, pp. 628–635; BERÉNYI–MARTONYI–SZAMEL 1971, pp. 549–566.

[86] BLAZOVICH 2007, pp. 35–39.

[87] Article 77 of OOR 1984.

Their duties included, in particular, compiling the agendas of the corporate meetings in accordance with the regulations of the council or the executive committee or participating in making them, seeing to the implementation of the resolutions passed by the council or by the executive committee and the control thereof, and carrying out the administrative tasks related to the work of the respective council commission. Generally, council companies and other local institutions were also supervised and directed by these organs. The leader of each specialized organ rendered account of his/her activity to the council or to the executive committee at regular intervals. During their operation, these organs were supposed to adhere to the "socialist rule of law",[88] arrange matters in an expedient and expert manner, refrain from bureaucracy, safeguard the rights of the citizenry, and promote the fulfillment of their obligations.[89] The specialized organs of the council and the councils themselves had *more wide-ranging duties* than their predecessors in the former system of municipalities.[90] All this was a consequence of the centralization efforts of the state apparatus.

The *county city office (megyei városi hivatal)* worked as a special organ in cities of county rank as of 1979. As a rule, it administered official cases of first instance. The rules prescribed for specialized organs applied to its legal status. Its territorial jurisdiction extended to the entire city, and in certain cases to the neighboring settlements as well.[91]

4. § A brief postscript

The soviet-type council system has become part of legal history by now. It was not necessarily a better or worse form of public administration than the

[88] The "socialist rule of law" is a typical expression to show how the communist legal and moral systems tried to define themselves as the ones being distinct from the norms of "bourgeois societies". The attribute "socialist" was used by them every time when there were no real significant differences between the institutions of the two kinds of legal, moral or other system. This way the ideology was the flexible dividing line: the adjective mentioned could mean anything at the concrete moment and that's opposite as well (for instance: socialist mind, socialist work, socialist personality, socialist education, socialist law and order, etc).

[89] Articles 79–83 of OOR 1984.

[90] Municipal *(törvényhatósági)* public administration existed between 1872 and 1950 in Hungary. Essentially, it was of a local governmental nature, yet it cannot be identified with local governments in the classical sense on account of the composition of the municipal committee on the one hand, and the considerably milder control exercised by the government on the other. RUSZOLY József: *Szeged szabad királyi város törvényhatósága (1872–1944).* [The Municipality of the Free Royal City of Szeged (1872–1944)] Szeged, 2004.

[91] Article 85 of OOR 1984; ANTAL 2009, pp. 327–340.

system of local governments currently in effect, only *different* in principle while *similar* in function. With all its merits and disadvantages, it was one possible model for the structure and institutional system of public administration. Precise knowledge and analysis of this system may be very informative when looking to the future, as well, not only in Hungary but also in Western Europe and the United States, as this type of the institutional system of public administration is still essentially unknown there.

Democratic Centralism and the Party Guidance of Soviet Type Councils in Communist Hungary (1950–1989/90)

1. § A historical background: the way to the soviet zone

The soviets brought a new form of public administration to Europe which aimed at developing a structure known as being the combination of local governance and centralized administration in order to ensure the practice of the power of the workers' and peasants' federation (in fact the dictatorship of the proletariat) in every stage of the operation of a state. Its evolution in Russia was not accidental: before World War I the special feature called *dual society* became a reality, which contained the classic members of capitalist society and the hereditary ingredients of the traditional (historical) civil sectors at the same time.[1] In this coexistence, the number of people belonging to the high bourgeoisie was low in Russia and the middle-class status as defined by the Western Europeans did not exist. Nevertheless, bourgeois mentality started to spread across the country as well as the political desire for bourgeois democratic transformation. However, as a more effective social power was needed to create a revolution, the leader elite of the modern sector had to cooperate with the pauperized working class and the unorganized peasants, who had lived in land communities before,[2] against the neo-absolutism of the Russian tsars as early as in 1905 and especially in 1917.[3]

The interest-protecting, ideological, political self-organizations of workers and peasants counted on this kind of interdependence both inside and outside the country. They also knew that they would be able to turn a bourgeois revolution into a left-wing protest thanks to their large share in the society in spite of

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[1] MÓZES Mihály: *Az ipari forradalmak kora*. [The Age of Industrial Revolutions] Budapest, 1990, pp. 27, 90–93.

[2] HORVÁTH Pál: *A középkori falusi földközösség jogtörténeti vonásai*. [Legal Historical Features of Land Communities in the Medieval Age] Budapest, 1960, pp. 134–144; ARATÓ Endre: *Kelet-Európa története a 19. század első felében*. [A History of East Europe in the First Half of the 19th Century] Budapest, 1971, pp. 455–462.

[3] PERÉNYI József – DOLMÁNYOS István: *A Szovjetunió története I. Oroszország története 1917-ig*. [A History of the Soviet Union. The History of Russia before 1917] Budapest, 1994, pp. 294–299; Marc SZEFTEL: *The Russian Constitution of April 23, 1906. Political Institutions of the Duma Monarchy*. Bruxelles, 1976; Szergej Juljevics VITTE: *Egy kegyvesztett visszaemlékezései*. [Memories of a Man out of Favour] Budapest, 1964, pp. 571–625; KOVÁCS István (Editor): *Az októberi dekrétumok és az első szovjet alkotmány*. [The Decrees of October and the First Soviet Constitution] Budapest, 1980, pp. 18–20; С. В. ЮШКОВ: *История государства и права СССР*. Частъ первая. [Constitutional and Legal History of the Soviet Union, Vol. 1] Москва, 1950, pp. 584–631.

the intents of the capitalists. Having realized all that, they began to form a new construction of state and governance in October 1917[4] without practical antecedents but with a developed theoretical background in which the power instruments of workers and peasants, organized during the revolution and called *soviets*, had an important part and tasks as well.[5]

The hierarchical public administration also made it possible to control the *complete* state and society effectively to eliminate the existing capitalist conditions. The intervention fights after the First World War (1919–1921) helped this process as well because it became impossible to ensure the continuation of the earlier state organs neither in a theoretical nor a practical way. The established system of soviets proved to be viable in a state;[6] however, even though it proclaimed the triumph of democracy, it rapidly turned into a hard dictatorship in practice. Stalinism, after its evolution in the first half of the 1930s, did not modify the basics of the system recognizing the operative instrument of political control in the organs of several soviets,[7] but omitted self governance and the guaranties of human rights and transferred this type of administration to be the servant of a left-wing (communist) dictatorial state.

All these processes did not become reality in Central European states between the World Wars because their societies were much closer to capitalist economic conditions: the leadership of the bourgeoisie had a greater part in these societies than in Russia and the number of middle class citizens was also higher. The aim of the working class was not the complete elimination of the special Central European capitalism but its *integration* into the middle class. That is why long-lasting left-wing political settlements did not exist in the region – the longest one was the Federal Hungarian Councils' Republic in

[4] KUN Miklós: *1917. Egy év krónikája*. [1917: Chronicle of a Year] Budapest, 1988, pp. 15–35; DOLMÁNYOS István: *A Szovjetunió története II. 1917–1966*. [A History of the Soviet Union II, 1917–1966.] Budapest, 1989, pp. 7–8, 11–13, 26–27; KOVÁCS 1980, pp. 21–25; ЮШКОВ 1950, pp. 644–653.

[5] Call of the people's commissar for interior affairs on the organization of local governments (24 December 1917) In: KOVÁCS 1980, pp. 168–169; Instruction of the people's commissar for interior affairs on the rights and duties of the soviets (24 December 1917) In: KOVÁCS 1980, pp. 173–174.

[6] Constitution of the Russian Socialist Federative Republic (10 July, 1918) In: KOVÁCS 1980, pp. 217–246; RUSZOLY József: *Európa alkotmánytörténete*. [The Constitution History of Europe] Budapest, 2005, pp. 526–553; Constitution of the Federation of Soviet Socialist Republics (31 January, 1924) In: KOVÁCS István (Editor): *A Szovjetunió szövetségi alkotmányai*. [Federative Constitutions of the Soviet Union] Budapest, 1982, pp. 129–147; HORVÁTH Pál: *Bevezetés az egyetemes jogtörténet forrásaiba*. [An Introduction to the Sources of General Legal History] Budapest, 1996, pp. 304–321; DOLMÁNYOS 1989, pp. 87–90.

[7] Constitution of the Federation of Soviet Socialist Republics (5 December, 1936) In: KOVÁCS 1982, pp. 201–224; HORVÁTH Pál: *A szocialista jogtípus fejlődéstörténete*. [The History of the Development of Soviet-Type Law] Budapest, 1987, pp. 69–73; DOLMÁNYOS 1989, pp. 228–230.

1919[8] –; what is more: the anti-capital political and economic movements opened the way to right-wing dictatorships (Germany, Austria) and Christian-national-conservative political tendencies (Hungary, Poland, Romania, Yugoslavia). Their programs were fundamentally based on an anti-communist and anti-Bolshevist philosophy; technocrats discovered a higher guarantee for the future in conservatism than in left-wing collectivism. That explains why there was no chance to adapt the soviet type public administration in Hungary, either, before World War II.

However, after the Second World War, everything changed. The fight against fascism had not ended yet, the *states in federation* (USA, UK, SU) had already divided the European spheres of interest between each other in Tehran (1943) and Yalta (1945):[9] the economic-political and armed worldwide opposition, based on these negotiations at a high level, the so-called "Cold War", caused a real global "alienation" of nations. In this situation, all the states of Central Europe became the suffering members of the gravitation of the Soviet Union, which used the activity of national communist parties led from Moscow for the transformation. In Hungary, the large political coalition of democratic parties, which was established in December 1944 with the participation of the Hungarian Social Democrat Party, the Hungarian Communist Party, the Party of Hungarian Farmers, the Hungarian Christian-Democrat Party and the Federation of Free Trade Unions, then only included the social democrats and communists in 1947; and finally the "close coalition" was equal to the *one-party rule* from the year of 1948.[10] The artificial *super-inflation* of traditional national currencies (for instance, called *Pengő* in Hungary between 1927 and 1947, *Forint* after 1947) ensured the necessary conditions of the monetary and economic *isolation* from Western Europe and the states of the international "Breton Woods" financial system.[11]

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[8] HAJDÚ Tibor: *A magyar Tanácsköztársaság*. [The Hungarian Councils' Republic] Budapest, 1969; SARLÓS Béla: *A Tanácsköztársaság jogrendszerének kialakulása*. [Evolution of the Legal System of the Hungarian Councils' Republic] Budapest, 1969; Gábor MÁTHÉ (Editor and author of the chapter): *The Hungarian State 1000–2000. Thousand Years in Europe*. Budapest, 2000, pp. 252–256; PÖLÖSKEI Ferenc – GERGELY Jenő – IZSÁK Lajos: *Magyarország története, 1918–1990*. [A History of Hungary, 1918–1990] Budapest, no year, pp. 23–32; L. NAGY Zsuzsa: *Magyarország története, 1918–1945*. [A History of Hungary, 1918–1945] Debrecen, 1995, pp. 43–72.

[9] RÁNKI György: *A második világháború története*. Budapest, 1982, pp. 374–389, 477–502; W. S. CHURCHILL: *A második világháború*. [The Second World War] Vol. 2, Budapest, 1989, pp. 299–353, 531–570.

[10] PÖLÖSKEI–GERGELY–IZSÁK, pp. 175–211; József RUSZOLY: *Ungarn im Übergang zur Republik, 1944–1946*. In: Ders.: Beiträge zur neueren Verfassungsgeschichte. (Ungarn und Europa) = Ungarische Rechtshistoriker 3. Budapest, 2009, pp. 384–410.

[11] Rondo CAMERON: *A világgazdaság rövid története*. [A Short History of World Economy] Budapest, 1994, pp. 437–447, 451.

All these special circumstances led to a unique, unrepeatable historical situation in the Central European region in the second half of the 1940s: the social, economic, political and public law conditions converted themselves into soviet type communism and collectivism without any transition.[12]

Soviet type local councils spread in the so-called socialist states after passing on their *new constitutions* to the National Parliaments[13] which meant the reception of Russian public administration with some necessary differences in all the states mentioned,[14] with the exception of Yugoslavia.[15] Being a member of the Soviet zone, Hungary could not avoid the transformation of its legal system.[16]

2. § Democratic centralism and Hungarian councils

The Hungarian Parliament *(Magyar Országgyűlés)* created the first charter constitution of the country in 1949[17] and after that, as one of the first public

[12] The best summary of this process can be read in: Ferenc FEJTŐ: *Histoire des démocraties populaires* (Paris, 1952), augmented edition: *Histoire des démocraties populaires. 1. L'ère de Staline (1945–1952), 2. Après Staline (1953–1963)* Paris, 1969, 1979, 1992, 1998, 2006 (Tel-Aviv, 1954; Firenze, 1955; Barcelona, 1971; New York–London, 1971; Köln, 1973; Tokyo, 1978; Budapest, 1991).

[13] Tamás ANTAL: *Socialist Councils and Representation in the People's Republic of Hungary (1949–1989).* Parliaments, Estates and Representation, 2010/2, pp. 113–128, especially pp. 114–115.

[14] TOLDI Ferenc: *Az európai népi demokratikus országok területi beosztása és tanácsi szervezete*. [The Territorial Division and the System of Councils of European Socialist States] Budapest, 1977, pp. 71–100.

[15] KOVÁCS István (Editor): *Az európai népi demokráciák alkotmányai*. [Constitutions of the European People's Democracies] Budapest, 1985, pp. 190–314; HORVÁTH 1987, pp. 295–299, 332–340; SZENTE Zoltán: *Európai alkotmány- és parlamentarizmustörténet*. [European Constitution and Parliamentarism History] Budapest, 2006, pp. 126–127; HEKA László: *Szerbia állam- és jogtörténete*. [The Constitutional and Legal History of Serbia] Szeged, 2005, pp. 207–223; TOLDI Ferenc: *A jugoszláv alkotmánytörténet áttekintése*. [A Summary of the Yugoslavian Constitutional History] Állam- és Jogtudomány, 1967/1, pp. 45–78; Barbara JELAVICH: *A Balkán története. 20. század*. [A History of Balkan, 20th Century] Budapest, 2000, pp. 335–351; DALLOS Ferenc: *Jegyzetek Jugoszláviáról*. [Records on Yugoslavia] Állam és Igazgatás, 1956/9, pp. 556–565; FONYÓ Gyula: *Az igazgatás néhány új vonása Jugoszláviában*. [Some New Aspects of the Administration in Yugoslavia] Állam és Igazgatás, 1965/3, pp. 272–276; HORVÁTH Albert: *A jugoszláv községi szkupstinák működéséről*. [On the Functioning of the Yugoslavian Commune Skupstinas] Állam és Igazgatás, 1968/9, pp. 827–837.

[16] For some literature on the soviet legal system see William E. BUTLER: *Soviet Law*. London, 1983, 1988; William E. BUTLER: *Russian and Soviet Law. An Annotated Catalogue of Reference Works, Legislation, Court Reports, Serials and Monographs on Russian and Soviet Law (Including International Law)*. Zug, 1976; William E. BUTLER: *Collected Legislation of the Union of Soviet Socialist Republics and the Constituent Union Republics*. New York, 1998.

[17] Act XX of 1949 on the Constitution of the People's Republic of Hungary.

law reforms, it broke with the historical, bourgeois municipal public administration system and introduced the soviet model in 1950. In the process of passing Act I of 1950, known as the *first council act*, neither real opposition nor opposite opinions existed in Parliament – in fact they wouldn't have been authorized given the one party rule in politics – and the same happened in the "debate" of the other two acts on local councils in 1954 and 1971.[18] Although democratic legal institutions did not operate in practice, the then political actors regulated local councils mostly by parliamentary acts instead of governmental decrees or law-decrees, to show that pro form these legal norms and the ultimate public administration were the articulated common will of the parliamentary electors and the people's representative organs. Representatives performed speeches during the debates which were written by the central government, so the processes in Parliament were only necessary "performances" directed in advance. These artificial debates on the bills took only two days in 1950 and 1954 and merely one day in 1971, which clearly indicated the real nature of the socialist people's representation.[19] The time and way of coming into force of the passed acts were planned not by the Council of Ministers (the Government) or the Ministry of Home Affairs but by the political committee and the secretariat of the state party.

It was not allowed to change anything without its permission. The following example proves it sophisticatedly: at the meeting of the Political Committee *(Politikai Bizottság)* of the Hungarian Communist Party *(Magyar Dolgozók Pártja)* in August 1954, it was found that "legal directions connected with the local council elections were declared earlier than the *Political Committee* made its decisions on them, which caused a divergence between a decree of the Government and the parallel decision of the party. According to this, the assignment of cadres [candidates] happened without informing the territorial party committees. It must be wound up immediately and the decision of the Political Committee ought to be implemented".[20]

The official interpretation of the People's Republic of Hungary on the soviet type council system is that it was a modern, more suitable public administrative structure for the theoretical needs of socialist democracy than the former one, which had been a politically and ideologically undesirable municipal public administration. The final outcome of all these circumstances was a territorial and local administrative structure, breaking with the principality of real

[18] Act I of 1950, Act X of 1954 and Act I of 1971 on the Local Councils.

[19] ANTAL Tamás: *A tanácsrendszer és jogintézményei Szegeden (1950–1990)*. [The System of Councils and Its Legal Institutions in Szeged (1950–1990)] Szeged, 2009, pp. 33–91.

[20] ANTAL 2009, p. 183.

self-governance, which was called *democratic centralism*.[21] This meant that each council and council organ could be instructed by the superior organs of state authority or state administration, which were also controlled by the analogous party organs. Therefore, although the third council act tried to put an end to this obvious system of dependence, real local governments did not exist at that time. The possibility to instruct executive committees *(végrehajtó bizottságok)* existed throughout the entire period and that is why it was possible, if it seemed necessary, to control local decisions by the Government and the party organs. This was also the reason for the *administrative patronage*: the authority of the superior executive committees to approve decrees and resolutions.[22]

The experts and authors of the age made conscious and serious efforts to explore the scientific reasons for the termination of the bourgeois public administration and for the superiority of county, district, city and village councils. The establishment of this new kind of organization was interpreted *from a political point of view* with the hard fact: "the question of power is solved". It meant that the federation of working people's classes, led by the workers' class itself, controlled the Hungarian state through the constitutional and political organs "in which the classes of industrial workers and peasants can fight against the forces of village capitalism together and absolute efficiently". The introduction of councils was said to have a high importance in the struggle on the temporary stage of the "battle of classes", because "it established an organizational form to arrange the forces of working mass directly into the activities of state instruments". The previous administrative frameworks were perceived as hindrances to the evolution of socialist democracy not being suitable for the mobilization and organization of the mass of working people.[23]

From the *organizational point of view* councils were indispensable to finish with the "duality" in the field of state activities – which meant the refusal of the "needless" double structure of central state and parallel legal institutions of self-governance. The main goal of the efforts was the establishment of stable local units of state power to develop the democratic centralism mentioned and

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[21] BERÉNYI Sándor – MARTONYI János – SZAMEL Lajos: *Magyar államigazgatási jog. Általános rész*. [Hungarian Administrative Law: General Studies] Budapest, 1971, pp. 428–432.

[22] KISS László: *A tanácsi szervek politikai (párt) irányításának néhány kérdése Magyarországon*. [Some Issues of the Political (Party) Control of Council Organs in Hungary] In: Emlékkönyv Ádám Antal egyetemi tanár születésének 70. évfordulójára, Editor: PETRÉTEI József. Budapest–Pécs, 2000, pp. 134–136.

[23] BEÉR János: *A helyi tanácsok kialakulása és fejlődése Magyarországon (1945–1960)*. [Evolution and Development of Local Councils in Hungary, 1945–1960] Budapest, 1962, p. 167.

the *double dependence* of local administrative bodies.[24] The latter one was the doctrine of dual control: the executive committee of a local council operated in a subordinated way under the practical guidance of the council itself and the executive committee of the superior council in the hierarchy.[25] It ensured the effective party dependence, too, which could control the entire machinery of state. After all, the end of transformation of the capitalist state to the one of soviet conception was finished by the evolution of the estate (order) of council apparatus.

The modification was also supported by *economic aspects*. Communism did not find the former public administration capable of solving the questions arising through the development of the new economic system. The theoretical thinkers were right at this point because the coordination of economic conditions was not in the scope of authority of the earlier municipal public administration.[26]

Nevertheless, after comparing the Hungarian and the Russian soviets, legal philosophers tried to prove that the two formations *were not entirely the same*. In Russia, councils were "born in fight" as they were originally one of the instruments of the socialist revolution and became state and administrative organs only later. In Hungary councils were established in the second part of the people's revolution after taking the power: they were a *kind of result of the revolution* according to the need for legal and political reforms. Hungarian councils practiced administrative functions from the very beginning and they became mass organs afterwards.[27]

It would be interesting to examine the opinion of Russian scientists on the adaptation of the system of soviets in Hungary. Unfortunately, no authentic sources dealing with this question are known at the moment. But it is worth mentioning that some chapters of the three-volume-long *History of Hungary*, written in the Russian language,[28] refer to the council acts in a few paragraphs.

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[24] BEÉR 1962, pp. 167–168.

[25] SÁRI János: *A tanács végrehajtó bizottsága és tisztségviselői*. [The Executive Committee of a Council and Its Functionaries] Budapest, 1979; FÜRCHT Pál: *A tanács és a végrehajtó bizottság kapcsolata*. [Connection of the Council and the Executive Committee] Állam és Igazgatás, 1974/12, pp. 1125–1134; TOLDI Ferenc: *A tanácsok végrehajtó bizottságinak jelentősége állami szerveink rendszerében*. [Importance of the Executive Committees in the System of State Organization] Állam és Igazgatás, 1955/10, pp. 598–610; RAFT Miklós: *A végrehajtó bizottság jogállása*. [Legal Status of Executive Committees] Állam és Igazgatás, 1972/2, pp. 111–125.

[26] BEÉR 1962, p. 168.

[27] BEÉR 1962, p. 170.

[28] История Венгрии. Том третий. Редакционная коллегия: Т. М. ИСЛАМОВ, А. И. ПУШКАШ, В. П. ШУШАРИН. Москва, 1972.

The authors of the book mentioned pointed out that the "bourgeois regime" intended to hinder the introduction of the new public administration and the workers' and peasants' participation in the reforms. The authors also stressed that the critics referring to the missing practice and education of the workers' class were incorrect with regard to citing the renowned words of József Révai, a member of the leadership of the Hungarian Communist Party, who said: "working men and peasants must be integrated into the public administration first, then they will be educated later".[29] The third council act was appreciated in another chapter of the monograph, which called the attention to the increase of the scope of the financial and budgetary authority of local councils and to the strengthening of the council chairmen's legal status. They were satisfied with the more effective social control mechanism belonging to the electors by the establishment of the right to recall a not appreciated deputy (council member) directly without the expressed agreement of the Patriotic People's Front, too.[30]

To summarize the *most characteristic constitutional standpoints* of the socialist legal and political system, let us quote a few sentences by István Kovács, an ex-member of the Hungarian Academy of Sciences: "the same class character of central and local administrative organs requires practicing state power by organizational forms with the same sort of main principals both in the centre of the state and in the county. That is why it is nonsense to imagine such a long-lasting situation when local practicing of state power is based on council type organs, while the practicing of central power is based upon the theory of parliamentarism. A unified system of state power is developed in every socialist country, which means that essentially council [soviet] type organs with common principal values perform their duties both in the centre of the state and in the local public administration."[31] He made it clear: Parliamentarism and democratic centralism are absolutely different legal philosophies.

3. § Connection of the state management and the councils

The fundamental concept of the people's democracy was the fact that the organization of a socialist state must be *uniform* without the balance or the division of powers. *No vertical or horizontal division* of state institutions was allowed; the different organs only had a distinct function. Representative bod-

[29] See above footnote 28, pp. 609–610.
[30] See above footnote 28, pp. 833–834.
[31] BEÉR János – KOVÁCS István – SZAMEL Lajos: *Magyar államjog*. [Hungarian State Law] Budapest, 1964, pp. 362.

ies and administrative bureaus with a countrywide scope of authority were complementary to each other in functioning along the doctrines of the state conception.[32] This way, Parliament was the highest representative forum, the Presidential Council of the People's Republic instructed the system of powers as a collective state president, the Council of Ministers (the Government) directed the executive committees of councils, and ministers controlled the specialized organs of local and county councils. This functional division was influenced over by the analogous party units and committees, which could pressure the constitutional organs in a non-constitutional way. Councils were integrated into this kind of state as local or territorial administrative bodies and offices in very close connection with the higher state management.

The *Hungarian Parliament (Magyar Országgyűlés)* passed the council acts above mentioned, as well as the acts on elections[33] and on the budget.[34] Because the Parliament held only few-days-long sessions in a year, there was no possibility to create a close relation between it and the councils. Although the representatives made speeches on the activity of their electors and councils, the real parliamentary control mechanism did not work at all.

The parliamentary legislation was replaced by law-decrees *(törvényerejű rendeletek)* carried out by the *Presidential Council (Elnöki Tanács)*, which could

[32] BEÉR János: *Az államhatalmi szervezet egysége a Magyar Népköztársaságban*. [The Unity of the Organism of State Authority in Hungary] Állam és Igazgatás, 1960/4, pp. 258–271; BEÉR János: *Helyi tanácsaink államhatalmi jellege*. [State-Power Characteristics of Our Local Councils] Állam és Igazgatás, 1951/11–12, pp. 593–606; BIHARI Ottó: *Az államhatalmi-képviseleti szervek elmélete*. [Theory of the Organs of State Authority and Representation] Budapest, 1963, pp. 137–154; BIHARI Ottó: *A tanácsok államhatalmi jellege*. [State-Power Characteristics of the Councils] Állam és Igazgatás, 1965/4, pp. 358–370.

[33] Act I of 1950 on local councils, Act IX of 1954 on the election of council members, Act X of 1954 on local councils, Act III of 1958 on the election of parliamentary representatives and council members, Act V of 1962 on some regulations on the election of council members, Act III of 1966 on the election of parliamentary representatives and council members, Act III of 1970 on the election of representatives and council members, Act I of 1971 on local councils, Act VI of 1976 on the election of council members, Act III of 1983 on the election of representatives and council members, Act IV of 1985 on the modification of Act I of 1971 on local councils, Act XI of 1989 on the modification of Act III of 1983 on the election of representatives and council members.

[34] Act VI of 1968 on the budget of Hungary for 1969–1970, Act IV of 1970 on the budget of Hungary for 1971 and the budgetary regulation of the financial plans of councils for 1971–1975, Act V of 1975 on the budget of Hungary for 1976 and on the financial plans of councils for 1976–1980, Act IV of 1980 on the budget of Hungary for 1981 and on the financial plans of councils for 1981–1985, Act II of 1981 on the implementation of the budget of Hungary for 1980 and the councils' financial plans in 1976–1980, Act VIII of 1985 on the budget of Hungary for 1986 and the middle-long financial estimates of councils for 1986–1990, Act III of 1986 on the implementation of the budget of Hungary for 1985 and the financial plans of councils in 1981–1985; etc.

modify even the passed parliamentary acts.[35] All its 20 members were elected by Parliament. The Presidential Council controlled the territorial and local organs of state power by its directives: the county councils and the ones of cities of county rank directly, the others through the county councils *(megyei tanácsok)*. All the controlled organs had to report their results and difficulties to the PC, and these official summaries were handled by its secretariat. The PC had the right to the cassation or modification of a council decree or resolution not compatible with the Constitution or the "common interests of the people". The organizational and operational rules of the plenary meetings and other instruments of councils were planned centrally by the PC in 1954, which resulted in the nearly complete unification of council operational rules.[36] At the time of the third council act (1971–1989/90) the PC performed a softer, constitutional state monitoring involving the right to the dissolution of a council functioning illegally. In those two decades, direct control once again belonged to the authority of the Government, like between 1950 and 1954.

The *Government* could control the councils and all their executive organs directly in the first period, while in the second one its authorities were extended only to the executive committees and not to the complete council organism by means of reports, ordinary consultations, directives and concrete instructions, as well as the special education for the apparatus and the executives. The most important orders or recommendations streamed into the council administration via the Government and the ministers. In order to fulfil this complex task, the *Bureau of Councils* was established in the governmental administration, which became a countrywide organ in its territorial authority.[37] The ministers and heads of other countrywide organs instructed the actors of public administration in a sectorial structure according to the special conditions of the given social/economic sector of state life.

As there was a *hierarchical connection* between the several councils based on the territorial stages of public administration, the higher ones had the right and they were obliged to valuate the operation of the subordinated councils. For example, the chairman of a county council gathered the chairmen of district and settlement councils to hold a conference every month. As the superior (mainly county) executive committees performed a legal supervision over the

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[35] The most important one: Law-Decree 26 of 1983 on the modification of Act I of 1971 and on some matters of the scope of authority.

[36] ÁDÁM Antal: *A Népköztársaság Elnöki Tanácsa*. [The Presidential Council of the People's Republic] Budapest, 1959; BEÉR–KOVÁCS–SZAMEL 1964, pp. 309–310; ANTAL 2009, pp. 130–131; ANTAL 2010, p. 120.

[37] Paragraph 73 of Act I of 1971 (the third Council Act); BEÉR–KOVÁCS–SZAMEL 1964, p. 325.

city and village councils on their territories, the latter ones had to square their matters with the higher organs before making decisions even in local cases.[38]

4. § Connection of the party and the councils

Whereas councils were said to be the most ideal and most democratic administrative system in the decades of people's democracy (1949–1989), those who formulated the act on local governments (Act LXV of 1990) had a *completely different* opinion. The official reasoning for the act mentioned declared the council type public administration to be a "historical misguidance": "the too hard centralization gave a very small space for local independence. Democratic controllers of local activities were not the directly elected bodies but the council apparatus leaders who were instructed by higher state organs via 'hand-power' and who operated under the pressure of the local units of the monolith state-party being coordinated by high authorities, too." The contrast between these two opinions forces the researchers to find an explanation and a middle way.

Mihály Bihari, former chairman of the Hungarian Constitutional Court, drew attention to the fact that the political system of the socialist society was *party centred* and *not state centred* as the ascendants had been before.[39] The state organization refused any kind of political plurality and required to have a single political interest on every level of public administration. On the other hand, Hungary wanted to join the United Nations Organization, and to achieve this goal it had to respect the UN Charter involving the protection of human rights by the state management.[40] In this situation, the creators of the system of local and territorial councils as well as the apostles of people's democracy knew that they intended to accept these constitutional values only formally[41] and in reality they planned a dictatorial state right from the very first moment.

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[38] KOVÁCS Andor: *A tanácsrendelet-alkotás néhány elvi és gyakorlati kérdése*. [Theoretical and Practical Questions of Council Legislation] Állam és Igazgatás, 1972/9, pp. 769–784; SZILÁGYI György: *A tanácsrendelet-alkotás tervszerűségének szegedi tapasztalatai*. [The Experiences of Systematic Arrangement of Council Legislation in Szeged] Állam és Igazgatás, 1975/1, pp. 85–92; SZILÁGYI György: *Ahogy a Torony alatt láttam és megéltem... Szemelvények Szeged XX. századi közigazgatás-történetéből*. [As I Examined under the "Tower": Extracts from the History of the Public Administration of Szeged in the 20th Century] Szeged, 2003, pp. 221–225.

[39] PAPP Zsolt (Editor): *Tudósklub. Válogatás a televízió műsorából*. [A Selection of the TV Program Titled "Club of Scientists"] Budapest, 1981, p. 114.

[40] NAGY Károly: *A nemzetközi jog*. [International Law] Budapest, 1999, pp. 447–448.

[41] HORVÁTH Attila: *Az emberi jogok sorsa Magyarországon a szovjet típusú diktatúra időszakában*. [Fate of Human Rights in Hungary during the Soviet Type Dictatorship] Rendészet és Emberi Jogok, 2011/1, pp. 33–64.

The theoretical foundation was given by the single party [Hungarian Communist Party *(Magyar Dolgozók Pártja)*, from 1957 Hungarian Socialist Labourers' Party *(Magyar Szocialista Munkáspárt)*], which declared itself as a constitutional actor in public life and forced the Parliament, the Government and the Presidential Council in direct ways. As it was mentioned earlier, the Hungarian Parliament rarely held meetings – only a few days annually. However, as it was necessary to examine and control the society and the citizens as directly as possible, public administration also had to contain the instruments of effective control mechanism. It was the *real meaning of democratic centralism* that fulfilled the usual administrative tasks by such organs which looked similar to self-governments but were instructed by central powers.

The scope of authority of the councils was identified only by a laconic itemized list in the council acts of 1950 and 1954 but it was obvious: in addition to the functions of ordinary self-governance, they had to realize economic management and mass movement tasks as well. It was the way of completing the aims of the officially planned industrial achievements being regularized by normative directions. Collectivism also served that mission.[42] On the other hand, the importance of the collective mind of working men was propagated everywhere: the institutions of social mass connections and movements were the *consultation centres* for the local population, the *street and house committees* for people living in the same street or blocks of flats,[43] the *political units* at working places and the so-called common social actions *(társadalmi munkák)* for the working city (village) residents.

The idea of canalizing the society into political decisions was hypothetically right. What is more, sometimes its instruments were more sophisticated than the ones in Western Europe: the deputies were recallable by their electors who had the right to get to know the council members' reports on their public activities; they could express their problems or wishes to the council members in a direct way. Sometimes *social debates* were held to give a chance to the citizens to share their opinions on a concrete subject in consultation centres as it happened with regard to the second council act in 1954. However, it must be

[42] See for instance Acts XIII, XIV, XXV, XXVII, XXVIII and XXXV of 1948 on the collectivism of bauxite, aluminium and coal mining, that of some industrial units, electric stations and long distance transmission lines, ex-royal real properties, etc. See also BEREND T. Iván: *A szocialista gazdaság fejlődése Magyarországon, 1945–1975*. [Development of Socialist Economy in Hungary, 1945–1975] Budapest, 1979, especially pp. 145–146; ORBÁN Sándor: *Tanyaközpontosítás, községesítési kísérletek a felszabadulás után*. [Farm Centralisation and Villages after the Liberation of State] In: PÖLÖSKEI Ferenc and SZABAD György (Editors): A Magyar tanyarendszer múltja. Budapest, 1980, pp. 362–398.

[43] ANTAL 2009, pp. 163–169; ANTAL 2010, pp. 123.

emphasized that all these political rights were applicable only to informal conversations. Plebiscites or independent elections did not exist in reality; therefore the councils did not have to accept any of the expressed opinions. It was rather useful for the state *secret services* to find the "enemies" of the political system.[44]

The legal status of council members was *deputy type in character* which, *in principle*, included the right for the electors to recall and order them. They were not given salary for their work. The root of the problem was that all the candidates were politically tested and observed, men and women were nominated not by the electors but by the umbrella organization called *Patriotic People's Front* (earlier Hungarian Independent People's Front). It functioned as a sort of socialized counterpart of the state party from 1954, to make it look like elections were not entirely managed by one-party in Hungary. Officially, it constituted the "mass foundation" of the councils. In fact, although it served as an umbrella organization for many social groups, it was a political organization controlled by the party.[45]

Only its candidates had the right to be nominated in parliamentary or council elections. The electors could only decide whether to support the nominated person for the borough or not. Votes against the candidates of the People's Front were usually regarded as invalid. Even *double nomination* was prohibited before 1971. This way, the deputies were "pre-elected" as well as the members of the executive committees or the council chairmen. For instance, in 1950 the number of the very first city and district council chairmen (chairmen of the executive committees) was 193 and only one of them was not an effective member of the communist party. From these persons there were 122 workers by *original profession*, 30 peasants, 30 intellectuals and 11 people had "some other" kind of job. Their *actual scope of activities* was: 9 party functionaries, 3 mass organ functionaries, 27 state clerks, 5 chairmen of industrial units, 133 public administrative clerks, 14 cooperative society members and 2 single farmers.[46]

Although citizens had the right to order the elected deputies to render account of their work, the right to recall them was performed by the People's Front indeed, too, being *nearly equivalent* to the state party itself. Opinions on the

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[44] RÉVÉSZ Béla: *A titkosszolgálatok a politikában és a politológiában*. [Secret Services in Politics and Politology] = Acta Jur. et Pol. Szeged, Tomus LXX. Fasc. 13, Szeged, 2007.

[45] For more details see: *A magyar Népfront története, 1935–1976.* [A History of Hungarian People's Front, 1935–1976] Editor in chief: KÁLLAY Gyula. Budapest, 1977, Vol. 2, pp. 178–488.

[46] ANTAL 2009, p. 143.

democratic deficit could be whispered only in “the small circles of the society” as István Bibó, moralist and democratic philosopher, legal expert, minister of the Government in the heroic days of the revolution of 1956, said.[47]

The *quality of the council apparatus* has received much subsequent criticism and duly so, as during the first decade significant problems did occur in the work of the specialized organs of the councils. This was rooted in the phenomenon called *cadre policy*: political (background) reliability was the only factor considered when selecting and replacing senior and middle executives, which had the result that not only the council body but also the head of department posts in specialized organs were filled by completely unskilled people. It took at least a decade to reconcile the requirements of professional competence and political reliability. As a consequence, several operational anomalies arose in this period.[48] The original profession and qualification of leading council executives is also typical: in the city of Szeged, there was a wood technician, a tailor’s assistant, an onion gardener, a factory worker, an iron turner, a tiling assistant and an agricultural labourer among them. After a while, the regime realized the ensuing difficulties and employed considerably higher educated officials.[49] A significant outcome of this was that, from 1971 only a lawyer, from 1982 only a specialist lawyer could become secretary of the executive committee *(vb. titkár)* even in village councils. It must be emphasized, however, that there were prominent intellectual experts in this period, too, whose devoted, self-sacrificing work made the administrative machinery work in spite of all the difficulties.

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[47] SZILÁGYI Sándor: *Bibó István*. [István Bibó’s Collected Papers] Budapest, 2001. Biographic data and bibliography: pp. 395–425; RUSZOLY József: *Bibó István, a szegedi jogi kar professzora* (1946–1950). [István Bibó, Professor of Law at Szeged] In: Ruszoly József: “és így is a mi korunk”, [“and it is our age”] Budapest, 2006, pp. 235–242; Ferenc DONÁTH: *István Bibó and the Fundamental Issue of Hungarian Democracy*. In: John SAVILLE (Editor): The Socialist Register. London, 1981, pp. 221–246; Ágnes HORVÁTH: *The Concentration of Power and Self-Defending Society: Elements of a Conceptual Framework on the Works of Karl Polanyi and István Bibó*. In: State and Civil Society: Relationships in Flux, Editor: Vera GÁTHY. Budapest, 1989, pp. 47–63.

[48] DALLOS Ferenc: *Helyes munkaszervezéssel javítsuk végrehajtó bizottságaink munkáját*. [Let us Improve the Work of Executive Committees with the Proper Organization of Work] Állam és Igazgatás, 1950/8–9, pp. 507–515; BODOVSZKY Gyula: *Emeljük a végrehajtó bizottságok munkájának színvonalát*. [Let us Raise the Level of Work of Executive Committees] Állam és Igazgatás, 1952/7, pp. 350–356.

[49] ZAGYVA Imre: *A tanácsi végrehajtó bizottsági vezetők képzésének néhány problémája*. [Problems of the Training of the Leaders of the Executive Committees of Councils] Állam és Igazgatás, 1960/11, pp. 853–857; FARKAS Ottó: *A végrehajtó bizottságok vezetői képzésének néhány kérdése*. [Issues of the Training of the Leaders of Executive Committees] Állam és Igazgatás, 1963/12, pp. 908–918.

During the introduction of the new economic mechanism (nicknamed "goulash socialism")[50] in 1968, the Government created a decree on the main requirements for human relations instead of the previous one carried out in 1957 after the revolution. The new governmental decree contained three types of important *requirements for council clerks*: political ones, professional ones and the capability for being an executive clerk. These values were used until the end of the era. Only after 1974 did professionalism become the number one priority for executive posts.[51]

Although a permanent fight was on against complicated administration in the council offices, the specialized administrative organs were imbued with *bureaucratism*. Political influence increased this kind of feature as well, because many decisions could not be passed without the agreement of the party units or centralized administrative bureaus. As a consequence, council administration was indeed not more flexible than the previous municipal system; just the complicated legal processes were replaced by the safety mechanisms coming from the political guidance. The direct intervention even in individual cases, frequent in the first two decades, lessened into general directives and party recommendations in the 1970s. János Kádár, first secretary and head of the communist party,[52] expressed the essential summary at the 12th National Congress of the party in 1980 as follows: "the party instructs but does not give orders, leads but not rules".[53] In order to complete the tasks, the several units of the party were arranged into a hierarchical system similar to the levels and stages of public administration.

[50] BEREND T. Iván – RÁNKI György: *A magyar gazdaság száz éve*. [Hundred Years of the Hungarian Economy] Budapest, 1972, pp. 227–304; BEREND T. Iván: *A magyar gazdasági reform útján*. [The Way of Hungarian Economic Reforms] Budapest, 1988, pp. 177–366; BEREND 1979, pp. 142–156.

[51] ANTAL 2009, pp. 146–147; ZRINSZKY László: *A káderképzés pedagógiája*. [Pedagogy of Cadre Education] Budapest, 1982.

[52] János Kádár (1912–1989) became the Prime Minister of Hungary after betraying the revolution and the legal Hungarian Government in November 1956. As the leader of the Hungarian Socialist Labourers' Party *(Magyar Szocialista Munkáspárt)* he and the influence of the Soviet Union determined the real political power until 1987. The so-called "Kádár-regime" is a very inconsistent historical period – as well as the person his own – because after the retaliations following the unsuccessful revolution and the war of independence his political system introduced the new economic mechanism in Hungary in 1968 which brought a social consolidation for the society. On the other hand the democratic institutions did not work at all. Quite a lot of people still commemorate the last decade of the era as the time of calculable social security and the peaceful "soft dictatorship". László GYURKÓ: *János Kádár. Porträtskizze auf historischem Hintergrund*. Frankfurt am Meine–Budapest, 1988; HUSZÁR Tibor: *Kádár János politikai életrajza*. [János Kádár's Political Biography] Volumes 1–2. Budapest, 2001–2003; BERECZ János: *Kádár élt...* [Kádár lived...] Volumes 1–4. Budapest, 2008–2012; RAINER M. János: *Bevezetés a Kádárizmusba*. [An Introduction to Kádárism] Budapest, 2011.

[53] KISS 2000, pp. 134–135; PAPP Lajos: *Az MSZMP XII. kongresszusa után*. [After the 12th Congress of the Hungarian Socialist Labourers' Party] Állam és Igazgatás, 1980/6, pp. 481–496.

Another special feature of people's democracy was trying to forward its *ideological doctrines* right to the individual citizens through the media and propaganda organs. The secret services were responsible of observing and analyzing the events and happenings of every day life. Political commissaries helped with this monitoring activity: they were integrated into the councils and into the civil residential areas, too. For instance, janitors and the committees of flat renters were not only in charge of ensuring the protection of the residential environment or helping the "socialist peaceful coexistence" of citizens but they were also obliged to report their experiences to several council and state organs. It was the *real manifestation* of the "dictatorship of the proletariat": the state made efforts to penetrate into individual autonomy – with more or less success.[54]

5. § Secrets of party guidance with a concrete example

The sources of party guidance are mostly unknown to the researchers because this activity was not always formulated in archived documents. The existing evidence of the control of the communist party kept in ex-secret archives is still being processed. The author of this paper found a case to present the essence of political interventions but he stresses that it was a single case.[55] Some people who used to be involved in the administrative council life say that one should not draw general conclusions from the following events, while others consider it to be really characteristic of the era.

The case happened in Szeged, city of county rank in 1961 when the deputies of the centre of the communist party made deep investigations on the collision of the functionaries of the city council and the city department of the party. The anonymous investigator wrote a report on the data that he/she managed to find out. In this document, it is declared that the relation between the city department of the party and the apparatus of the executive committee of the city council "did not manifest the correct party attitude, it was unprincipled and harmful". It meant that the actors of this case lacked honesty, "comrade cooperation" and the harmonization of opinions in their work. The report concluded in its preamble: "the Szeged unit of the party frequently takes over the leader activity from the city council in local matters, it realizes direct operative tasks, which causes the diminishing of healthy essential control". The report

[54] George ORWELL wrote his famous anti-utopia titled *1984* to show the danger of such voluntarist states like people's democracies – where "Big Brother can see everything".

[55] ANTAL 2009, pp. 148–151. The original documents can be found in the National Archives of Csongrád County (Szeged, Hungary). Homepage: www.csml.hu

absorbed the notes of the separate conversations of the inspectors and the first secretary of the party department, the chairman and the secretary of the executive committee.

The *first secretary of the local party unit* pointed out that the lack of cooperation was the chairman of the executive committee's fault, since he was not self-confident and talented enough in leadership. He did not find the chairman suitable for the post in such a well prepared staff. Although the deputy chairman was a talented person, he could not collaborate with the chairman either, because they shared a common personal antipathy. The deputy chairman was under the influence of "petty bourgeois friends" – according to the valuation of the first secretary mentioned.

The *chairman of the executive committee (vb. elnök)* had a completely different opinion. He held the party functionaries responsible because they always had a negative judgment on the council's plans for investments, which tied the members of the council in their activity. The style of communication of the party was also obstructive. He concluded that "the executives of the council and its specialized organs as well as the apparatus are scared of being in a connection with the party since the representatives of the party usually hurt the self-esteem and the dignity of the members of the council staff". He added that there was a "cold" cadre education in the practice of the local party unit, too. He also expressed: "the party's intervention and interference in the individual cases were obvious. Even the complimentary tickets to the Szeged open-air theatre were distributed in that way."

The *secretary of the executive committee (vb. titkár)*, a man especially loyal to the party regularly, supported the chairman of the council in this debate and not his comrades in the party department. The *deputy chairman (vb. elnök-helyettes)* also said that the agenda of the executive committee frequently consisted of predetermined subjects. Finally, the people expressing their point of view concluded: "we are scared of debating".

The official report accepted the standpoint of *the chairman of the executive committee* and it found him a well educated and highly qualified man suitable for his function. The local party leaders were considered responsible for the anomalies in the work of the council. The report condemned the deputy chairman and the council secretary too, because they were not willing to collaborate with the chairman of the executive committee correctly.

The end of this central investigation was very significant: with the exception of the council chairman, all the criticised functionaries were removed from their posts and were assigned to other offices. Most of these were higher positions (!) than the ones they had held before.

6. § Valuation of local councils from historical aspects

In order to summarize, the author of this paper finds it *incorrect* if the 40 years of the system of councils are judged only by their political attributes or by their obvious democratic deficit because not only politically dependent Hungarian people lived and took part in the system. Public administration and the functioning of state management or council apparatus were indispensable to not only the party elite but to the society, too, as in every kind of state. After the examination of the legal norms created by the council organs (local decrees and resolutions), it can be said that they really worked to satisfy the local common needs of the population limited by the actual possibilities. Large cities paid very serious attention to solving the matters of housing, every settlement was involved in maintaining public markets, organizing the city/village policy and planning, supervising public security and order, providing local public health and sanitation, education, transportation, lighting of public places, etc. by the specialized organs *(szakigazgatási szervek)* of the executive committees.[56] All these basic functions were complemented with the monitoring of council industrial plants and factories, cooperation with non-council economic actors to satisfy the residents' needs.

The *program of housing* might be the most important positive heritage of council type city administration because hundreds of thousands of people could move to rent comfortable apartments in new blocks, financed by the state and the city councils, instead of the obsolete, rural environment without normal electricity or a sewer system. Urbanization made a great step forward and Hungarian cities were given a modern "new face".[57] A *demographic boom*

[56] Department of health, department of construction and transport, department of administration, department of industry, department of commerce, department of food and agriculture, department of labour, department of culture, department of finance, department of personnel and further education, department of planning, supervisory department of physical education and sports, secretariat of economics, secretariat of organization and law. BLAZOVICH László (Editor): *Csongrád megye tanácsainak tisztségviselői*. [Functionaries of the Councils of Csongrád County] Szeged, 2007, pp. 35–39.

[57] MADARÁSZ Tibor: *Városigazgatás és urbanizáció*. [City Administration and Urbanization] Budapest, 1971, pp. 23–33. For a detailed example read the first published complete city-historical monograph on the socialist era: TAKÁCS Máté: *Városépítészet, városkép*. [City Planning, City De-

was also characteristic in cities and the industrial predominance could be observed in the economy instead of the former agricultural one.

It was *not* an ontologically false conception of those who had imagined the system of councils as a new type of public administration in the early years of the 20th century in Russia or in political exile outside Russia. Vladimir Ilyich Lenin, aware of the provisional nature of the historic situation in 1917, forecasted the future in his *April Theses*: the new Russia would be "not a parliamentary republic but a republic of soviets of workers, agricultural labourers and peasants' deputies throughout the country, from top to bottom".[58] Following the thesis of Marxism and Leninism, the central state, based on local and territorial councils of the working class, was *not equal* with such a dictatorship like Stalinism or other one-party systems in Eastern and Central Europe originally. It is true that, being anti-capital, the council hierarchy was not cooperative with the bourgeoisies, yet it was not planned to be the territory of personality cult and political persecution.

Hungarian councils *developed a lot* during their existence. The wish for real self-governance appeared in the third council act (1971) and finally turned to a "soft dictatorship". The years after the new economic mechanism, the late 1970s and the 1980s, were the same as the previous ones on the field of legal sources but they operated more sophisticatedly and flexibly in practice. As the institutions and the means of the dictatorship became more bearable, the consciousness of the civil society latched on to its new latitude. The protesting Solidarity Movement in Poland[59] showed a way out of the regime called people's democracy: it was the "silent revolution" when millions of citizens turned their back on the communist party and state.

The special co-existence of the civil society and the party ended to a kind of "humanization" in the everyday life of the Hungarian local councils, too. The Presidential Council carried out a law-decree in 1983 on the modification of the third council act. The most important changing was the abolition of the district council offices *(járási hivatalok)* and the entire district administration with regard to the fact that the public administration had to be modernized and rationalized in Hungary. The last Parliament of the era (1985–1990) planned

sign] In: Szeged története, 1945–1990 [A History of Szeged, City of County Rank, 1945–1990], Editor: BLAZOVICH László. Szeged, 2010, pp. 19–84.

[58] KOVÁCS 1980, p. 22.

[59] Timothy GARTON ASH: *The Polish Revolution: Solidarity*. London, 1991; Roman LABA: *The Roots of Solidarity: A Political Sociology of Poland's Working-Class Democratization*. Princeton, N.J., 1991.

to pass the fourth council act as well but the beginning of the political and legal transformation in 1988/89 stopped the preparation of the bill: the time of soviet-type councils had gone. At Szeged there happened such an event in December of 1988 that could not have been possible before: the executive committee of the city council was recalled by the deputies without the previous agreement of the local party unit.[60] It was obvious for every provident expert:[61] the public administration of the future would be based on effective democratic institutions and de facto self-governance. (Unfortunately there is no chance of more detailed analyzing concerning the limited extensions of the length of this article).[62]

The final transformation of political and legal institutions (1989/90)[63] drew a hard line between itself and the entire council system, which came to an end on October 23rd, 1990, just on the 34th anniversary of the Hungarian revolution and war of independence in 1956.

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[60] ANTAL Tamás: *Közigazgatás*. [Public Administration] In: Szeged története, 1945–1990 [A History of Szeged, City of County Rank, 1945–1990], Editor: BLAZOVICH László. Szeged, 2010, pp. 301–302.

[61] See for example LŐRINCZ Lajos: *Magyar közigazgatás: dilemmák és perspektíva*. [Hungarian Public Administration: Questions and Perspective] Budapest, 1988, pp. 62–76; Gábor PETRI: *Changes of Concepts: Legislation on Local Governments, 1987–1990*. In: The Reform of Hungarian Public Administration, Editor: Klára TAKÁCS. Collection of Studies, Published by the Hungarian Institute of Public Administration in 1991 in English and French Language. Budapest, 1991, pp. 91–103.

[62] Gábor SZABÓ: *Localities in Transition: Re-emergency of Self-government System*. In: The Reform of Hungarian Public Administration, Editor: Klára TAKÁCS. Collection of Studies, Published by the Hungarian Institute of Public Administration in 1991 in English and French Language. Budapest, 1991. pp. 73–80; Gábor SZABÓ: *Local Elections in Hungary 1990: Some Facts and Consequences Based on Statistical Data*. In: The Reform of Hungarian Public Administration, Editor: Klára TAKÁCS. Collection of Studies, Published by the Hungarian Institute of Public Administration in 1991 in English and French Language. Budapest, 1991, pp. 107–113.

[63] PÖLÖSKEI–GERGELY–IZSÁK, pp. 273–286; MÁTHÉ 2000, pp. 453–460 (the cited chapter was written by István KUKORELLI).

A magyar közjog száz éve (1890–1990). Tanulmányok Magyarország újabb kori alkotmány- és jogtörténetéből

ANTAL Tamás

E könyv a magyar alkotmány- és jogtörténet 1890 és 1990 közötti időszakának súlyponti kérdéseiből válogat. Az említett száz esztendő a politikai, gazdasági és nemzetközi válságok évszázada volt, amely megrázkódtatások sorát tartalmazta egész Európa, benne Magyarország számára is. A kötet szerzője nem átfogó képet szándékszik adni az említett időszakokról, hanem azokat egy-egy jellemző jogintézményi rendszeren keresztül tárja az olvasó elé. Ennek megfelelően a három történelmi periódus: az osztrák-magyar dualizmus kései békeévei (1890–1914), majd a két világháború közötti „Horthy-korszak" (1919/20–1944) és a második világháborút követő népi demokratikus állam és jogrendszer (1949–1989/90) működésének némely kérdéseit állítja a vizsgálódások középpontjába. Ennek megfelelően a dualizmuskori magyar bírósági szervezet reformjairól, a világháborúk között tovább élő polgári állam törvényhatósági-közigazgatási rendszeréről, végül pedig a szovjet típusú tanácsrendszerről és a baloldali diktatúra közjogi jellemzőiről tartalmaz a könyv tanulmányokat. A lábjegyzetekben feltüntetett források is jelzik: jogtörténeti szempontú, idegen nyelvű összefoglalások eddig kis számban keletkeztek a magyar történelem ezen évtizedeiről, amely hiányt e kötet sem pótolja, de betekintést nyújt a közjogi változások sorozatába, amelyek egyszersmind adalékok a tágabb, középeurópai jogfejlődés históriájához is.

1. *A könyv első részében* (13–76. p.) az 1890-es években végbemenő törvénykezési (bírósági) szervezeti és perjogi változásokról olvasható. A magyar jogszolgáltatási reformok első nagyobb korszaka 1875-ben befejeződött, s kialakult a dualizmuskori bírósági szervezet váza, amely azonban a 19. évszázad végére újabb korrekciókra szorult. Ezek részint szervezeti-intézményi, részint eljárásjogi, kodifikációs jellegűek voltak. A változások kiinduló pontját mindenképpen Szilágyi Dezső igazságügy-miniszter (1889–1895) tevékenysége jelentette: amikor a mérsékelt ellenzék soraiból meghívták a magyar kormányba, számos feladat megoldását várták tőle. Ezek közé tartozott különösen a bírósági fellebbviteli rendszer és az ítélőtáblák, valamint a bírói szolgálati jogviszony reformja, a közigazgatási bíráskodás kiterjesztése, a választási bíráskodás bifurkációs átalakítása, a börtönügy és a sajátos konzuli bíráskodás modernizálása, továbbá a hosszú ideje húzódó bűnvádi s polgári eljárásjogi kodifikációk felgyorsítása, befejezése.

Az *első tanulmány* (15–36. p.) a magyar esküdtszéki bíráskodás történetét foglalja össze: a reformkori és az 1848. évi első kísérletektől az 1867-től kibontakozó sajtóesküdtszéki bíráskodáson keresztül a *jury* hatáskörének kiterjesztéséig és az első Bűnvádi perrendtartásba (1896) való beemeléséig. Az esküdtszék magyarországi története egyben rávilágít e jogintézmény sajátosságain keresztül a korszak társadalmi problémáira, a magyar állam belső szervezeti ellentmondásira, valamint a nemzetiségi kérdések nem megfelelő kezelésének némely elemeire is. Az olvasó megismerheti a reformkori országgyűlési törekvéseket, különösen az 1843/44. évi büntetőjogi törvénytervezetek, a liberális követek és az esküdtszék viszonyát, majd pedig a sajtóesküdtszékek létrehozásának körülményeit az 1848. évi forradalom folyamában. A tanulmány részletesebben a kiegyezést követő esküdtszéki rendeletekkel és az eljárás egyes jellemzőivel, a velük kapcsolatos szakmai nézetekkel, a korszakot meghatározó személyiségekkel – politikusokkal és jogtudósokkal – foglalkozik, majd pedig a *jury* és a Bűnvádi perrendtartás kodifikációjának viszonyát, az esküdtszék reorganizációját mutatja be röviden. Az országgyűlési felszólalók, valamint a korabeli jogtudósok véleményein keresztül látható, hogy az esküdtszék mennyire hozzá tartozott a 19. századvégi jogállamiság fogalmához Európa-szerte, ugyanakkor az is kirajzolódik, hogy nem minden európai ország és társadalom érett meg *de facto* arra a felelősségtudatra, amellyel ezen intézmény francia mintájának adaptációja együtt járt. Minden esetre az esküdtszéket támogatók és ellenzők érvelését a történelem törte meg, midőn az első világháború elsodorta a liberális állam eszméjét, benne a magyarországi esküdtszéket is.

A *második tanulmány* (37–54. p.) a bírósági szervezeti reformok köréből az ítélőtáblák 1890/91. évi decentralizációjának körülményeibe enged betekintést a temesvári királyi ítélőtábla megszervezésének históriáján keresztül. A Szilágyi Dezső nevével jelzett közjogi változások mintegy nyitánya volt a jogorvoslati fórumok reformja, mely által az addigi kettő (Budapest és Marosvásárhely) helyébe tizenegy ítélőtábla lépett. A kilenc új fórumot Pozsonyban, Kassán, Debrecenben, Nagyváradon, Kolozsvárott, Temesváron, Szegeden, Pécsett és Győrben állították fel. A magyar bírósági szervezet jelentékeny fejlődésen ment keresztül ezáltal, mivel alkalmassá vált a szóbeliség és közvetlenség elvének biztosítására, amelyek mind a polgári, mind a büntetőeljárás új alapokra helyezése szempontjából elsődlegesek voltak. A korszerű törvénykezési szervezet ekkor érte el klasszikus formáját Magyarországon: a rendes bíróságok négyszintű tagozódása (a királyi járásbíróságok, a vármegyei törvényszékek, az ítélőtáblák és a Kúria) egészen 1951-ig létezett. A tanulmány részletezi Temesvár példáján a szervezés folyamatának jellemzőit, a felmerülő áldozatvállalás anyagi oldalának megosztását, a bírói kinevezések rendjét, va-

lamint Szilágyi Dezső (1840–1901) pályájának és emlékezetének értékelését, amely messze túlmutatott a magyar államon: ő Közép-Európa népei és nemzetei közös előrehaladásának zászlaját emelte fel – sajnálatos módon a kortársak közül csak kevesen követték a példáját.

A konzuli bíráskodásról szóló *harmadik tanulmány* (55–76. p.) egy mára történetivé vált jogintézményre hívja fel a figyelmet, egyszersmind rávilágít mindazon közjogi ellentmondásokra, amelyek a dualizmus egész korszakát áthatották. A konzuli bíráskodás – Szilágyi Dezső találó szavaival élve: egy „közjogi anomália" – ma nem lévő intézmény, ezért rövid bevezetés olvasható arról, mikor és milyen formákban alakult ki az európai és a keleti egzotikus államok, birodalmak között, hol helyezkedett el a jogrendszerek találkozási pontjaiban. Az osztrák-magyar konzuli bíráskodás vegyes jellegű volt: mindkét kormányzat tagadta, hogy egy újabb közös ügy keletkezett volna a két állam, az Osztrák Császárság és a Magyar Királyság között, ugyanakkor az a tény, mely szerint közös szervek gyakorolták azt, érzékenyen érintette a közös ügyek, a reálunió és a nemzeti szuverenitás problematikáját. Külön figyelmet szentel a szerző a Konstantinápolyban felállított konzuli főtörvényszéknek, amely a reform talán legfontosabb nóvuma volt. A nemzetközi és a belső jog határán elhelyezkedő konzuli törvénykezés szemléletes példája annak, hogy 1945 előtt az európai államok mennyire nem tekintették magukkal egyenrangúaknak az ázsiai országokat és társadalmakat.

2. *A könyv második része* (77–106. p.) az 1919 és 1944 közötti Magyarországra kalauzolja az olvasót a területi közigazgatási reformokon keresztül. Az 1872-től működő köztörvényhatósági rendszer revíziója az első világháború után egyértelműen szükségessé vált, de mivel a területi közigazgatás reformja mindig érzékenyen érinti a fennálló politikai rendszert, ezért arra 1929-ig lényegében nem került sor. A magyar kormányok a gazdasági stabilizációt tartván szem előtt a vármegyék és a törvényhatósági jogú városok belső szervezetének, valamint a közigazgatási eljárásnak a mélyebb átalakítását egyre halogatták, minek az lett a következménye, hogy a világháború és a hadiállapot megszűnte után egy évtizeddel még mindig az 1914 előtt választott testületek vezették a törvényhatóságokat. A várva-várt közjogi reformot az országgyűlés végül csak 1928 és 1929 folyamán fogadta el, minek következtében a magyar közigazgatás addigi rendszerét fenntartva, de lényeges újításokat is hozva egy választóvonalat rajzolt a Horthy-korszak egyébként is sajátos történetébe. A tanulmány ennek a szakmai előkészületeit mutatja be először, majd Hódmezővásárhely példáján részletesen taglalja a városi törvényhatóságok belső szervezetét – tekintettel az 1929. évi változásokra is. Ennek keretében részletezi a törvényhatósági bizottságok tagjainak jogi jellemzőit és jogállását, valamint a

szerv működésének és hatáskörének ismérveit, továbbá az említett reformok által létrehozott törvényhatósági kisgyűlést, a szintén módosított hatáskörű közigazgatási bizottságot, illetve az akkor megszüntetett városi tanácsot és annak ügyosztályait. A törvényhatóság egyszemélyi szervei közül a szerző kitér a polgármesterre, a városi főjegyzőre, a községi bíróra, az anyakönyvi hivatal tisztviselőire, valamint a kormányzatot képviselő főispánra.

A rendszer működésének középpontjában részint a heterogén összetételű törvényhatósági bizottság, valamint a kisgyűlés és a főispán képviselte kormányérdekek gyakori ellentéte, részint a helyi tisztségviselők és a politikai megosztottság egymásra hatása állott. Ugyanakkor a területi közigazgatás összetettsége szintén tetten érhető: a helyiekből centralizált állami szervek és a továbbra is törvényhatósági szervek egyre bonyolultabban szőtték át egymást, amely körülményt nehezítette az éra második felében az országban megnyilvánuló politikai és jogrendi jobbratolódás. A „király nélküli királyság" korszakának ellentmondásos közjogi viszonyait, a dualizmus korából átöröklött és továbbéltetett múlt, valamint a rátorlódó új tendenciák feszültségét szemléltetik az itt olvasható fejtegetések.

3. *A könyv harmadik részét* (107–164. p.) a szovjet típusú helyi közigazgatás és képviseleti rendszer vizsgálata képezi részint külföldi összehasonlító jellegű, részint magyar jogtörténeti megközelítésben. A népi demokratikus jogrendszerek és diktatúrák megértéséhez nélkülözhetetlen a szovjetek mintáját követő tanácsrendszerek törvényi és rendeleti szabályozásának legalább vázlatos ismerete. Maguk a munkás- és paraszttanácsok (szovjetek) az első polgári demokratikus forradalom idején szerveződtek meg Oroszországban (1905), majd jelentőséghez 1917-ben jutottak ugyanott a kettős hatalom időszakában, s végül alkotmányos intézményként először az 1918. évi szovjet-orosz alkotmányban jelentek meg. Ezt a közigazgatási rendszert valamennyi későbbi szovjet alkotmány átvette (1924, 1936, 1977), és követték 1945 után a kelet-közép-európai, újonnan létrejött baloldali rendszerek is egészen az 1989/90. évi átalakulásokig.

Magyarországon az 1950. évi I. tv. hívta életre a tanácsrendszert, ezt az 1954. évi X. tv., majd az 1971. évi I. tv. követte. Ugyan a harmadik tanácstörvény már próbálkozott önkormányzati színezetet vinni a közigazgatásba legalább annak alapelvei között, a struktúra hierarchikus volta, központi irányítottsága és a hatalmi ágak szétválasztásával szemben álló jellege lényegében nem változott. A szisztéma kiindulópontja ugyanis éppen a teljes centralizáció volt, a felső szintű állami irányítás közvetlen befolyása az államszervezet minden elemére azzal, hogy a helyi és területi érdekeltségű ügyek létezését ettől füg-

getlenül nem tagadták. A végrehajtó bizottság például a tanács mint szocialista képviseleti szerv által választott és létrehozott testület volt, amelynek mint végrehajtó szervnek igazodnia kellett az őt életre hívó tanács jogi normáihoz és a felettes végrehajtó bizottság normatív és egyéb aktusaihoz is. Így a minisztériumok láncolatos és közvetlen nexusban álltak a megyei vb.-kkel és a járási, illetve a városi/községi vb. testületekkel. Mindezek mellett nem elhanyagolható a rendszer működése szempontjából a párt analóg szervezetének befolyása sem.

A harmadik szerkezeti egység jelentősebb részét – a nemzetközi kitekintést követően – Szeged Megyei Város Tanácsának, pontosabban szerveinek, azok működésének és jogszabályainak bemutatása képezi. Ennek kiindulópontja az 1971 után többször módosított és újraszövegezett szervezeti és működési szabályzatok elemzése, összevetése és a fejlődési ívük megrajzolása. Mindezek keretében külön vizsgálja a szerző a tanácsi testületi szervek (a plénum és a tanácsi állandó bizottságok), valamint a küldöttek, továbbá a végrehajtó bizottság, a szakigazgatási szervek és a szakhivatalok jogi – elsődlegesen normatív – jellemzőit. Fontos kérdés a tanácsok és az egyéb állami szervek (az országgyűlés, az elnöki tanács, a minisztertanács, az egyéb helyi tanácsok), illetve a pártjellegű szervek (a Hazafias Népfront, a Kommunista Ifjúsági Szövetség és maga az állampárt) egymáshoz való viszonyának bemutatása is. A tanácsrendszer értékelését célszerű két irányból megközelíteni: részint a korabeli források és tanulmányok útján, amelyek jogi s helybeli folyóiratokban jelentek meg nagy számban, részint az utókor visszatekintő megítélése alapján. Azonban következetesen törekedni kell az objektivitásra: nem politikai és érzelmi, hanem szakmai szemszögből szükséges megítélni a tanácskorszakot is a hitelesség és a történeti hűség tükrében.

Sto godina mađarskog javnog prava (1890–1990). Studije iz novije ustavnopravne istorije Mađarske

Tamás ANTAL

Ova knjiga predstavlja izbor najznačajnijih pitanja mađarske ustavne i javnopravne istorije u periodu od 1890. do 1990. godine. Pomenutih sto godina bilo je razdoblje bremenito političkim, ekonomskim i međunarodnim krizama, koje su za posledicu imale niz događaja koji su potresli Evropu, pa samim tim i Mađarsku. Autor ovog rada nema nameru da da preglednu sliku čitavog ovoga perioda, već ga kroz pojedine karakteristične pravne institute stavlja na uvid čitaocu. Shodno tome u centar istraživanja stavlja pojedina pitanja funkcionisanja države i pravnog sistema u tri istorijska perioda: mirnog doba austro-ugarskog dualizma (1890–1914), „Horthyjeve-ere" između dva svetska rata (1919/20–1944), te razdoblja narodne demokratske države i pravnog sistema, koji su usledili nakon Drugog svetskog rata (1949–1989/90). U skladu sa navedenim knjiga sadrži studije o reformi mađarskog pravosudnog sistema u periodu dualizma, o pravosudno-upravnom sistemu građanske države koja je postojala između dva svetska rata, kao i o sovjetskom modelu sistema takozvanih „sovjeta" i o javnopravnim karakteristikama diktature proleterijata. Izvori i literatura, navedeni u napomenama, ukazuju da su do sada o navedenim periodima mađarske istorije, na stranim jezicima objavljeni malobrojni tekstovi pravnoistorijske sadržine. Ovaj rad, doduše, ne uklanja navedeni nedostatak, već daje uvid u niz javnopravnih promena koje istovremeno mogu da posluže i kao prilozi za širu istoriju srednjoevropskog pravnog razvoja.

1. *U prvom delu knjige* (str. 13–76) autor nas upoznaje sa promenama u organizaciji sudova i procesnog prava, koje su sprovedene devedesetih godina XIX veka. Prvo razdoblje mađarskih pravosudnih reformi završeno je 1875. godine i tada je nastao okvir sudske organizacije iz perioda dualizma, koji je, međutim, pred kraj XIX veka pokazao potrebu za ispravkama. One su delom bile organizaciono-institucionalnog, a delom procesno-pravnog karaktera. Polaznu tačku ovih promena svakako je predstavljala delatnost ministra pravde Silađi Dežea (Szilágyi Dezső). Kada je 1889. godine pozvan iz redova umerene opozicije u mađarsku vladu, od njega se očekivalo rešavanje brojnih zadataka. Među njima se naročito izdvajala potreba za reformom sudskog žalbenog postupka i takozvanih „sudbenih stolova", kao i za izmenom pravnog položaja sudija, te proširenjem delokruga upravnog sudstva, dvostepenim preuređenjem izbranih sudova, modernizacijom zatvorskog sistema i

specifičnog „konzulskog” sudstva, odnosno za ubrzavanjem i završetkom dugotrajnog procesa kodifikacije krivičnog i građanskog procesnog prava.

Prvo poglavlje (str. 15–36) daje pregled istorije mađarskog porotnog suđenja od prvih pokušaja iz vremena reformnog razdoblja i revolucionarne 1848. godine, preko porotnog suđenja u sporovima vezanim za štampu, nastalim 1867. godine, proširivanjem delokruga porote *(jury)*, do njenog konačnog regulisanja prvim mađarskim Zakonikom o krivičnom postupku (1896). Istorija porotnog suđenja u Mađarskoj, zahvaljujući specifičnostima ovog pravnog instituta, ujedno osvetljava i društvene probleme navedene epohe, unutrašnje protivurečnosti mađarskog državnog uređenja, kao i neke elemente neodgovarajućeg odnosa prema nemađarskim narodima. Čitalac može da se upozna sa nastojanjima ugarskog sabora u reformnom razdoblju, a naročito sa nacrtima krivičnopravnog zakonika od 1843/44. godine, sa odnosima između liberalnih poslanika i porote, a zatim i sa okolnostima stvaranja porotnih sudova u sklopu revolucionarnih zbivanja 1848. godine. Studija se detaljnije bavi uredbama vezanim za porotno sudstvo i pojedinim karakteristikama sudskog postupka u periodu nakon nagodbe, kao i sa stručnim gledištima i ličnostima koje su obeležile tu epohu: političarima i naučnicima iz oblasti prava. U daljem tekstu razmatra se pitanje porote *(jury)* u svetlu kodifikacije krivičnog procesnog prava. Sem toga, studija ukratko prikazuje reorganizaciju porotnog suda. Preko govornika u parlamentu, kao i mišljenja tadašnje pravne nauke, može se videti u kojoj meri je porotno suđenje bilo sastavni deo shvatanja o pravnoj državi u celoj Evropi XIX veka. Pored toga, autor naglašava, ni da svaka evropska država nije bila sazrela do onog stepena na kome bi mogla da prihvati francuski model ovog instituta. U svakom slučaju, istorijski tok događaja (izbijanje Prvog svetskog rata) je prekinuo i argumente zagovornika, i argumente protivnika porotnog suđenja.

Drugo poglavlje (str. 37–54) pruža nam uvid u reformu organizacije sudstva i to kroz okolnosti decentralizacije sudbenih stolova 1890/1891. godine, na primeru istorije organizovanja kraljevskog sudbenog stola u Temišvaru. Reforma foruma koji su rešavali po pravnim lekovima bila je neka vrsta otpočinjanja javnopravnih promena personifikovanih u ličnosi Silađi Dežea. Njome je umesto tadašnja dva (u Budimpešti i Târgu Murešu, mađarski: Marosvásárhely) organizovano jedanaest sudbenih stolova. Devet novih sudskih foruma osnovano je u Bratislavi (Požunu), Košicama, Debrecenu, Velikom Varadinu, Kluž Napoki (mađarski: Kolozsvár), Temišvaru, Segedinu, Pečuju i Đeru (mađarski: Győr). Time je mađarska pravosudna organizacija prošla kroz značajan razvoj, budući da je postala sposobna da obezbedi primenu principa usmenosti i neposrednosti, koji su bili primarni u postavl-

janju novih temelja kako u pogledu građanskog, tako i krivičnog postupka. U Mađarskoj je tada savremena pravosudna organizacija dobila svoju klasičnu formu, izraženu kroz četiri nivoa redovnih sudova: kraljevski opštinski sudovi, županijski tribunali, sudbeni stolovi i Kurija, koji su funkcionisali sve do 1951. godine. Studija na primeru Temišvara detaljno opisuje karakteristike sudske organizacije, načina nadoknade nastalih materijalnih troškova, postupak imenovanja sudija, odnosno vrednovanje karijere i rada Silađi Dežea (Szilágyi Dezső, 1840–1901), koja prevazilazi granice mađarske države: on je bio barjaktar koji je podigao zastavu zajedničkog napretka naroda i narodnosti Srednje Evrope, ali su na žalost njegov primer sledili tek retki među njegovim savremenicima.

Na konzulsko sudstvo, koje je danas već postalo istorijskopravni institut, odnosi se *treće poglavlje* (str. 55–76). Ono sa jedne strane, osvetljava sve javnopravne protivurečnosti koje su se javljale tokom celog perioda dualizma. Konzulsko suđenje je prema rečima Silađi Dežea, jedna „javnopravna anomalija”, institut koji danas više ne postoji. Stoga, čitalac može da sazna kratak pregled nastanka toga instituta, kao i u kojim evropskim državama je ono bilo u primeni. Konzulsko sudstvo u Austro-Ugarskoj imalo je mešoviti karakter: obe vlade su poricale da je između dveju država, Austrijske Carevine i Mađarskog Kraljevstva, njegovim postojanjem nastao još jedan novi posao koga one treba da zajednički rešavaju; istovremeno, u vezi problematike zajedničkih poslova, realne unije i nacionalnog suvereniteta, konzulsko sudstvo je predstavljalo osetljivo pitanje s obzirom na činjenicu da su ga obavljali zajednički organi. Autor posvećuje posebnu pažnju vrhovnom konzulskom sudu osnovanom u Carigradu, koji je verovatno bio najvažniji novitet cele reforme. Konzulsko sudstvo, koje je stojalo na granici između međunarodnog i unutrašnjeg prava, očigledan je primer u kolikoj meri se evropske države pre 1945. godine nisu smatrale ravnopravnima u odnosu na azijske države i društva.

2. *Drugi deo knjige* (str. 77–106), opisujući upravno-teritorijalne reforme, uvodi čitaoca u mađarske prilike u periodu od 1919. do 1944. godine. Revizija sistema javne uprave, kakav je funkcionisao od 1872. godine neosporno se pokazala potrebnom nakon Prvog svetskog rata, ali budući da reforma teritorijalne uprave uvek izaziva probleme za postojeći politički sistem, do nje u suštini nije došlo sve do 1929. godine. Mađarske vlade, su nastojeći da očuvaju privrednu stabilnost, odlagale sprovođenje promena unutrašnje organizacije županija i gradova sa municipalnim statusom, kao i korenitu reformu upravnog postupka, što je imalo za posledicu da su i nakon jedne decenije po završetku svetskog rata i okončanja ratnog stanja, gradove sa statusom municipija još uvek vodila tela izabrana pre 1914. godine. Dugo očekivanu

reformu uprave, parlament je konačno usvojio u periodu 1928–1929. godine tako što je zadržan dotadašnji sistem mađarske uprave, ali su uvedene suštinske novosti, čime je nastala prekretnica u, i inače specifičnoj, istoriji Hortijeve (Horthy) ere. U studiji je prvo dat prikaz stručnih priprema za to, a zatim je na primeru Hodmezevašarheja (Hódmezővásárhely) detaljno prikazana unutrašnja organizacija gradova sa statusom municipija, imajući u vidu i promene iz 1929. godine. U okviru toga, autor detaljno opisuje svojstva i pravni položaj članova gradskih veća municipalnih samouprava, kao i kriterijume funkcionisanja organa i njihov delokrug. U daljem tekstu se daje prikaz male gradske skupštine u municipalnom sistemu, koja je ustrojena prema navedenim reformama, zatim upravnog odbora sa takođe izmenjenim delokrugom ovlašćenja, kao i tada ukinutih gradskih veća i njihovih odseka. Od inokosnih organa gradova sa lokalnom autonomijom, autor čitaoce upoznaje sa funkcijom gradonačelnika, glavnog gradskog notara, opštinskog sudije, te činovnicima matičnog ureda, odnosno sa funkcijom velikog župana kao predstavnika vlade.

U centru funkcionisanja sistema stajalo je gradsko veće municipija, čiji je sastav bio heterogen, i odražavao protivurečnosti između male skupštine i velikog župana kao predstavnika vladinih interesa. Na funkcionisanje sistema delom su uticali lokalni činovnici i njihova različita politička pripadnost. Istovremeno, možemo pratiti i složenost teritorijalne uprave: sve su se zamršenije isprepletali centralizovani državni organi, sastavljeni od lokalnih činovnika i organi gradova sa lokalnom samoupravom, a tu je okolnost otežavalo i sve izraženije pomeranje političkog i pravnog sistema zemlje u desno, tokom druge polovine ovog razdoblja. Autor nam u daljem tekstu razlaže protivurečne javnopravne odnose u periodu „kraljevine bez kralja", iz doba dualizma nasleđenu ali i dalje živu prošlost, kao i na njih nadograđene nove tendencije koje su dovele do društvenih napetosti.

3. *Treći deo knjige* (str. 107–164) donosi ispitivanje sovjetskog tipa lokalne uprave i predstavničkog sistema, koje je jednim delom komparartivnog karaktera, tako šro se upoređuje sa inostranim primerima, a sa druge strane se pak ispitivanje vrši kroz prizmu mađarske pravne istorije. Za razumevanje pravnih sistema narodnih demokratija i diktatura neophodno je upoznati barem okvire zakonske i druge normativne regulative sistema veća, organizovanog prema modelu sovjeta. Radnička i seljačka veća (sovjeti) nastala su u Rusiji u vreme prve građanske demokratske revolucije (1905. godine), a zatim su postala zvanična 1917. godine u eri „dvojne vlasti", te su se napokon kao ustavna institucija pojavili u sovjetsko-ruskom ustavu 1918. godine. Ovaj upravni sistem su kasnije preuzeli svi ustavi Sovjetskog Saveza (1924, 1936,

1977), a posle 1945. godine su ga sledili i svi srednjoevropski državni sistemi predvođeni levicom, sve do demokratskih promena 1989/90. godine.

U Mađarskoj je sistem sovjeta uveden zakonom broj I. iz 1950. godine, a iza njega su sledili zakon broj X. iz 1954. godine, te zakon broj I. iz 1971. godine. Iako je treći zakon o većima (sovjetima) već pokušavao da unese u upravu elemente samouprave, barem među njegovim osnovnim načelima, ipak se njena hijerarhijska struktura, rukovođenje iz jednog centra i karakter protivan principu podele vlasti, u suštini nisu promenili. Naime, polazna tačka sistema bila je upravo potpuna centralizacija, direktan uticaj gornjeg nivoa državnog rukovodstva na svaki element državne uprave, ali tako da uprkos tome nije osporavano postojanje poslova od lokalnog i teritorijalnog interesa. Tako je na primer, izvršni odbor bio telo izabrano i ustanovljeno od strane veća kao socijalističkog predstavničkog organa, te je kao izvršni organ trebalo da bude usklađeno sa pravnim normama veća koje ga je osnovalo, kao i sa normativnim i drugim aktima njemu nadređenog izvršnog odbora. Na taj su način ministarstva stajala u lančanom i direktnom nexusu prema županijskim izvršnim odborima, kao i prema telima opštinskih, odnosno gradskih (opštinskih) izvršnih odbora. Pored svega navedenog u pogledu funkcionisanja sistema ne sme da se zanemari ni uticaj partijske organizacije.

Nakon osvrta na međunarodne okolnosti, studija se u značajnom delu bavi prikazom funkcionisanja Veća županijskog grada Segedina, tačnije njegovih organa, kao i pravne regulative. Polaznu tačku u tome predstavlja analiza, poređenje i opis razvoja pravilnika o organizaciji i radu tih tela, koji su posle 1971. godine više puta menjani i dopunjavani, ili pak objavljeni u izmenjenom tekstu. U okviru istoga, autor posebno istražuje pravne – prvenstveno normativne – karakteristike tela Veća (plenum i stalni odbori), odnosno poslanika, zatim izvršnog odbora, stručnih rukovodećih organa i stručnih direkcija. Važno pitanje je i prikazivanje međusobnog odnosa između Veća i drugih državnih organa (parlamenta, predsedničkog veća, ministarskog veća i ostalih lokalnih veća), odnosno organa partijskog karaktera (Patriotski narodni front, Savez komunističke omladine i sama državna partija). Procena sistema veća svrsishodno je da se izvrši iz dva ugla: sa jedne strane na osnovu savremenih izvora i studija, koji se u velikom broju pojavljuju u pravnim i lokalnim časopisima, a delom i na osnovu ocene kasnijih pokoljenja. Pri tome treba konsekventno nastojati da se sačuva objektivnost, dakle funkcionisanje veća ne sme da se ocenjuje na bazi političkih preferencija i emocija, nego ga treba posmatrati sa stručnog gledišta, u ogledalu verodostojnih istorijskih činjenica.

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