

VOL. 14 / 2023

No. 1

JOURNAL ON EUROPEAN HISTORY OF LAW



JOURNAL



STS
SCIENCE CENTRE



JOURNAL ON EUROPEAN HISTORY OF LAW



JOURNAL

VOL. 14 / 2023 NO. 1

Editorial staff

JOURNAL ON EUROPEAN HISTORY OF LAW:

Prof. Dr. Christian Baldus

Faculty of Law, Heidelberg University, Germany

JUDr. PhDr. Stanislav Balík, Ph.D.

Faculty of Law, Westbohemia University, Plzeň, Czech Republic

Prof. Dr. Barna Mezey

Faculty of Law, Eötvös-Loránd-University Budapest, Hungary

Prof. JUDr. Jozef Beňa, CSc.

Faculty of Law, Comenius University in Bratislava,
Slovak Republic

Doc. JUDr. PhDr. Jiří Bílý, CSc.

Metropole – University Prague, Czech Republic

Daniela Buccomino, Ph.D.

University of Milan, Italy

dr hab. Piotr Fiedorczyk

Faculty of Law, University of Białystok, Poland

Alberto Iglesias Garzón, Ph.D.

Charles III University of Madrid, Spain

Prof. Dr.iur. Dr.phil. Thomas Gergen, MA

Institut Supérieur de l'Economie,
ISEC Université Luxembourg

Prof. Dr. Gábor Hamza

Faculty of Law, Eötvös-Loránd-University Budapest, Hungary

Doc. JUDr. Vilém Knoll, Ph.D.

Faculty of Law, Westbohemia University, Plzeň,
Czech Republic

JUDr. David Kolumber, Ph.D.

Faculty of Law, Masaryk University, Brno, Czech Republic

izv. prof. dr. sc. Ivan Kosnica

Faculty of Law, University of Zagreb, Croatia

izv. prof. dr. sc. Mirela Krešić

Faculty of Law, University of Zagreb, Croatia

Prof. zw. dr hab. Adam Lityński

Faculty of Law, Humanitas University in Sosnowiec, Poland

Doc. Dr. Olga Lysenko

Faculty of Law, Lomonosov Moscow State University, Russia

Tony Murphy

Department of Law & Criminology,
Sheffield Hallam University, UK

ao. Univ. Prof. Dr.jur. Christian Neschwara

Faculty of Law, University of Vienna, Austria

Prof. Dr. Dmitry Poldnikov

Faculty of Law, National Research University,
Higher School of Economics, Moscow, Russia

Dr Dr Guido Rossi

Edinburgh Law School – University of Edinburgh, UK

Doc. JUDr. Karel Schelle, CSc.

Attorney at Law, Brno, Czech Republic

Dr. Gábor Schweitzer, Ph.D.

Institute for Legal Studies
of the Hungarian Academy of Sciences, Hungary

Adw. Ewa Stawicka

Poland

Dr. Magdolna Szűcs, Ph.D.

Faculty of Law, University of Novi Sad, Serbia

Doc. JUDr. Bc. Jaromír Tauchen, Ph.D., LL.M.

Faculty of Law, Masaryk University, Brno, Czech Republic

Dr. Norbert Varga

Faculty of Law, University of Szeged, Hungary

Prof. Dr. Wulf Eckart Voß

Faculty of Law, University of Osnabrück, Germany

TABLE OF CONTENTS

<i>Miriam Gassner</i> : From Brest-Litovsk via St. Germain to Sèvres - A Legal Perspective on the Peace Treaties and the Disintegration of Three Multi-ethnic Empires at the End of the First World War	2
<i>Christoph Schmetterer</i> : Die Diskussion um die Rückwirkung bei Einführung der Untreue in Österreich 1931	15
<i>Viđ Žepić</i> : <i>Iudex scepro acquitatis armandus est</i> . Richterliche Insignien in der europäischen Rechtstradition bis zum 18. Jahrhundert	24
<i>Peter Roethke</i> : Virtuous Promises: The Changing Oaths of the Reichshofrat and the Appearance of Impartiality	36
<i>Daniela Buccomino</i> : 'ascendere a sommi gradi... cumular infinite ricchezze' / 'Ascending to Great Heights... Cumulating Infinite Riches'. Legal Education and Professional Careers in the State of Milan (16th–18th Century)	44
<i>Carlos Sardinha</i> : Natural Law and the Defense of Freedom of Trade and Navigation in Hugo Grotius' <i>Mare Liberum</i> (1609) with Regard to the Seizure of the Portuguese Carrack <i>Santa Catarina</i> by the Dutch during the Reign of Philip III of Spain (1603)	62
<i>Charalampos Stamelos</i> : Historical and Philosophical Overview of the Law of Ancient Cyprus up to Roman Times	70
<i>Adolfo A. Diaz-Bautista Cremades</i> : Approaching the Legal Regime of Consensual Abduction Through History	78
<i>Tereza Kolumber</i> : Legal Regulation of Elementary and Upper Elementary Schools during the Second Czecho-Slovak Republic and the Protectorate of Bohemia and Moravia	88
<i>Ján Štefanica</i> : Causes of Political Trials against Slovak Nationalists in Czechoslovakia	99
<i>Veronika Lehotay</i> : Strafrecht in Ungarn (1920–1944)	106
<i>Elemér Balogh</i> : Iurisprudentia in Medieval Ecclesiastical Jurisdiction (The Role of the <i>iusperitorum</i> in the German and Hungarian Case Law)	123
<i>Kristóf Mihály Heil</i> : Strafrechtliche Kommissionstätigkeiten im Lande und im Komitat (1791–1832)	134
<i>Orsolya Falus</i> : The Legal History of the Order of the Holy Spirit in Hungary. Facts and Doubts	141
<i>László Ádám Józ</i> : Under Duress or Coercion. Special Land Registry Cancellation Lawsuits after the Second Vienna Award	150
<i>Máté Julesz</i> : The Legal History of Informed Consent	161
<i>Bence Krasóczy</i> : The First Hungarian Competition Act in the Judicial Practice	172
<i>Dónes Legeza</i> : Copyright Aspects of Promise of Reward in Hungary	178
<i>David Manuel Rodríguez Ferro</i> : The Right of 'Manifestacion' in the Kingdom of Aragon: Origins and Legal Heritage	188
<i>João Manuel Cardão do Espírito Santo Noronha</i> : Evolutionary Trends of the Continental European Commercial Company and Partnership Law in the First Half of the 20th Century	197
<i>Majlinda Belegu, Bashkim Rrahmani</i> : Marital and Inheritance Law from the Middle Ages to the Positive Law. From Scanderberg Canon to Positive Law	202

BOOK REVIEWS

<i>Wojciech Materski</i> : JW obronie piędzi rodzimej ziemi. Estońsko-sowiecki/rosyjski spór terytorialny 1917–2018	212
<i>Gábor Hamza</i> : Az európai magánjog fejlődése a kezdetektől a XX. század végéig. A modern magánjogi rendszerek kialakulása a római jogi hagyományok alapján	217
<i>Vier neuere Bände aus Karlsruhe – Inzwischen sind 40 Bände der Schriftenreihe des Rechtshistorischen Museums (RHM) Karlsruhe erschienen</i>	220
<i>Markus Hirte / Johannes Dillinger (Hg.)</i> : Schatz und Schatzsuche in Recht und Geschichte = Kataloge des mittelalterlichen Kriminalmuseums in Rothenburg ob der Tauber	222
<i>Tobias Schenk</i> : Actum et iudicium als analytisches Problem der Justizforschung. Interdisziplinäre Perspektiven auf kollegiale Entscheidungskulturen am Beispiel des kaiserlichen Reichshofrats	223
<i>Joachim Conrad (Hg.)</i> : Die evangelische Martinskirche in Köllerbach und ihre Gemeinde. Festschrift zur 800-Jahr-Feier der ersten urkundlichen Erwähnung	225
<i>Eric Hilgendorf / Hans Kudlich / Brian Valerius (Hg.)</i> : Handbuch des Strafrechts, Sektion I (Grundlagen und Allgemeiner Teil des Strafrechts)	227
<i>Elena Pezzato</i> : Si sanctitas inter eos sit digna foedere coniugali. Gli apporti patrimoniali alla moglie supertrite in età tardoantica e giustiniana	231
<i>Andreas Zack</i> : Das Ende des Zweiten Triumvirats und die Amtsgewalten des Imperator Caesar Divi filius (Octavianus) in der politischen Ordnung Roms (43–27 v. Chr.): Übersehene, vergessene und neue Überlegungen zur Deutung von Augustus, Res gestae 7,1; 25,2 und 34,1	233
<i>Jana Osterkamp</i> : Rád v rozmanitosti: Dějiny federalismu v habsburské monarchii od doby předběznové do roku 1918.	234

REPORTS FROM HISTORY OF LAW

<i>Thomas Gergen</i> : „In den Schluchten der Verträge“ – Eine Würdigung zum Tod von Herrn Rechtsanwalt Professor Dr. iur. Albrecht Götz von Olenhusen	236
<i>Thomas Gergen</i> : Die Saar-Verfassung vom 15. Dezember 1947 – Erinnerung und Würdigung zu 75 Jahren Parlamentsgeschichte	238
<i>Thomas Gergen</i> : Der Esther-Bejarano-Platz in Saarlouis: Eine Dokumentation wider das Nazi-Unrecht	241
<i>Norbert Varga</i> : Report on the First Stage of the OTKA Research Entitled "The Development of Private Law in the Interwar Period"	248
Guidelines for authors	251

JOURNAL ON EUROPEAN HISTORY OF LAW

© 2023 STS Science Centre Ltd. / The European Society for History of Law

All contributions / papers are subject to a peer-review. The journal is indexed in SCOPUS and ERIH PLUS.

All rights reserved. Neither this publication nor any part of it may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of STS Science Centre Ltd. or The European Society for History of Law. Published semiannually by STS Science Centre Ltd. and The European Society for History of Law. „Journal on European History of Law“ is a registered trademark of STS Science Centre Ltd. and The European Society for History of Law. Issued twice a year. Printed in the EU.

www.sts-books.co.uk / www.historyoflaw.eu

ISSN 2042-6402



Teilnehmer und Jury nach der Preisverleihung im Kino 8 ½ in Saarbrücken. Quelle: AK des Saarlandes.



*Gedenken an Esther Bejarano:
v.l.n.r. Kutlu Yurtseven, Joram Bejarano (beide Microphone Mafia), die Juryvorsitzende Mo Asumang und die Moderatorin Dörte Grabbert.
Quelle:
AK des Saarlandes.*

*Thomas Gergen**

* Prof. Dr. iur. Dr. phil. Thomas Gergen, Maître en droit, Institut Supérieur de l'Économie, ISEC Université Luxembourg, E-Mail: thomas.gergen@isec.lu / ORCID 0000-0002-0546-204X.

Report on the First Stage of the OTKA Research Entitled “The Development of Private Law in the Interwar Period”

The research team held its first meeting on 1 September 2021. Members included habil. associate professor and project leader Norbert Varga; professor Mária Homoki-Nagy; senior lecturer Máté Pétervári; researcher Dénes Legeza; PhD students Kristóf Szivós and Bence Krusóczki.

After every secondary source was successfully collected related to the topic, and the research of archive sources began during the first stage of the project, the following is the detailed description of the major achievements. The main results of dissemination are detailed below.

Mária Homoki-Nagy dealt with the examination of the historical foundations of contract law relationships. Commercial purchase, as one of the most fundamental contract types of commercial law, did not come to fruition via codification in Hungarian legal practice, but was already established during a much earlier period in the system of common law, demonstrated by the evidences of archival sources. The first legal regulation of commercial purchases was the traffic contract, which received legal regulation via a legislative provision during the modification of the 1944 bills of exchange law, and this served as the foundation of its regulation in contract law.¹ Not to mention that the continuance and survival of some special regulation related to the property rights of women in the 20th century were also researched via archival sources (National Archives of Hungary, Archives of

Csongrád-Csanád County IB.B.157.a29/III1854.). Relevant scientific presentations: Das ungarische Handelsgezetzbuch. (Regensburg, 19-20 May 2022); County responses to the works of regular committees. With a specific focus on private law and rent-roll operations (Budapest, 16 February 2022) and Die Entwicklung des ungarischen Vertragsrechts an der Wende vom 19. zum 20. Jahrhundert. (Szeged, 10 June 2022).

In the Act V of 1916, the regulation of compulsory non-bankruptcy settlements was legally reinforced. The aim of Máté Pétervári's research was to dissect the practices of such procedures by examining archive sources following the aforementioned regulation. The concept of compulsory non-bankruptcy settlement was the Hungarian government's response to the economic difficulties emerging during the First World War. Therefore, the first thing to examine is the appliance of the procedure in that era, since guarantees an opportunity to trace feature shifts during the initial timeframe, not to mention its effects on practical law procedures. (National Archives of Hungary, Archives of Bács-Kiskun County VII.2-b. The documents of the Royal Regional court of Kalocsa, Litigation documents 29-32. 1909-1914; 1915-1919.). Relevant scientific presentations: The Effects of the Lifetime Achievements of Kelemen Óvári on the Development of Hungarian Insolvency Law. (Szeged, 14 October

¹ HOMOKI-NAGY, M., Certain Edicts of Commercial Purchase. In: BIRHER, N. – MISKOLCZI-BODNÁR, P. – NAGY P. – TÓTH J., Z. (Eds.), *Studia in honorem István Sipta 70*. Budapest, 2022, pp. 211–221.

2021); The relationship of the Legal Profession and Compulsory Non-Bankruptcy Settlements. (Miskolc, 25 February 2022); Appearance of the Compulsory Non-Bankruptcy Settlement in the Practice of the Royal Regional Court of Kalocsa. (Szeged, 10 June 2022) and The Compulsory Non-Bankruptcy Settlement in the Hungarian Bankruptcy Practice During the First World War (Athens, 12 July 2022).²

In one of his essays, Kristóf Szivós examined the appeal stage of civil lawsuits, with a special focus on the question that what situation should allow the litigants to establish new statements of facts and bring forward new pieces of evidence which they failed to do within the frameworks of the first instance proceedings. The essay also highlights the changes introduced by Act XXXIV of 1930.³ Another topic he tackled during his research was the examination of international predecessors of the Hungarian code of civil procedures by referring German⁴ and Austrian⁵ procedural law. Furthermore, the researcher analysed one of the most significant achievements in the codification of the Hungarian code of civil procedures, namely the appearance of the principle of the unity of the cause⁶ (National Archives of Hungary, Archives of Baranya County VII.2-b the documents of the Royal Regional Court of Pécs, National Archives of Hungary, Archives of Pest County VII.1-b the documents of the Royal Regional Court of Pest region, National Archives of Hungary, Archives of Csongrád-Csanád County VII. 1-b the documents of the Royal Regional Court of Szeged). Relevant scientific presentations: The Practical Questions Regarding the Unity of Oral Hearing After the Codification of Hungarian Law of Civil Procedure. (Krakow, 17 September 2021); The Changes in the Right of Novelty in the Hungarian Civil Procedure in the Interwar Period. (Krakow, 7 October 2021); Before and After Franz Klein. The So-called Socialisation of the Draft of the Code of Civil Procedures at the End of the 19th Century. (Debrecen, 27 May 2022); Die Rolle der Prozessaufnahme Verhandlung in der ersten ungarischen Zivilprozessordnung: Theorie und gerichtliche Praxis. (Szeged, 10 June 2022); The Tools Preventing Undue Delay in Act I of 1911. (Budapest, 17 June 2022) and The Comparative Analysis of Avoiding Undue Delay in the History of Austrian, German, and Hungarian Civil Procedure (Athens, 12 July 2022).

Bence Krusóczki examined the practices of the courts of arbitration of the chamber of commerce, and the practices of the jury. He sought to find a definitive answer to one question by focusing on the general clause of the act on unfair competition (Act V of 1923), and also by examining the practices of the Court of Arbitration of the Budapest Chamber of Commerce and Industry and the Jury of the chamber: what is the moral standard according to which they could decide whether or not a certain business can be considered unfair. Protection against unfair competition mostly can only fall under private law, for most times, unfair competition harmed the competitors' personal rights. Moreover, the researcher examined the Hungarian legislation's certain solutions against unfair competition. (BaCA P. III. 1859-1934., National Archives of Hungary OL Z 195. J. VII. 1924-126., National Archives of Hungary OL Z 202. Vb. 1925-1927.). Relevant scientific presentations: The Emergence of Competition Law in Hungary. (Krakow, 17 September 2021); Competition Qualification in Relation to Unfair Competition – Is it Unfair to Exceed Closing Time? The Lawsuit of Druggist Against Pharmacists. (Szeged, 10 December 2021); The First Hungarian Competition Act in the Judicial Practice. (Szeged, 10 June 2022) and The Circumscription of Honest Practices According to the Practices of the Budapest Chamber of Commerce and Industry. (Budapest, 17 June 2022.)

In connection with cartel private law, Norbert Varga's main focus was the analysis from a dogmatic (for example, the edicts of the Cartel Court in relation to private law, the principal statement of the Cartel Court on boycotts) and a practical standpoint, supported by examples (for example, coal cartel, Viktória Chemical Plant). He analysed the difficulties of cartel private law, taking the rights and duties of cartel members, and conflict management into account. In connection with the presentation obligation of cartel contracts, the validity requirements were regulated by Act XX of 1931, which meant that the Cartel Act contained mandates of private law, as well. Based on archival sources, it can be stated (for example, electricity transfer cartel, sulphuric acid argil and alum agreement, enamelled cookware cartel, ship agreement) that the regulations on presentation obligation were enforced.⁷ (National Archives of Hungary Z Commerce Archives 1585-1948, Na-

² PÉTERVÁRI, M., Megakadályozta-e a csődnitási hullámot az I. világháború alatt a csődönkívüli kényszeregyezés bevezetése a Kalocsai Kir. Törvényszék illetékességi területén? [Whether the Introduction of Compulsory Non-Bankruptcy Settlement Prevented the Wave of Declarations of Bankruptcy in the Area of Competence of Royal Regional Court of Kalocsa During the First World War?] In: *Jogtörténeti Szemle* (under publication); PÉTERVÁRI, M., Changes in the Hungarian Insolvency Law in the Interwar Period. In: *Krakowskie Studia Z Historii Panstwa i Prawa*, Vol. 15., No. 2., 2022, pp. 227-244.

³ SZIVÓS, K., The Changes in the Right of Novelty in Hungarian Civil Procedure in the Interwar Period. In: *Krakowskie Studia z Historii Panstwa i Prawa*, Vol. 15, No. 2., 2022, pp. 245-259.

⁴ SZIVÓS, K., A perelhúzás liberális szankciórendszerének XIX. századi kialakulása a német jogterületen [The evolvement of liberal sanctions against undue procedural delay in Germany in the 19th century] In: *Iustum Aequum Salutare*, Vol. 18., No. 4, 2022, pp. 81-96.

⁵ SZIVÓS, K., A szóbeliség és közvetlenség térnyerése az osztrák polgári perben [The development of orality and immediacy in the Austrian civil procedure] In: *Jogtörténeti Szemle*, Vol. 20., No. 2, 2022 (under publication).

⁶ SZIVÓS, K., Das freie Vorbringen und seine Begrenzung nach der Kodifikation des ungarischen Zivilprozessrechts. In: *Journal on European History of Law*, Vol. 13, No. 2, 2022, pp. 114-120.

⁷ VARGA, N., Between Public and Private Law: The Foundations of the Regulation of the Hungarian Cartel Law of 1931. In: *Jogtörténeti Szemle*, Vol. 19., Special Issue, 2021, pp. 65-71.; VARGA, N., All Essential Elements of a Cartel Contract Based on a Specific Example, In: BIRHER, N. – MISKOLCZI-BODNÁR, P. – NAGY P. – TÓTH J., Z. (Eds.), *Studia in honorem István Stipta 70*. Budapest, 2022, pp. 505-512.

tional Archives of Hungary BFL. XI. Commerce bodies 1776-1999.). Relevant scientific presentations: Cartel Private Law in the Interwar Period in Hungary. (Athens, 11-14 July 2022); Regulation on the Cartel Agreements in the Interwar Period in Hungary. (Szeged, 14 June 2022); Additions to the History of Cartel Law Regulation According to Relevant Works of Law Professors of Szeged. (Szeged, 14-15 October 2021); The Presentation Obligation of Cartel Contracts During the Interwar Period. (Miskolc, 25 February 2022.) and Cartel Contracts in Practice During the Interwar Period. (Hódmezővásárhely, 30 July-7th September 2022.)

Dénes Legeza summarised the codification backgrounds of the pursuits of copyright law experts. He dealt with the achievements of P. Elemér Balás, one of the most significant private attorneys of the interwar period, especially his copyright law proposal of 1933. It is common knowledge from archival sources that the representative of copyright law codification of the Ministry of Religion and Public Education requested that Endre Nizsalovszky should analyse the proposal, and the text survived in its entirety. Apart from providing a general description of the proposal of Balás, the purpose of the researcher is to process the written review of Endre Nizsalovszky in connection to a handful of topic, for example, personality rights, radio broadcast and the transfer of copyrights through inheritance.⁸ (National Archives of Hungary, the archives of the Ministry of Religion and Public Education (Section K), the documents of the Copyright Law Experts Committee, registration number: XIX-I-42). Relevant scientific presentations: The Role of Experts in Copyright Disputes. (Budapest, 24th September, 2021.);

The Copyright Law Proposal of P. Elemér Balás, According to Endre Nizsalovszky. (Szeged, 14 October 2021); “What is behind the mp3?” – From Music Rolls to Collective Management of Mechanical Rights (Oslo, 18 February 2022) and The Protection of Authors’ Moral Rights in Hungary – In the First Half of the 20th Century (Szeged, 14 June 2022).⁹

In connection to talent management, the class “What Makes a Good Study?” was announced, and within its framework, Máté Pétervári, Norbert Varga, Bence Krusóczki, Dénes Legeza and Kristóf Szivós gave lectures. Graduate students Benedek Varga, István Szabó and Ákos Epinger were also taken into the project for SSA (Student Scientific Association) study topic research and study writing. On the Night of Researchers (24 September 2021), Máté Pétervári and Norbert Varga gave a lecture entitled The Appearance of State Intervention in Economic Life. The event of the 10th Legal Historical Days (14-15 October 2021) was also arranged during the first stage of the project, where the researchers gave lectures. Within the framework of “The 1st Joint Workshop of the Jagellonian University and the University of Szeged” on 10 June 2022, the researchers of both the University of Szeged and the Jagellonian University introduced their respective research results.

Our aim in the second stage of the project is to continue fundamental research, and also to organise a dissemination forum for not only Hungarian and Polish researchers, but also students, which could result in a significant boost in the propagation and educational usage of the results of the research.

*Norbert Varga**

⁸ LEGEZA, D., The Role of Experts in Hungarian Copyright Disputes. In: POGÁCSÁS, A. (ed.), *Intellectual Creations in the Service of Mankind*. Budapest, 2022, pp. 263–278.

⁹ LEGEZA, D., A kereskedelmi forgalomban nem elérhető szerzői művek szabályozásának fejlődése – Mária Teréziától a DSM irányelvig [The Development of Out-of-commerce Works’ Regulation – from Maria Theresa to the CDSM Directive]. In: GÖRÖG, M. – MEZEL, P. (ed.), *Innovatív társadalom – innovatív szellemi tulajdonvédelem* [Innovative Society – Innovative Intellectual Property Protection]. Szeged, 2020, pp. 24-42. LEGEZA, D., Development of the Hungarian ‘Work Made for Hire’ Provisions. In: DAVID, A. F., – VARGA, N., (ed.), *New Studies in History and Law*. Athens, 2019, pp. 47-64.; LEGEZA, D., *A kiadói szerződés története: A reformkortól 1952-ig*, [History of Publishing Contract – From the Reform Era until 1952] Szeged, 2018, 212 p. LEGEZA, D., Az akadémiai pályadíj és a színházi drámajutalom szerzői jogi kérdései [Copyright Issues Concerning Rewards of the Academy and of the National Theatre]. In: *Iparjogvédelmi és Szerzői Jogi Szemle*, Nr. 4, 2017, pp. 109-125.

* Dr. habil. Norbert Varga, associate professor, Department of Hungarian Legal History, Faculty of Law, University of Szeged, Hungary, email: vargan@juris.u-szeged.hu / ORCID 0000-0001-6126-3099.