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THE CONSOLIDATION OF HUNGARIAN LEGAL PRACTICE WITH THE AUSTRIAN NORMS IN 1861¹

The years between 1848 and 1867 mark one of the most significant although very turbulent periods in the Hungarian legal history. At the beginning, the revolutionary waves of the Spring of Nations made it possible to introduce fundamental changes to the political, economic, and social system of the country². Just after the Viennese Revolution that broke out on 13 March, the liberal Hungarian statesmen convinced King Ferdinand V (also known as Emperor Ferdinand I) to appoint a civil government. Over the course of the next few weeks, the Hungarian Parliament enacted altogether 31 Acts which laid down the foundation of a constitutional monarchy³.

The main ambition of the Hungarian statesmen was to implement all the reforms with legal instruments⁴. This meant that both chambers of the Parliament had to agree on the proposed changes and, ultimately, they needed the King to promulgate the bill⁵. They felt that if they received the consent of the head of the state, the Viennese Government would not repeal the changes later. Furthermore, they thought that if the proposed reforms were presented as an evolutionary step,

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² B. Mezey, *Magyar alkotmánytörténet* [Hungarian Constitutional History], Budapest 2003, p. 246.

³ I. Deák, *Törvényes forradalom: Kossuth Lajos és a magyarok 1848-49-ben* [Lawful Revolution: Louis Kossuth and the Hungarians in 1848-49], Budapest 1983, p. 116.

⁴ B. Mezey, *Szuverenitáskérdések* [The Issue of Sovereignty], „Jogtörténeti Szemle” 2015, issue 4, p. 56. Also see G. Képes, *Az 1848-as forradalom törvényalkotása és a magyar parlamentarizmus* [Legislation of the Hungarian Revolution of 1848 and Hungarian Parliamentarism], „Jogtudományi Közlöny” 1998, issue 4, pp. 137-140.

⁵ A. Gergely, *Magyarország története a 19. században* [History of Hungary in the 19th Century], Budapest 2005, p. 241.

the royal court would be more open to a discussion⁶. However, due to the fragile political situation and the fear that the Viennese Court would change its mind as to the planned reforms, the members of the Parliament had to act swiftly. This approach resulted in many insufficiencies, mostly due to time constraints.

The greatest deficiency was the regulation of the relationship between Hungary and the Habsburg Empire as a whole. The makers of these laws envisioned a mostly independent country, which would have resulted from a personal union between Hungary and the rest of the Empire⁷. However, this was unacceptable to the dynasty. Consequently, a war broke out in Fall 1848. A few months before the suppression of the Hungarian Revolution, Emperor Franz Joseph issued the March Constitution of Austria, which suspended the Hungarian constitutional order. According to Martyn Rady: "Relying upon the doctrine of constitutional forfeiture (*Verwirkungstheorie*), Franz Joseph now administered Hungary in the manner of his other kingdoms, imposing legislation in the form of decrees. The neo-absolutist regime that he introduced may well have been radical and modernizing, carrying into effect the social revolution begun in 1848, but it relied upon instruments previously deprived of the constitutional validity by the terms of the April Laws"⁸. Hungary was divided into five territories which became simply parts of the centralized Austrian Empire⁹. The Viennese Government embraced this opportunity and aimed to unify both the public administration and the legal system in the whole empire after 1850. As part of the process, many Austrian legal norms were imposed by royal decrees upon the Hungarian territories¹⁰. This led to fundamental and also necessary changes in the country's legal system¹¹. Some of them were even envisioned by the April Laws.

SOME CHARACTERISTICS OF THE HUNGARIAN LEGAL SYSTEM BEFORE 1848

In Hungary, customary law took precedence up until 1848. This can be attributed to two main reasons. First and foremost, any attempt at codification seemed

⁶ I. Deák, *Törvényes forradalom...*, p. 107.

⁷ M. Rady, *Customary Law in Hungary. Courts, Texts, and the Tripartitum*, Oxford 2015, p. 221.

⁸ *Ibidem*, p. 222.

⁹ A. Berzeviczy, *Az abszolútizmus kora Magyarországon* [The Era of Absolutism in Hungary], Budapest 1932, p. 61.

¹⁰ M. Rady, *Customary Law...*, pp. 222-223.

¹¹ See M. Rady, Nonnisi in sensu legum? *Decree and Rendelet in Hungary (1790–1914)*, „Hungarian Historical Review” 2016, issue 1, p. 10.

almost impossible since the beginning of the 16th century. The enactment of any code was out of the question during the 150 year long war period against the Ottoman Empire which spanned until the end of the 17th century. For the second part of the 18th century, the rule of the enlightened absolutistic leaders, like Maria Theresa and her son Joseph II, also prevented the national codification. Even if only for a very short period of time, the Hungarian noblemen became more open to modernizing the country's legal institutions after the death of Joseph II. Therefore, parliamentary committees were formed to revise every area of the legal system. However, most politicians started to oppose all the planned economic and social reforms when the King of France was executed in early 1793. Their attitude changed only at the end of the 1820s. However, they achieved real successes only in commercial law until the "Lawful Revolution" of 1848.

It is also important to note that the main source of the traditional Hungarian customary law was the law book of István Werbőczy¹², the famous *Tripartitum opus iuris consuetudinarii inclyti regni Hungariae*, often called the *Tripartitum*¹³. According to its provisions, statute law became a subordinate aspect of the customary law¹⁴, since the judges could repeal an act if it contained a provision that was not in accordance with the customs of the realm¹⁵. Therefore, aside from the historical and political circumstances, these principles ensured the superiority of the customary law for many centuries alone.

In 1852, the Austrian Criminal Code of 1803 was introduced in Hungary which was replaced with the Criminal Code of 1852 shortly thereafter¹⁶. Both codes embraced the idea of legal equality and the most fundamental principles of modern criminal law, like the *nullum crimen et nulla poena sine lege*. Most crimes were punishable by prison, both codes maintained also the death penalty. Even if neither act was the most forward-thinking penal code in the contemporary Europe, both of them were somewhat more modern than the Hungarian customs. On the other hand, the penalties were more severe compared to the Hungarian

¹² István Werbőczy (1465–1541), Justice of the Realm, Personalis (substitute of the King in the judiciary) since 1517, Palatine of the Kingdom of Hungary (1525–1526). See G. Bónis, *A Hármaskönyv* [The Tripartitum], Budapest 1990, p. 9.

¹³ As György Képes notes, for a modern English translation see M.J. Bak, P. Banyó, M. Rady, (eds.), *The Customary Law of the Renowned Kingdom of Hungary: A Work in Three Parts Rendered by Stephen Werbőczy*, M.J. Bak (transl.), Los Angeles 2005.

¹⁴ M. Rady, *Customary Law...*, p. 47.

¹⁵ See: *Tripartitum*, Preamble, Art. 11, § 4. http://www.staff.u-szeged.hu/~capitul/analecta/trip_hung.htm (visited December 31, 2018).

¹⁶ Ch. Neschwara, Ch., *Österreichs Recht in Ungarn*. „Rechtsgeschichtliche Vorträge” 2008, issue 52, p. 106.

judicial practice. Regarding the judicial proceedings, the Code of Criminal Procedure¹⁷ was introduced by the Emperor.

THE TRANSFORMATION OF HUNGARIAN PRIVATE LAW IN THE 1850S

In the 1850s, no other branch of the Hungarian legal system was so deeply affected by these changes than the private law. Therefore, I would like to concentrate on this area. As I mentioned, the April Laws outlined profound changes in almost every area of the legal system but beyond that, the Hungarian Parliament did not get the chance to make the laws necessary to realize those reforms properly. Take the abolishment of the legal institution called *avicitas* for example. Enacted in the 14th century, its goal was to prevent the family estate from being divided. Its rules prohibited the sale of real estates that were inherited at least one time basically. To sell a land or impose any charges on it required the consent of every heir and all the future heirs. Therefore, exercising the right of disposition became virtually impossible¹⁸. From the 1830s, more and more statesmen argued that the economy would not develop until it was abrogated¹⁹. In 1848, the article that abolished this legal institution “theoretically” consisted of only two paragraphs²⁰. The first requested the government to create a new, modern civil code. The phrasing was not a coincidence, because it is not an overstatement to say that by abrogating this very legal institution the whole body of the private law needed to be revised. The second one asked the judges to suspend all proceedings related to the aforementioned properties. Regarding this provision, I would like to point out only one aspect of the problem: the inheritance of such properties differed between male and female descendants. This rule clearly violated the principles of the April Laws²¹. However, no new provisions were adopted that would have resolved this discrepancy.

Regarding the emancipation of serfs, the details were also vague with the most important question being that what would happen to the lands that were

¹⁷ Strafprozessordnung Österreichs from 17 January 1850. See <http://www.koeblergerhard.de/Fontes/StPOOe1850-20070830.htm> (visited December 31, 2018).

¹⁸ See M. Rady, *Customary Law...*, pp. 85-88.

¹⁹ See I. Széchenyi: *Hitel* [Credit], Pest 1830, pp. 184-188.

²⁰ See Act No. 15 of 1848.

²¹ M. Rady, *Customary Law...*, p. 91.

used by the serfs but belonged to the noblemen?²² Obviously, everyone knew that the lands had to be redistributed to the former serfs²³. But how exactly would that happen? The April Laws stated that the former landholders would be entitled to compensation²⁴. However, the question remained: who would be obliged to do so? The serfs themselves or maybe the state itself? The political power lied in the hands of the noblemen, consequently, they decided upon the latter. Even if these laws made it clear that the compensation should fall on the shoulders of the state, the Hungarian statesmen felt that it would be more appropriate for the members of the first elected Parliament to decide upon these matters.

The first Hungarian government began the formation of the much needed codes and other laws that would make the transition possible after the enactment of the April Laws²⁵. However, they did not get the chance to finish any of these drafts when the King demanded the complete repeal of all the laws from 1848. A few weeks later, the war of independence broke out²⁶.

A few years later, the Viennese Government began addressing these problems by issuing various imperial patents. In 1852, the Emperor promulgated a letter patent which *de facto* abolished the *avicitas* and, therefore, made the trade of lands possible. A year later, another letter patent was made about the emancipation of serfs which addressed the issue of compensation. In May 1853, the Austrian Civil Code (ABGB) came into force in Hungary²⁷. From this point forward, the entire Hungarian private law was being transformed as the Austrian and Hungarian legal traditions were quite different in this area. Nonetheless, the ABGB was a modern code which had the potential to serve as a framework for transitioning the feudal economy into a capitalist one²⁸. However, I must emphasize that this step did not make the Hungarian customs instantaneously irrelevant as the adoption of the Austrian Civil Code had no retrospective effect. The last important provision of this period came with the introduction of the land registry in 1855.

Looking back from the distance of more than 150 years, we can state that these specific changes served the good of the country by developing its

²² G. Béli, *Magyar jogtörténet – A tradicionális jog* [Hungarian Legal History – Traditional Law], Budapest–Pécs 2009, p. 307.

²³ See Act No. 9 of 1848.

²⁴ See Act. No. 12 of 1848.

²⁵ I. Deák, *Törvényes forradalom...*, p. 133.

²⁶ *Ibidem*, pp. 197-198.

²⁷ M. Rady, *Customary Law...*, p. 222.

²⁸ Vékás L., *The Codification of Private Law in Hungary in Historical Perspective*, „Annales” 2010, issue 4 https://www.ajk.elte.hu/file/annales_2010_04_Vekas.pdf (access: 31 December 2018).

economy²⁹. However, their introduction happened just a few years after the country lost its constitution and everyone was still reeling from the tragic aftermath of the lost war. The political climate was just not suitable for the public to be able to support these changes at that time³⁰.

AT CROSSROADS BETWEEN REVOLUTION AND COMPROMISE

In 1860, the worsening of the state of affairs and the defeat in the Austro-Sardinian War led the Emperor to promulgate a new constitution which became known as the October Diploma³¹. This is widely known for the attempted federalization of the Austrian Empire³², but it also restored Hungary to its former constitutional status – albeit with a few restrictions. I must emphasize, that at that time, the Emperor was not ready for such compromise that he would make a few years later. Therefore, he did not acknowledge the validity of the April Laws. The Hungarian constitution and its institutions were reverted back to the way they were in 1847. Furthermore, the Emperor ordered to maintain all the changes made in the legal system in the last decade³³.

The reaction to this new imperial constitution was not unambiguous even if it was conceived mostly by a group of ultraconservative Hungarian politicians. The majority of the statesmen candidly opposed the Diploma, some maintained a distant attitude towards it, and only a few supported it. Nonetheless, it created an opportunity to restore the majority of the state institutions including the counties. The county was not just a simple municipality from the 13th century in Hungary. The Lower Chamber of the Parliament consisted mostly of their deputies. Therefore, they were directly involved in shaping the political landscape. Their courts had judicial authority over many cases in the first instance and they also performed various administrative duties.

With the October Diploma, the Emperor decided to reinstate the Hungarian public administration together with the country's judicial system. However, he emphasized that the Austrian model of judiciary would stay in effect until the

²⁹ M. Rady, *Customary Law...*, p. 223.

³⁰ L. Vékás, *The Codification...*, p. 2010.

³¹ M. Rady, *Customary Law...*, p. 224.

³² E. Roman, *Austria-Hungary and the Successor States: A Reference Guide from the Renaissance to the Present*, New York 2003, p. 536.

³³ A. Kecskeméthy, *Vázlatok egy év történetéből* [Outlines of History of One Year], Pest 1862, p. 63.

Parliament was convened and was capable of making new laws. Furthermore, he also ordered the counties to do not resume their judicial activities. Truth to be told, most of them did not obey. In fact, the majority of the reorganised counties declared that they viewed the April Laws as the only constitutional framework and therefore they reinstated all their traditional organs including the tribunals. They also declared that they will not carry out the sentences issued by Austrian courts. The situation was getting more and more complicated by every passing day, because most of the municipalities declared the Austrian laws unconstitutional³⁴, and their newly reorganized courts started to base their rulings upon the old Hungarian laws in criminal and civil cases alike³⁵.

THE CONFERENCE OF THE JUSTICE OF THE REALM AND THE PROVISIONAL JUDICIAL RULES

Back in October 1860, Emperor Franz Joseph named a conservative aristocrat, Count George Apponyi as “Justice of the Realm” (*országbíró* in Hungarian, *iudex curiae* in Latin)³⁶. As György Képes mentions, Apponyi held the highest-ranking Hungarian office at the time due to the fact that the King have not appointed a Palatine (*nádor* in Hungarian) after the events of 1848. At the same time, the King informed Baron Miklós Vay, Court Chancellor of Hungary, about his intention to restore the Hungarian judicial system³⁷. Therefore, the Emperor ordered the newly appointed chief justice to convene a meeting that should debate over the most pressing issues regarding the administration of justice. To fulfill this request, a commission was organized in January 1861, comprising the high-ranking judges, lawyers, legal scholars, and other prominent persons invited by Count Apponyi³⁸. It has been referred to as the Conference of the Justice of the Realm (*Országbírói Értekezlet*). According to the decree of the King, the official duty of this forum was to decide on the “organization of the adjudication”. Yet, the contents of this term was strongly debated. Therefore, the commission’s mandate was also unclear at the beginning³⁹. The narrow interpretation would have

³⁴ G. Ráth, *Az országbírói értekezlet a törvénykezés tárgyában* [The Conference of the Justice of the Realm in the Matter of Judiciary], Pest 1862, p. 5.

³⁵ G. Szabad, *Forradalom és kiegyezés választóján* [At crossroads between revolution and compromise], Budapest 1967, p. 160.

³⁶ “High Judge” as translated by M. Rady, See: M. Rady, *Customary Law...*, p. 221.

³⁷ G. Képes, *The Birth and Youth of the Modern Hungarian Private Law*, „Journal on European History of Law” 2016, issue 7, p. 106.

³⁸ G. Képes *The Birth...*, p. 107.

³⁹ G. Ráth, *Az országbírói...*, p. 8.

only entailed a proposal for the reorganization of the court system⁴⁰, while the broader content also included the evaluation of all Austrian laws which had previously entered into force regarding their validity. After a brief debate, the members settled on the latter.

In light of the historical circumstances, it cannot be surprising that the starting point for the Conference was to return to the state of April 1848. However, since the laws used before Revolution differentiated between the noblemen and the serfs in every area of the legal system⁴¹, it seemed impossible for the most part to revert to these laws without substantial changes. Certain members, like Kálmán Ghyczy⁴², thought this was an easy issue to solve because the regulations which had previously related only to noblemen could have been applied to the emancipated serfs as well (this method had already been used in the revolution of 1848)⁴³. This principle could have worked to a certain degree in criminal law, but others emphasized that the abolishment of *avicitas* eliminated the foundation of the medieval private law basically. In their view, if the Conference, or later the Parliament, would have returned to this stage of legal development where the feudal laws no longer existed⁴⁴, but no new system had been developed, the judges would have received discretionary powers in most cases due to the lack of applicable law. Some suggested that the reinstatement of the juridical recess imposed in the April Laws would have solved this conflict, not many supported this idea though⁴⁵.

Nevertheless, the biggest obstacle was that the Austrian legal norms, most notably the letter patens on abolishment of *avicitas* and serfdom from 1852 and 1853 changed the Hungarian legal order fundamentally. This circumstance, together with the fact that the introduction of the Austrian Civil Code have established many important legal institutions (e.g. the modern land registry) that had not existed in the medieval Hungarian law, and the annulment of which would have caused an economic disaster⁴⁶. Another important factor was that all of these legal norms were already in effect for almost a decade in 1860. This seemingly left two possibilities open: the Conference could have advised the Parliament to uphold the Austrian laws and, as a consequence, acknowledge them as being constitutional; or could have pushed for a return to the state of 1848, ignoring all the drawbacks mentioned earlier⁴⁷. The prior option was completely unacceptable

⁴⁰ *Ibidem*, p. 16.

⁴¹ G. Ráth, *Az országbírói...*, p. 18.

⁴² Kálmán Ghyczy (1808-1888), State secretary in the Ministry of Justice in 1848, Speaker of the House of Representatives in 1861, Minister of Finance between 1874 and 1875.

⁴³ G. Ráth, *Az országbírói...*, pp. 13-17.

⁴⁴ *Ibidem*, p. 21.

⁴⁵ *Ibidem*, p. 14.

⁴⁶ *Ibidem*, p. 40.

⁴⁷ *Ibidem*, pp. 32-33.

for political and professional reasons alike. In criminal law, it has been cited for example that the Austrian Criminal Code was too harsh, and the judicial processes took more time based on the Austrian rules of procedure in both criminal and civil cases⁴⁸. The latter option was also problematic which is why some members of the Conference, most notably Ferenc Deák and Boldizsár Horvát, advised for a third solution, a compromise between these two⁴⁹.

They argued that a distinction should be made between public and private law. In the prior field, it would have been unacceptable to let any Austrian laws remain in effect, because everything that happened after 1849 was forced upon the country and therefore had been unconstitutional⁵⁰. After the suppression of the war of independence, the Habsburgs forced their constitution on Hungary, created an absolutistic regime, which is why everyone should have opposed anything that would have been less than the return to the basis of the April Laws. However, in the field of private law, these rules could not be applied the same way⁵¹.

This opinion was expressed by both Ferenc Deák⁵² and Boldizsár Horvát⁵³ among others during the early sessions. They argued that the most fundamental aim and principle of the private law was to protect the rights of the individuals⁵⁴. They also emphasized that all legal relations that had originated from the basis of the Austrian legal norms should be evaluated and judged on those basis⁵⁵. In addition, they claimed that until the Parliament would be convened and capable of making laws, certain Austrian legal norms had to be kept in effect. The advocates of this compromise thought that legal certainty was just as valuable principle as that of legality, and therefore, if they restored the legal state of 1848, such an action would be unconstitutional because it would have created judicial anarchy⁵⁶.

In the end, this argument won over most members⁵⁷. Therefore, the Commission proposed that the Hungarian laws should be applied, but in the cases where they would not be applicable (e.g. the Act abolishing the *avicitas*) the courts should base their judgments on the provisional rules set up by the Com-

⁴⁸ *Ibidem*, p. 38.

⁴⁹ B. Mezey, *Horvát Boldizsár az Országbírói Értekezleten* [Boldizsár Horvát on the Conference of the Justice of the Realm], „Jogtörténeti Szemle” 2005, issue 3, p. 33.

⁵⁰ G. Ráth, *Az országbírói...*, p. 33.

⁵¹ *Ibidem*, p. 33.

⁵² Ferenc Deák (1803-1876): Hungarian statesman, the first Hungarian Minister of Justice in 1848. His most acclaimed accomplishment was the realization of the Austrian-Hungarian Compromise.

⁵³ Boldizsár Horvát (1822-1898): Hungarian politician, who served as Minister of Justice between 1867 and 1871 in the Government of Gyula Andrássy.

⁵⁴ G. Ráth, *Az országbírói...*, pp. 33-36.

⁵⁵ Some participants thought just the opposite. For more information see G. Ráth, *Az országbírói...*, pp. 45-46.

⁵⁶ G. Ráth, *Az országbírói...*, p. 34.

⁵⁷ *Ibidem*, p. 58.

mission. The proposal became known as the Provisional Judicial Rules⁵⁸. Its first paragraph stated that the Hungarian private laws should be reinstated with some amendments required by the principles of legal certainty and legal continuity⁵⁹. Therefore, its propositions re-introduced the old Hungarian legal norms in “most” cases (as was the case with the Bankruptcy Act or with the criminal law). In other cases, like in law of succession or family law, they reinstated and modified the “old” Hungarian laws. Finally, and perhaps most importantly, they acknowledged that some of the Austrian legal norms should stay in effect for the sake of legal certainty (like the one introducing the land registry of the Urbarial Patent of 1853 that settled the legal relations between the noblemen and their former serfs). These rules also stated that some parts of the Austrian Civil Code would remain in effect – especially the ones that were necessary with the adoption of the land registry. Due to its broad phrasing, this provision became a source of controversy for the next decades⁶⁰.

Following the issuance of the Commission’s proposal, a Committee was established by the House of Representatives, which proposed to accept these provisional rules without changes. After a debate, the representatives adopted it, as did the House of Lords⁶¹. A few days later, the Hungarian Royal Curia ordered the courts to base their rulings on the said rules⁶².

THE INFLUENCE OF AUSTRIAN LAWS IN HUNGARY AFTER 1861

On 23 July 1861, the old Hungarian Laws were reinstated by the Provisional Judicial Rules. Any legal relation that had originated after this moment was going to be ruled on the basis of the Hungarian laws. Still, the presence of the Austrian laws remained much stronger in the judicial practice. Essentially, the Hungarian courts differentiated between two types of cases. Where the legal relation in question occurred before July 1861, those were adjudicated based on the Austrian Civil Code because the Provisional Judicial Rules had no retrospective effect⁶³.

⁵⁸ In Martyn Rady’s wording: Provisional Judicial Regulations. *Ibidem*, p. 228.

⁵⁹ See G. Ráth, *Az országbírói...*, p. 207.

⁶⁰ See A. Meszer, *Országbírói Értekezlet (21. és 156. §§) és az Osztrák Polgári Törvénykönyv* [Conference of the Justice of the Realm (§§ 21 and 145) and the Austrian Civil Code], Budapest 1897, p. 10-16.

⁶¹ B. Mezey, *Horvát Boldizsár az 1861-es országgyűlésen* [Boldizsár Horvát in the Parliament of 1861], „Jogtörténeti Szemle” 2007, issue 1, p. 24.

⁶² B. Mezey, *Magyar jogtörténet* [Hungarian Legal History], Budapest 2007, p. 159.

⁶³ B. Mezey, *Horvát Boldizsár az Országbírói...*, p. 35.

In every other case, the provisions of the code were referred only through previous verdicts⁶⁴. The provisional rules did not forbid the implementation of certain provisions of the ABGB. For example, the Austrian code's rules on declaring someone legally dead remained in force until 1868 and those on adoption until 1877⁶⁵. In the absence of the Hungarian Civil Code, the judicial practice relied on the Austrian Code in tort law cases until the end of the 19th century. Furthermore, the key features of the Austrian land registry rules remained in force even in the 20th century. As a consequence, many Austrian legal norms remained in force basically as customs, thanks to the judges, who based their decisions on the Austrian Civil Code, when they could not find any applicable laws.

CONCLUSION

Between 1848 and 1867, the Hungarian legal system was profoundly altered. At the beginning, the April Laws outlined the grand vision of a civil society, but the implementation was interrupted abruptly. In the 1850s, the modernization was realized in many ways through unconstitutional means that profoundly changed the Hungarian legal culture. In 1860, the October Diploma showed another path for the Habsburg Empire but neither Hungary, nor the dynasty was truly ready for a compromise. In 1861, without a proper legislative body, the members of the judicial conference could only choose between the imposed Austrian laws and the outdated Hungarian customs. After the Austrian-Hungarian Compromise of 1867, the situation changed. The reinstatement of the Hungarian Constitution as a whole enabled the Parliament to perform its legislative duties⁶⁶. After that, a new period began in the Hungarian legal history when the lawmakers became truly open to the idea of adopting foreign methods⁶⁷. In the 1870s, the basic requirement for every codifier was to be fluent in several languages so they would be able to compare the legal institutions in as many European countries as possible⁶⁸. Their job became to find the most progressive solutions and implement them in the Hungarian legal system. In this decade alone, the Parliament adopted a criminal and

⁶⁴ L. Vékás L. quotes K. Szladits, *A magyar magánjog I.* [Hungarian Private Law I], Budapest 1941, p. 95.

⁶⁵ *Ibidem*.

⁶⁶ M. Rady, *Customary Law...*, p. 230-231.

⁶⁷ B. Mezey, *Egy jogászkarrier a 19. században. (Csemegi Károly 1826-1899)* [The career of a lawyer in the 19th Century], (in:) *A Praxistól a kodifikációig. Csemegi Károly emlékére (1826-1899)* [From Legal Practice to Codification: In Memory of Károly Csemegi (1826-1899)], Budapest 2001, p. 20.

⁶⁸ B. Mezey, *Egy jogászkarrier...*, p. 18.

a commercial code⁶⁹. Both of them were deeply influenced by the contemporary German legal thinking⁷⁰. Therefore, the influence of the Austrian laws lessened over the next decades. However, without a comprehensive civil code, the ABGB deeply influenced the Hungarian legal culture even if it was in force for less than ten years.

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Summary

A few months before the suppression of the Hungarian Revolution in August 1849, Emperor Franz Joseph issued the Constitution of Olmütz, which suspended the Hungarian constitutional order. After 1850, the Viennese Government aimed to unify the legal system in the whole empire, and as part of the process, many Austrian legal norms were imposed by royal decrees upon the Hungarian territories. This led to fundamental changes in the country's legal system (the customary law as “law in action” took precedence up until 1848), even though it happened unconstitutionally.

The worsening state of affairs and the defeat in the Austro-Sardinian War led the Emperor to promulgate a new constitution which became known as the October Diploma in 1860. Accordingly, Hungary regained its former constitutional status, but Franz Joseph ordered the newly reinstated chief justice to assemble a council that should debate over the most pressing issues regarding the administration of justice. There, the most influential lawyers proposed that the Hungarian laws shall be restored – albeit with several compromises. Most members agreed that an absolute and immediate repeal of every Austrian legal norm would certainly violate the rights of the citizens. Therefore, even though this committee did not accept the validity of these laws, the majority of its members argued that some of them must remain in effect until the Parliament will reconvene.

Consequently, the Austrian legal norms as “law in books” deeply influenced the “law in action” in Hungary for the years to come.

KEYWORDS

legal History, Hungarian law, April Laws, Codification

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historia prawa, prawo węgierskie, węgierskie ustawy marcowe (1848), kodyfikacja