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Private Law Publications in Hungary between 1920–1944 with Special Regard to the Influence of German Law and the Restriction of Rights

The study analyses the reaction of Hungarian private law jurists to the right restrictions and deprivations of the Horthy era concerning Civil law, whether they welcomed or criticized them and more importantly, if they spoke about them at all publicly. I examined the legal papers that were published in the subject period in Hungary, namely the Jogtudományi Közlöny (Journal of Jurisprudence), Polgári Jog (Civil Law) and Magyar Jogi Szemle (Hungarian Law Review) in order to seek answers.

Keywords: private law, Horthy era, restriction of rights, deprivation of rights, German influence

‘Of course, which times are normal and which are not are a matter of perception and greatly – sensitivity. Are they normal today? There are some of us who answer no to it without hesitation. However, the official perception is that they are. Fiat applicatio.’¹

1. Introduction and methodology

The aim of the study is to find out how the Hungarian civilists at the time felt about the deprivation and restriction of rights of the *Horthy* era (1920–1944), and to what extent did they express their opinion or not. In order to explore this, I reviewed the journals published in the Horthy era, such as the articles on private law in the *Jogtudományi Közlöny* (Journal of Jurisprudence)² between 1920 and 1934, as well as the *Polgári Jog* (Civil Law) (1925–1938) and the *Magyar Jogi Szemle* (Hungarian Law Review) (1920–1944). The article seeks the answer to this question in the studies of these journals.

It should be noted that the *Magyar Jogi Szemle* contains articles mainly on Criminal Law and Public Law, compared to which there is a negligible number of publications on *Polgári Jog*, after analysing them, it was found that the authors did not reflect on the provisions adversely affecting private legal relations. A similar trend can be observed in the *Jogtudományi Közlöny*, no works other than some of *Artur Meszlény*’s were published that would be relevant to the topic; however, the

¹ MESZLÉNY, Nyári tépelődések [Ponders in the summer] 105–106.

² The Journal of Jurisprudence was first issued in 1866, it was not published during the Soviet Republic of Hungary and was struggling after its re-issue in 1920 and the journal was terminated in 1934 by the publisher.

journal *Polgári Jog* abounded in these. In view of the above, I present the findings from publications in the *Jogtudományi Közlemény* and *Polgári Jog* in separate chapters.

Given that the study primarily seeks to present the views of individual private jurists on the deprivation and restriction of rights in the Horthy era, their statements are presented systematically by journal and per person, not in chronological order. In cases where the German effect is not highlighted, I present a reflection on restrictive provisions.

2. Opinions of Hungarian private jurists on the German influence and the restrictive provisions

The paper is limited to the study of the scope of Private Law, and in this respect the third Jewish law, the so-called ‘race protection law’ has the greatest significance. During my research, I have come to the conclusion that legal journals have refrained from describing this Act. Two studies can be found about the Act, both by *István Szentmiklósi*, who, in 1938, at the time of the publishment of the first article as a council notary at a Royal Appellate Court and in 1942, at the time of the second article as Tribunal Judge expressed his supportive opinion about the obligatory medical examination prior to marriage. However, the *Polgári Jog* journal, edited by *Meszlény* as a president, contained a number of studies in which the authors expressed their concerns about the excessive interference of Public Law with Private Law. Apart from that, private jurists mainly did not speak for or against the Jewish laws, except for *Artur Meszlény*, a student of *Dezső Márkus*, who criticized the deprivation and restriction provisions of the time in the columns of the *Jogtudományi Közlemény*.

However, regardless of the fact that they did not express their views explicitly, I found information in the research on how civilists felt about the events of the era.

At a lecture given by Professor *Géza Marton* at the University of Debrecen, a dog entered the classroom on November 14, 1932, and the students played with it when the professor appeared and asked how the animal had entered the room, to which no one responded. According to the Debrecen Newspaper³ (*Debreczeni Ujság*), the professor left the room at that time, but according to the Hungarian Newspaper (*Magyar Hírlap*), the Christian students shouted, ‘the Jews did it, get out of here!’. Jewish students were then also accused by name of bringing in the dog and behaving threateningly. For this, the Jews left the room. Two days later, a student, *László B.*, stood up during the class and announced that he was not willing to listen to the lecture with the suspects and perpetrators. *Béla H.*, a Jewish student asked who he was referring to and listed them by name. *Béla H.* resented the suspicion on behalf of the Jews, to which *Barnabas D.* stood up and stated that ‘until we receive redress from the Jews for the harm done to us, we will not tolerate them at the lecture.’ Professor *Marton* then closed the debate and tried to convince students that the whole community to which a person belongs to could not be held responsible for the probable mistake of one person.⁴

Károly Szladits in the six-volume work titled the Hungarian Private Law (1939–1942), edited by him, in which he was also the author, only touched on the violation of the principle of equality

³ A debreceni egyetem jogi fakultásán zsidó hallgatók megzavarták az előadásokat [The Jewish Students Disturbed the Lectures at the Law Faculty of the University of Debrecen] 3.

⁴ Hogyan került egy kóbor kutya Marton Géza professzor tantermébe? [How did a stray dog appear in Professor Géza Marton’s lecture room?] 3.

of rights in one sentence when naming the limits of capacity of acquisition of property, including religious affiliation.⁵ It can be stated about his writings published in the period that he did not write about Jewish laws and their effects.

In 1923 and 1924, *Antal Almási* published his two-volume summary work on Hungarian Private Law in German in Berlin.⁶ In the preface to the first volume, he stated that the existence of a strong German influence in the development of Hungarian private law and the Germanic elements could be considered a fact, however, these have assimilated to Hungarian law over the centuries. He cited as an example the Act on Commerce, Bill of Exchange and Bankruptcy, which *'was made under heavy German influence'* and became *'a more or less bad imitation of the good German pattern'*. At the same time, Hungarian unwritten, customary Private Law is of an *'original'* national character. *Almási* emphasized that the German influence in Hungarian private law did not take place through the transposition of laws and codes, but that the general legal ideas appeared in Hungary as well, and then these were transformed into customary law according to the national character.⁷ However, *Almási* did not write all this about the restrictive norms of the era, but about the state of our Private Law, which was being codified at that time.

4. Publications of the *Jogtudományi Közlöny*

The *Jogtudományi Közlöny* was published only in the first half of the Horthy era, until 1934, and then began again after the Second World War. No articles on deprivation and restriction of rights were published in the journal, except for one, under the pseudonym of *Hungarus*⁸, who welcomed the proposal to amend the Marriage Act. Contrary to this, *Artur Meszlény* has formulated a scientifically based critique of the state's measures, which, in his opinion, go too far into private law, restricting law and thus endangering legal certainty. In March 1922, he wrote that the personality rights had finally been triumphantly recognized, but that the war and subsequent legislation had challenged their enforcement. According to him, posterity will characterize this era as *'the age of expropriation of earnings and the granting of them to the executive power'*. Public power, in his view, extends too far into the private sphere, as seen in the *numerus clausus* provisions and the new industry law. He notes, however, that *'what political goals this tendency has served, and whether or not we endorse those goals, is beyond the scope of our research'*.⁹ In his article *'The roughening of the law'*, he criticized the laws that serve to increase state wealth, arguing that these rules do not prevent price increases, but rather are about the struggle to gain a monopoly on price increases. He explained that he did not feel legal certainty and that the reasoning for the laws obscured the real purpose of the laws, such as *'the law that excludes certain, and not the most inexperienced, citizens from college education proclaims in its words the intention to ensure the thoroughness and effectiveness of college education'*.¹⁰ He voiced his concerns about the land reform,

⁵ HERGER, Az igazságosság és a jogtalanság határai a magyar magánjogban [The borders of justice and injustice in Hungarian Private Law] 9.

⁶ Szemle [Review] 159.

⁷ ALMÁSI, A magyar magánjog jellemzése [The characteristics of Hungarian Private Law] 163–164.

⁸ HUNGARUS, A zsidók közéleti és gazdasági térfoglalásáról szóló törvényjavaslat elvi alapja. [The principle basis of the bill on the occupation of the public and economic space of Jews] 2–3.

⁹ MESZLÉNY, Újabb törvényhozásunk és a magánjog [Our recent legislation and the Private Law] 34.

¹⁰ MESZLÉNY, A jog eldurvulása. [The roughening of law] 69–70.

which he said was a disguised restriction on rights.¹¹ In another article, he highlights that the sages and religions of all ages say that *'there is no one or group of people who has the right to see and use another as a mere means to his own ends'*.¹²

5. Articles of the Polgári Jog

In view of the popularity of the meetings of the *'Society of Civil Jurists'* recruited by *Salamon Beck*, the journal titled *Polgári Jog* was issued in 1925, edited by *Artur Meszlény*. In the introduction *Meszlény* stated the purpose of the paper is *'to contribute to the removal of the ruins, the work of mutual understanding, to return the law to its balance and the heights it once had, which is far removed from the steam of human passions and prejudices, one-sidedness and bias.'* They wanted to provide knowledge, *'not to shy away from objective and decent-sounding criticism, not to apply for favours and benefits from anyone, avoiding being offensive to one's person and provocation, but to relentlessly hanging on to the truth.'*

He emphasized that we could not be hindered by the laws of Nature, no man was its master, we were all created free, equal, and fallible. He warned us not to think, *'that the other is already evil and worthless just because he's not quite like you – imagine yourself'* and *'not to take the air from or cover the sun from the other, because tomorrow he can be the stronger one and he could push you into the abyss.'* Twenty million people died as a result of the war, which did not make life easier the slightest for the survivors, because all working people do extra work, which together form the great reserve base of society. *'Thus, to destroy a human being, is to commit suicide, whether it is in an international or domestic struggle.'*

He wanted the law to be *'a proud priestess of the Truth'*, *'a shield to provide sure protection that will readily accept anyone fleeing violence'*, and *'not to be a slatternly, stubborn and a ready-to-serve nurse for law illegitimacy'* and stated that *'the law should not be a form of execution of violence'*.¹³

Antal Almási thought of the creation of the Civil Code in the first issue of the journal *Polgári jog* in 1925, that the situation at the time was not suitable for a private Law code to enter into force. Upon legislation, the main question to be decided in his opinion was *'if the pre-war rules should be legislated and consciously confronting them with life, or perhaps the current situation should be perpetuated?'* First of all, he did not consider the creation of the Code justified because the foundations of the right to personality became questionable and according to him *'some of our laws determining the right to the most important self-determination are not based on the person's mere existence but they are connected to being a part of groups, smaller than the state'*¹⁴, and sometimes are also subject to administrative licenses and decisions¹⁵, in other words the most important branches of the right to privacy are to the transforming from privileged rights in the private sense, which belong equally to everyone, into privileges subject to administrative discretion'.

¹¹ MESZLÉNY, Földbirtokreform és magánjog [Land reform and Private Law] 162–163., 7., 190–191.

¹² MESZLÉNY, Morál és jog [Morality and law] 41.

¹³ MESZLÉNY, Beköszöntő [Welcome] 1–4.

¹⁴ 'Race, nationality: 3 § of Act XXV of 1920, suitability for agriculture: 25 § of Act XXVI of 1920.'

¹⁵ '3 § of Act XXV of 1920, administrative authorization: many cases in the Act XII of 1922, County Economic Subcommittee: 25 § of Act XXXVI of 1920, shall be considered as an administrative authority in this sense as well. Land Registry Court (25 § of Act XXXVI of 1920), the decisions etc. of the Minister of Agriculture (ibidem 20 §), which ultimately determine who is allowed to pursue a career in science, commerce or industry and agriculture, and who is not.'

On the other hand, in Property Law, the concept of movable property has changed, the pre-war content of property has been lost due to restrictions on the ownership of real estate (compulsory lease) and restrictions on land reform.

Thirdly, the law of obligations cannot be regulated long standing in an economically unstable situation. All in all, he could not have imagined a Code that *'regulates the right to privacy, property rights, and credit agreements in a pre-war manner, nor one that listens to these, or wants to enact and, above all, can enact them in their chaotic state of the time'*.¹⁶

In his work entitled *'Legal Policy'*, Meszlény explained that the public law provisions adopted to protect the weaker party had reached so far into the regulation of Private Law relations that the greatest treasure of Hungary, its freedom, had been lost *'in the midst of many state care'*.

According to him, the ideal method is that *'the legislator does not regulate more than is absolutely necessary'*.¹⁷

He stressed his concern in particular that the *'16 § of Act LCIII of 1912 within certain limitations and then 14 § of Act L of 1914 in general entitled the government to regulate the private law relations which became necessary as a result of the war with decrees and according to the second paragraph of 1 § of Act VI of 1920, which extended the exceptional power, the interests of warfare, the interests of the internal order and public security of the country as well as its foreign policy shall be understood.'* In his view, the Curia applied the regulations without examining the legitimacy of the authorization after the war situation had passed. The regulation of private life situations by decrees must in any case be *'consistently kept in mind as a matter of exceptionality and exigency'*.¹⁸

After a speech of *Eugen Schiffer*, retired Minister of Justice and Deputy Chancellor of the German Empire at the Hungarian Law Society, Meszlény wrote an open letter to him, reflecting on the parallels and differences he had discovered in the effects of the war in the two states. One of these parallels is the shift in law in favor of Public Law and to the detriment of Private Law, which violates an individual's right to self-determination and freedom of movement. However, while in Germany this is done in order to protect the economically weaker party, in Hungary *'for the sake of general and proclaimed public interest goals. These are the goals deemed necessary for the economic survival of the nation and for the protection and consolidation of the existing social order.'* The restrictions violated the right to property, as the land reform essentially revises the land acquired since the war to the extent that the acquisition must be restricted in order to have those who are found *'worthy and suitable'* gain access to land; in addition, the freedom to choose one's career is restricted by a number of provisions, *'with the aim of providing and maintaining earning opportunities and careers for those sections of society who are considered to be fit and proper to do so.'*

According to his presentation, in the areas identified by the Deputy Chancellor as the focal point of the German reform, there is a barely perceptible change among Hungarians, so that *'Private Law rules on movable property have hardly changed, and relatively few changes have taken place in the settlement of legal relations between producer and consumer, employer and employee.'* While in Germany, in addition to the prevailing concept of family, the personal rights of spouses were pushed into the background and

¹⁶ ALMÁSI, A polgári törvénykönyv [The Civil Code] 8–13.

¹⁷ MESZLÉNY, Jogpolitika. [Legal policy] 193–196.

¹⁸ MESZLÉNY, Új jogszabálytan [New legislation precept] 334–341.

children born out of wedlock did not have a Family Law situation, in Hungary this is a less burning problem, as the legal situation is completely different.

In his view, Hungarian law does not recognize the authority of the husband in the Germanic sense of the word; husband and wife have long been, in principle, equal in marriage, although he states that there are no specific statistics on whether men or women are generally the masters in families. The institution for the maintenance of a child out of wedlock has been established by court practice and a decree¹⁹ of covering a woman's urgent needs around childbirth is covered by a war decree, the scope of which has been maintained. According to *Meszlény*, the field of family law did not trigger more general reform demands. While German law is characterized by the 'over-technicality of the law' as an effect and remnant of the rule of Roman law, in Hungary the earlier Codes (such as the Commercial Code, the Criminal Code, the Bankruptcy and Enforcement Act) are 'primitive to the legislature' and are only applicable by extremely free interpretation of law, but thus the development of judicial law interpretation characterizes these areas.

Recent laws are on a higher level by the technicality of the law, for example, the so-called Commission text of the draft Civil Code, the acts on unfair competition, copyright, Customs Law, but he expressed that *'new provisions taken from case-law have not always succeeded in completely emancipating themselves from the occasionality of the judicial decisions and in extracting the general principles of law precisely from the raw material of a particular case.'* He considers the mass of new legislation to be a challenge, but even more serious, that *'preparations are not being made with the publicity as before, and huge codes of surprise often come into effect in a matter of days, so that even tacit learning is excluded.'* He considers it positive in January 1929 that *'since the end of the exceptional power of war, the multitude of decrees has subsided, and the Acts are good in content.'* Regarding the courts, he stated that in Hungary judges did not have to struggle to feel illegitimate about the state power in whose name they operate. It is not the duty of the court in its judgment *'to support or suppress the extreme social currents that are prevalent and are largely destined for a short life, but to serve only one: faithful to its oath, without favor and pleasure, without fear and hatred, alone and exclusively the truth.'* He was pleased to note that, with a few exceptions, Hungarian judges would adhere to the latter ideal, so that they would recapture the old nimbus of the courts.²⁰

Ede Alföldy, a retired chairman of an Appellate Court, and a lawyer, warned in a 1927 article entitled *'Limitations of Legislative Power'* that in the time of the *'fashion of various dictatorships of the time'* the proper development of the scope of judicial law enforcement can offset these quite effectively.²¹

In 1934, *Dezső Nagy Jr.* expressed his concern about the State administering by decrees. There was some improvement in 1922, as the 6 § of the Act XVII of 1922 stated that decrees that had become redundant should be repealed immediately, and that those still to be maintained should be submitted to the National Assembly by the Government as bills. Then the primacy and supremacy of written law prevailed again, *'but the financial crisis that erupted in 1931 not only shook our economic life to its foundations, but also once again hit a huge gap in the principle of constitutionality. The 2 § of the Act XXVI of 1931 has given the ministry an unprecedented wide-ranging authority to preserve the order of*

¹⁹ Az eltartásra jogosult családtagok és a házasságon kívül született gyermekek fokozottabb magánjogi védelméről szóló 3982/1916. M. E. számú rendelet [No. 3982/1916 Ministerial Decree on the enhanced private law protection of family members entitled to maintenance and children born out of wedlock].

²⁰ MESZLÉNY, Az igazságügy reformjához [About the judicial reform] 1–7.

²¹ ALFÖLDI, A törvényhozó hatalom korlátai [Limitations of Legislative Power] 85–87.

economic and credit life. To this end, the government may, by decree, make not only private and procedural provisions, but also other provisions which fall within the competence of the legislature under our constitution.’ With this, the number and position of the decrees swelled in 1933 and according to him, *‘the Repository of Decrees became a more important collection of legislation than the National Repository of Acts.’*²²

Salamon Beck in the same year, also in the wake of the economic crisis, noticed that the fundamental principles of law were being shaken. Of the rules of crisis law, *‘one or the other happily adheres to the rules of the universal legal order, but many provisions run counter to legal principles.’*²³

Gábor Vladár, later Minister of Justice, gave a lecture at the National Club on February 23, 1938, entitled *‘Deflection of Law from Life’*, in which he presented the cases of the distancing of positive law from life. He explained that the law is meant to regulate living conditions, *‘but it cannot stand in the way of life, it cannot reverse it, it can only build a riverbed for it.’* He foresaw that *‘if the positive law deviates from life, it will be the object of laughter, indifference, and hatred.’* This can have two consequences: *desuetudo* or revolution.

According to *Vladár*, the Hungarian nation retained its right to Roman Law and Canon Law because *‘it arose from the needs of life, in practice, polished on the stones of life, it was the right of Hungarian life, at least in its main features.’*²⁴

István Szentmiklósi, a Royal Appellate Court notary, welcomed the family protection program, the compulsory pre-marriage medical examination (which came into force with Act XV of 1941 supplementing and amending the Marriage Act, this was the so-called *‘race protection Act’*) as a *‘not insignificant reform’*. The essence of the reform, according to which a medical opinion is mandatory, then the right of the marrying party is to decide whether to enter into a marriage or not, and if the party fails to undergo a medical examination he or she had to be punished but the marriage remained valid, was not sufficient. He said that those who could only have ill offspring and whose health endangered the health of the other spouse should be prevented from marrying, as *‘the health of the family and the nation through the family must be kept clean because it is not doubtful that the nation’s intellectual, moral, etc. can only be perfected in this way’*. The court notary advocated the view, in contrast to a number of studies published in the columns of the journal *Polgári Jog*, that Public Law should intervene in Private Law and that national objectives should take precedence over individual interests. In his view, while *‘the choice of a spouse is a person’s personal freedom’*, *the issue of compulsory pre-marriage medical examination in Europe has not been able to proceed well because many have already seen personal freedom violated in compulsory medical examination. There is no doubt that the prohibition of marriage encounters personal freedom. But it also collides when we ban blood relatives from marrying each other. No one thinks of objecting to this.’* According to him, *‘individual freedom can only count on protection and unrestrictedness as long as it does not conflict with the vital interests of the nation. The unrestricted importance of individual liberty must take precedence over the paramount importance of public health. The first is to protect and improve the health of the nation, which can only be achieved by banning those who endanger the health of the family, the nation, from marriage, even at the cost of restricting individual freedom.’* According to *Szentmiklósi*, it is necessary to go further and present a health certificate issued by the examining doctor, which proves that the marrying

²² IFJ. NAGY, Törvény vagy rendelet? [Act of decree?] 11–13.

²³ BECK, A jog tragikuma [The tragedy of the law] 118–120.

²⁴ VLADÁR, Az élet elhajlása a jogtól [The Deflection Law from Life] 129–144.

party does not suffer from an inherited or infectious disease that endangers the health of the other marrying party or the descendant from the marriage, and it should be a precondition of the marriage. He also believed that as a constitutional safeguard, if a doctor refused to issue a certificate and the party would find it detrimental to oneself, the party could lodge a complaint with the Royal Tribunal, which would decide on the complaint the after out-of-court proceedings of the hearing of medical experts.²⁵

The author later factually described the provisions of the *'Race Protection Act'* in the *Magyar Jogi Szemle* in 1942, according to which when the proposal became a law it *'significantly lost its eugenic character.'*²⁶

4. Summary

Overall, therefore, with a few exceptions, we cannot find sharp criticism in the scientific journals about the restrictive and disenfranchisement provisions of the era. The *'greatest voice'* of the era was *Artur Mészlénny*, whose death in 1937 prevented him from expressing his views throughout the *Horthy* era in order to protect Private Law.

One of the reasons for the lack of public expression of opinion about disenfranchisement in Private Law may be that the disqualification provisions have typically been in Public Law regulations and less in Private Law regulations.

This is explained by *Dezső Nagy Jr.* in *Polgári Jog*, who, through the examples of *Caesar's* bankruptcy and interest laws, *Napoleon's Code Civil* and *Mussolini's Codice di commercio*, sought to substantiate the premise that *'under dictatorships, Public Law (Constitutional Law, Criminal Law) suffers disproportionately more than Private Law, in front of which – often untouchable ideas – even the most powerful dictator's lictors bend the beams.'*²⁷

The other reason could be that in an era of legal uncertainty, private jurists did not openly oppose the authorities for fear of retaliation. Few have raised their voices in defense of private law, as the following words of *Mészlénny* suggest: *'Of course, which times are normal and which are not are a matter of perception and greatly – sensitivity. Are they normal today? There are some of us who answer no to it without hesitation. However, the official perception is that they are. Fiat applicatio.'*²⁸

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