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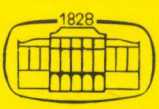

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POLITICAL CULTURE – LEGAL CULTURE: CONFLICTS AND HARMONY*

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The analysis of the relation between political and legal culture attempts to present those historical factors which were shaping the eventual conflicts and harmony of the two cultures. Based upon the South and South-Eastern Asian version of paternalist political culture and its appearance in the East European region it seeks relation between the "orientative" and "legalistic" types of political and legal cultures.

I.

The structure and functioning of the political and legal systems living in a society are conditioned by the historically evolved social environment. The social environment has its own effects on each element of the political and legal systems, the structure of norms, the organizations, the status and role network of these systems just as much as human behaviour realizing these elements. Political and legal culture is also manifest in the political and legal thinking related to the political or legal systems. Historically, however, the political or legal culture conditioning the structure and functioning of the political and legal systems, is itself a phenomenon shaped to a considerable extent by just the functioning of these systems. The two systems and two cultures related to them can be separated only analytically, in reality their specificities and elements are inseparable from one another, and they are linked together by their entire social and cultural environment. I have spoken about the political and legal systems, and about political and

*A comparative study prepared for the 13th World Congress on Philosophy of Law and Social Philosophy, August 20-26 1987, Kobe, Japan.

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legal culture, whereas in this presentation I just attempt to investigate whether there is any relationship between the two – as this may be a question in the case of both systems and cultures – and if so, then what is it like.

Most of the analytical attempts approaching society with the concept of system tacitly, or even expressly include the legal system /though its autonomy may be admitted/ in the political one /see for instance Parsons 1969:28-29/, or they consider the legal system to be part of some other system. There is hardly any example to be considered on a plane equal to that of the others. This has been attempted most by the sociology of law, though by far not using the concept with identical content. On this occasion I would not engage myself in the analysis of the question as I hope my stand has become clear from the introductory lines, and it is also clear what elements do I consider to be the components of the legal system. /And with this I have already separated my stand from those who accept system in law only on the normative level, that is to say as a system of norms./ The relationship of law and politics, as two social phenomena are quite clear by now, as it is also clear that washing the two into each other, no matter to the 'benefit' of which, has dysfunctional consequences for both in practice, and considerably restricts the cognitive possibilities of science. Franz Neumann has noted rightly that the dissolution of politics into law – which is related to some extent to the removal of risk from politics either in the theory or practice of liberalism, or in that of European Social Democracy of more recent times – is not only a naive confidence in the possibility of shaping society by law, but it even endangers democracy itself /Neumann 1964:264/. And the reverse is also true. The consideration of law as an instrument of politics, and the practical consequences of such an attitude, which has excluded the specificities of law gathered during millennia from regulation, has created dysfunctional consequences in each society where it was attempted, and ultimately the service of the voluntarist policy of authoritarian power reduced and eliminated trust necessary toward law /Kulcsár 1985:281-364/. All this, however, does not alter the reciprocal influence and close relationship bet-

ween the two phenomena, and consequently between the two systems.

The question is whether there is some relationship between the two cultures, the political and the legal one, and if so, how? Do for instance the various types of political and legal culture correspond to each other?

Without venturing now into the analyses of the conceptual problems of political and legal cultures, I may state that much that as the very same components consitute the elements of the political and legal systems in the conceptual abstraction, and the difference may be found in their linkage to the phenomenon of politics and of law, similarly such common components may also be found in the political and legal cultures prespectively. Both concepts cover in a sense subjective phemomena if compared to the respective systems, it was not accidental that Lucien W. Pye called the political system the systematized subjective empire of politics. /Pye 1965/. Yet these subjective elements are objective facts from the point of the system, and among others, they are just the consequences of the functioning of the two systems in the political, as well as legal culture. These subjective phenomena are the subjective attitudes of group quality, and reaction capabilities also of group quality, which evolve historically in relation to the elements of the political and legal systems or in relation to the entire system with a 'systematization' of a historical nature. This fact is important even if in the process of 'systematization' certain values, basic principles, knowledge, attitudes and symbols appear to have priority. All these orientations, attitudes, values and emotions, and the symbolism related to them, together with the modes of action /and the related ideas, views and opinions/ evolved and ingrained in the environment of the political or legal system and realizing the individual elements of these systems are the results of an usually longer development of historical dimensions. Neither political culture, nor the legal one can be considered simply as an 'acquired' phenomenon, but they consist of the social /in a broader sense/ group, and individual processing of the historically accumulated experiences. The cognitive, the emotional-evaluating elements and the beha-

vioural patterns in the attitudes can be found in both of them.

By analyzing legal culture Lawrence Friedman has, however, made a distinction in that he separated internal legal culture, which I would call the professional legal culture, and which would mean the 'set of attitudes and values' of those in the legal profession, from the external legal culture, which is the set of attitudes and values of laymen, of the society, related to law /Friedman 1977:76/. And the differentiation is really justified. When we think for instance, of Otto Kahn-Freund's statement which has become a saying by now, according to which "the objectives are determined by the society, and the means by legal tradition" /Kahn-Freund 1966:45/, then the professional legal culture occurs to us first. But the culture of the legal profession is inseparable from the legal culture characteristic of the society, which as a whole encompasses and conditions professional legal culture as well. When Roscoe Pound writing on the 'spirit' of common law says that "it is essentially a mode of judicial and juristic thinking, a mode of treating legal problems rather than a fixed body of definite rules" /Pound 1963:1/, then he keeps in mind the professional legal culture. However, the 'spirit' of common law reflects a broader legal culture than that, in which for instance the authority of the court is much bigger than in other legal cultures, where conscious law making has been subordinate to juridical practice almost until today, where the place of the individual, the protection of his freedom and property is of outstanding significance, and where litigation has retained the opportunity of 'honest struggle' entrenched by safeguards, etc. All this is naturally a historical product, just as every culture is, and it differs with its characteristics not only from other cultures of traditional foundations, but in many respects also from the so-called European, Continental legal cultures.

If I accept the division of legal culture, though their interaction and relationship to the legal system naturally makes this separation a relative one, then I must also presume such a differentiation within the political culture. This inference has to be accepted even if we know that politics as a profession got historically much less separated from lay society than

the legal one. But in the duality of politicians' culture and of political culture a difference of attitude and values between 'professional' politicians and those who do not deal with politics as a profession can be definitely felt. However, there is yet another point which should be considered at the internal, or professional, and external or lay duality of the legal and political cultures. And this is the position of the two professions in the society. With the development of the legal profession its representatives, in keeping with their internal stratification, occupy various levels within the hierarchical relations of the society. This position depends upon the characteristics of the legal system too. /For example, the social position of a judge is entirely different in legal systems characterized by the Anglo-Saxon legal tradition, than in the Continental one; and it is again different in the Federal Republic of Germany or in Hungary due to the influences deriving from the political system, though both of them belong to the Continental legal system and there are many common traits in their legal tradition too./ Due to yet other factors — and here already the specificities of the economic system are also manifest — the social position of lawyers differs in every legal culture from a legal expert working for instance in public administration, etc. The profession of politicians is partly less closed than the legal one /people may become politicians from several professions/, and partly — the degree again depending upon the characteristics of the political systems — the politician is forced to keep in a closer touch with the society than the legal expert. The professional characteristics of a politician are also more malleable than those of the legal professionals, but the relationship with authority /even if outside such positions/, characteristic of the profession, is a significant factor separating him from the outsiders.

Any outline of the relationships between political and legal cultures is made particularly complicated by such a dual nature of both cultures, and since now I may only aim at the development of a conceptional sketch, I can only slightly consider the external and internal separation of these cultures in my subsequent analysis.

There is yet another point which I have to refer to in the interest of making the framework of the analysis clear. Culture, as it is commonly known, is not an uniform entity even in the individual societies. I. Wallerstein is right in saying that the interrelationships of world economy have created by now such a situation in which we may speak about the development of the world system and the societies living within the accidentally drawn political borders of individual countries may hardly mean the framework of an approach. Afterall the phenomena of these societies are partly the consequences of global processes, or of the responses given to them /Wallerstein 1986: 14/. I repeat: this is true but within certain limitations. Actually, the consequences of the original specificities can be found in each society, which shape even the responses given to the contemporary processes, therefore the residual differences /Deutsch 1973/ have a significance even today. It is true that these specificities cannot be linked to the politically accidental borders from two aspects even. One is that they outgrow these borders in certain respects. The specificities of the Hungarian society for instance culturally extend over the present borders which are historically really accidental, encompassing one-third of its original territory as reduced by the Trianon peace-treaty, and cover the almost four million Hungarians living in the neighbouring countries. Influences deriving from the political unity of the erstwhile Austro-Hungarian Monarchy can also be recognized in the successor states, at least in regions which used to constitute the Monarchy. And the subcultures existing in the individual countries create differences even within societies as "units".

Subcultures, however, develop not only in culture as such, but also in the political and legal cultures. These subcultures may be related within the political culture for instance to ethnicity, to the social classes and strata, they may have their influence through regional specificities, etc. One of the subcultures – mostly, though not always the one of the politically dominant ethnic group, class, or layer, etc. – may become dominant and may characterize the political culture of the entire society. For instance the entire political culture was

characterized by the subculture of the nobility in Poland or in Hungary with specificities still having an impact /Kulcsár 1987/, or in China, and to some extent in India the subculture of the 'literates' /Nandy 1972:115/, etc. The various subcultures can be similarly distinguished within the legal culture. Moreover, as the plurality of the legal system is more or less a fact everywhere, components of the legal system may also evolve and maintain a legal subculture though — and this is also a problem to be studied — the components of the legal system do not always have such an effect. In India for instance, where the legal system is extremely complex, apparently the two components of sacral origin, the traditional Hindu and Muslim law have by far not created such a difference in legal culture than the penetration of the British legal culture and the newer Indian legislation based on it. A specific subculture, becoming dominant /even if dominance is more conspicuous than extensively spread/ in many respects, is linked to the latter one. It is also doubtful whether the differences of the legal cultures linked to the sacral Hindu and Muslim law are so sizeable as to be subcultures. It is a corollary of the plural nature of the legal system that several legal subcultures may live in a society. In the East European and Central East European regions for instance — until the traditional peasant society was /and has been/ alive if only in traces — the so-called popular legal customs not only maintained a specific set of norms, but also the subcultural elements of the legal culture and have continued to do so to a certain extent.

II.

I try to outline the relationships of the political and legal cultures concretely by approaching legal culture associated to two regional variants of political culture, which can be characterized by paternalist features. The choice is justified by the existence of different variants of political culture of paternalist features in different regions of the world, though naturally they may have evolved traits differing from one an-

other. And the choice of the regions was influenced by the remarkable analysis of the paternalistic political cultures made recently by Lucien W. Pye /Pye: 1985/, though 'only'in South and South-East Asia, which is happily complemented by the international survey /Chiba 1986/ conducted by Masaji Chiba and covering the legal culture of the same region /excepting China, but including Egypt and Iran/. The political culture of the other region /East Central European[1] and Hungary within in/ to be studied is also characterized by paternalism in many respects. And though no such comprehensive analysis has been made like Lucien W. Pye's, yet several studies, based on minor surveys and analyses, have attempted to define its most important features /Kulcsár1987/. The basic features of the legal culture of the East Central European region can also be outlined, and a comparison with the results of surveys of the South and South-Eastern and Far Eastern region is also possible. It is possible despite the rather big differences between the legal systems and cultures concerned, particularly if we try to apply Masaji Chiba's hipothesis on the three levels of the legal structure the third component of which, the legal postulates, in my view already touch upon the terrain of legal culture. Actually this hipothesis differentiates between three components of the legal system, namely: 1. official law, which is /are/ sanctioned by the legitimate authority/-es/ of a country, now state law

[1]The three main regions of the European continent are rather historical than geographical units. Therefore their geographical location is not precise, and what is more important, its 'borders' change with the times. The Eastern borders of the West European region follow more or less the line of the Elbe and Saale and later on the Leitha and the Western borders of the earlier Roman province of Pannonia. Whereas the Western 'border' of the East European region runs from the Baltic states along the present Eastern borders of Poland, the Carpathian range and the river Sava. The territory between the two regions may be called the East Central European region, which carries East European features in many respects as far as its original characteristics are concerned, but during the course of history it followed the Western pattern and tried to adapt itself to the Western institutions and social set-up, while part of its territory was under the the influence of the Eastern region for shorter or longer periods. On this see in more detail: Szücs /1983: 132-133/

is the most importatnt within it, but the different sacral laws, like Hindu law, Muslim law, canon law, etc. also belong to it; 2. unofficial law, which is not sanctioned by some legitimate authority, but by the consensus of a certain circle of people in practice, and definitely influences the effectiveness of official law either by opposition, modification, complementing, such are for instance the tribal legal customs, folk-law, etc.; 3. legal postulates, which are value principles or value systems, and are specifically connected with official or unofficial law, founding, justifying and orienting the latter ones /Chiba 1986:6/.

To further analysis however, a brief description of the political culture of paternalist nature is necessary by summing up the identical and different features in the Asian and European regions mentioned above.

1. The first problem is the exploration of the socio-historical roots of the political culture of paternalist type. For the Asian regions this problem seems to be easier at the first glance, as Lucien W. Pye derives this political culture and its specific traits from cultural factors right from the outset. He considers Confucianism to be the decisive factor in the Far Eastern and partly South-East Asian societies, which appeared in China, Japan, Korea or Vietnam with different traits due to the specific cultural traditions and social structure of the countries mentioned, yet the bases of its interpretation of power, the ensemble of the moral pattern and paternalist care in the model of the stable, continuous and harmonious society, are identical. In China the political system built on the model of the family, as it derives from Confucianism, equally legitimized imperial power at the top of the hierarchical structure and the mandarin bureaucracy below it. In Japan it evolved the paternalistic form of elitism, which tolerated decentralized and competitive authorities. In Korea the combination of the two appeared, complemented by the Confucian thesis that virtue should win its reward, therefore the Korean elite entrepreneur is ready to take risks. In Vietnam Confucianism strengthened national pride, though it is true, that the effects of Mahayana Buddhism and French Catholic culture can also be

felt there. One of the most important features of this Confucian political culture is that paternalist power is based on the governing activity of 'superior' people, whose behaviour is directed by classic wisdom and their power is manifest in a hierarchically built authority. The objective of this political and governmental power is much more the maintenance of respect for status than the realization of innovatory concepts of innovatory policy /Pye 1985:55-81/. The uniform cultural background guaranteed by Confucianism was missing in South-East Asia where the joint presence of Buddhism, Islam and Catholicism has evolved several kinds of tradition. The essential trait however, namely that power is part of the cosmic order, which is represented by the divine King and a hierarchically ordered power structure functions below the summit, appeared also in these societies, moreover, it was strengthened even by colonial policy. In fact, this hierarchy could be manifest in the bureucratic organizational system strengthened during the colonial period and grown enormously after independence.

Naturally, differences were manifest in the societies of this region too, for instance the Burmese faith in the omnipotence of the divine King resulted in the rejection of all external patterns and in refraining from learning, and it created such a rigid sub- and superordination, which was loaded by tension as rigidity is accompanied by distrust. In Thailand the King was also a demo-god, but the teacher and protector of his subjects, the governor of his clerks, the student of the Buddhist holy scripts. Here rigidity was less in sub- and superordination, the principle of reciprocal security was also built into it and this also made political culture more open. In Indonesia too a divine royal power evolved but it was much more the patron client relationship which got strengthened and not only sub- and superordination /Pye 1985:90-120/. The Indian concept of power was originally also based on the concept of the divine King – as it penetrated into the South-East Asian cultures from here – and karma founded behaviour according to which the rebirth of man is determined by his behaviour in his earlier existence. As life is only a stage in the series of reincarnations, the later existence of man is also determined

by how far does he observe law, how far does he obey his superior, does he avoid pollution by the subordinates, etc., so the unchallengeable nature of power was almost incorporated into the religious consciousness of people. From this basic range of ideas the separation of religious and secular power was soon accomplished, essentially by the appearance of the caste system, and the norms of right behaviour were also linked to the castes, or jatis /sub-groups by birth/. In the caste system status and power could be separated, from which the Hindu understanding of power derived, a harsh interpretation of Machiavellian[2] nature, to use a Western term here. As Manu worded it: "The entire world is kept in order by punishment, since sinless men can be found only with difficulty." British rule was built on this political culture, which developed the clerical apparatus, considered necessary already by Kautilya, into a bureaucratically efficient system of organizations, even if efficiency was weakened by the original traits of the political culture, namely that spiritual matters are more important than the 'objective' ones, or that the Hindu officials are automatically inclined to protect status and rank, and that as man has to follow dharma automatically, so he has to stick to the office manuals, etc. In India too, just as in the other countries of the Asian region, the family is of basic significance. But in the Hindu family the mother-son relationship is dominant and not the father's role, which has significant consequences upon the consideration of power. Such is for instance the inclination to moralize, an inclination to uncertainties of behaviour deriving from the ambivalent nature of the role of women, which is only enhanced by the lack of unambiguous socialization, free of contradictions /as different for instance from the Chinese family/. From all this ultimately an ambivalent relationship

[2] In Western political thinking it is customary to compare Machiavelli's oeuvre with Arthashastra, the manual on administration written by Kautilya in the Mauryan India. To the analysis of the problem see Prosad Sil/1985: 101-142./According to Kautilya the ultimate basis of state power is 'danda', literally meaning a stick, but figuratively penal law, but in keeping with Hindu morality danda should be tamed by dharma /Ibid: 141/.

to power derives: it is expected from power to render support and care, but also negative traits are associated with it. The dharma of the ruler is to maintain temporal order with the punitive norms of danda, but because of the ambiguities mentioned above, power – the practice of which replaced sacral rules by secular law making – cannot be truly complete or satisfactory. The temptation for instance, that man may try to escape from the consequences of his deeds, is alluring even for those who exercise power /Pye 1985: 133-154/.

The pressure for adaptation which inevitably appeared in the societies of the periphery within the centre-periphery relationship first during the colonial period, and later on after independence /in some countries without colonial rule/ brought new elements into the traditional political culture and corroborated certain traditional elements. Thus, political culture is shaped also by a relatively new adaptational compulsion beyond the consequences of the cultural context.

From these specificities outlined in an extremely simplified manner two consequences can definitely be drawn.

The first one is that Pye's analysis identifies the cultural aspects, the cultural context of Asian power /even if in some cases I would challenge him/, but he does not reach the social base of these cultural interrelationship, those relations which have created the described cultures in the development of these regions. This would obviously require further analysis.

The second one is that several identical features derive from political culture of paternalistic foundations alive in the Asian societies referred to, despite all the differences.

If I aim at summarizing them – almost as components of an ideal type – then the following can be stated as being the specific Asian features of paternalist culture.

– Political power adheres to status, its legitimation originates from here, it has no, or hardly any relationship with the effectiveness of politics itself.

– Power gets mystified and ritualized, people believe that power may solve every problem <u>if it wants to</u>, if it acts accordin to ritual, consequently the 'ritual' may substitute the

real element.

– Care and benevolence are associated with the notion of power.

– The moral aspect of power is expressed by personal example, which, however, strengthens the idea of a static and conformist social order, and develops hypocrisy in the bureaucracy.

From all this it derives that – as the concept of power has nothing to do with social utility, efficiency and representation, because it is status and goal by itself – it cannot be 'degraded' to a relationship with utilitarian objectives. Further on: as the medium of power appears as the embodiment of the entire community, and not as a representative of partial interests, so people subordinated to power also avoid expressing their views openly in public issues. They rather turn to tactical manoeuvres, intrigues based on personal contacts, which are better related to conflicts and solutions manifest in stable hierarchical systems.

– It is also part of the specific features that people learn how to deal with power, moreover, they develop patterns that help the efficient manipulation of power.

– Paternalist political culture, as it derives from its essence, emphasizes the group against the individual, and it is based on power relations or on the model of the family /like for instance in the Far East/, or parallelly it is expressed in the form of the patron-client relationship as well.

2. The paternalistic culture developed in the Eastern periphery of Europe, in the East and East Central European region was less ideologically based in the course of history, though the notion of the King of 'divine right' was alive in Eastern and East Central Europe just as much as in Western Europe. But the secular and sacral power of the King was really stressed only in Eastern Europe, in Russia, and even there under Byzantine and Mongolian, that is under Asian impact.

The appearance and durability of paternalistic culture in the Eastern periphery of Europe /where paternalist power survived almost until today/ is related to its lagging behind the development of the other part of Europe, and to the constant

'pressure' for adaptation, which was never successful just because of the original specificities, hence it was a recurrent phenomenon. As backwardness and differentness maintained a historically recurrent adaptation despite the imitation of external patterns[3] – as the external patterns could never become the the same under the different conditions which they were in their original context – and the form of adaptation was the recurrent pressure for reform usually from the top towards the bottom, which strengthened the position of the political system in society in an extraordinary manner, so the power of the centre grew particularly within the political system. The excessive weight of the political system – if not of its centre – was strengthened by its opposition to reforms consisting of the adoption of external patterns, particularly on the part of those /individuals, groups, strata/ who were attached to the existing conditions. As the pressure for adaptation, the external elements transplanted by reforms diverted the trend of development based on the original specificities from its organic nature, so political power /primarily the state, which, at least in East Central Europe, periodically meant an alien imperial framework as well/ created certain elements artificially within the society. Such elements which appeared without interference in the far more organic Western European development. This condition further enhanced the role of the state and of law together with it, occasionally even considering law, with excessive confidence in it, to be suited to substitute other means, to be a substituent instrument.

There are, however, significant differences among the developmental specificities of the societies which evolved in the Eastern periphery of Europe. In Eastern Europe, for instance, different cultural conditions evolved under the Byzantine impact, which unfolded not only the unity of secular and sacral power particularly in Russia, but – again along Byzantine pattern – also a rigid hierarchy of power and a special sense of mission. This has always put Russia into an ambivalent position

[3]The adoption of external patterns has always had a great role in the historical development of the East Central European societies /See: Kulcsár 1983 and Kulcsár 1986/.

in her relationships with the more developed parts of Europe by the contradiction of the pressure for technical adaptation and spiritual missionary real. Yet the fundamental features of the paternalist political culture deriving from the main trend of development described here, can be found in all the societies of the region.

A manifestation of the paternalist government of state is the series of the so-called reformer Kings known only in the Eastern periphery and not elsewhere in Europe, which in a sense preceded the absolutist monarchies appearing in the European centre only later. The latter ones then projected a programme expressly aiming at the shaping of the society as representatives of enlightened absolutism from Prussia to Russia. In the political culture as equivalent of the paternalist government of state is the subject's behaviour.

The subject's behaviour is essentially the acceptance of the care and dominance of the centre without a demand to really participate in politics, usually until a point, when the general condition of the society is at least satisfactory. But in the case of lasting deterioration the same presumption grows which appeared in the Asian paternalist policy, namely that government is capable of solving the social problems if it wants to, therefore if the problems become permanent it is obvious that the government does not want to act. In such a situation the subject may even venture to take violent steps, though frequently in an irresponsible manner, disregarding the significance of the conditions.

Violence happens to be an essential element of paternalist political leaderhip and political culture anyhow. Paternalist political leadership usually safeguards the decisions by penal law, and since one of the characteristics of a paternalist political centre is its disinterestedness in the processes of feedback, the rejection of alternative political conceptions and every such criticism and action which might result in an alternative political conception, such an attempt may easily become a political crime. A natural reaction to the violence applied by the political leadership is also violence, revolts, riots, etc., which can be found so frequently beyond the poli-

tical changes appearing in the Eastern periphery of Europe. Consequently, fear also becomes a lasting element of the political leadership and culture.

An important element of the Asian paternalist culture is the lack of the criticism of political leadership. As Pye says, criticism was not only not considered to be a means of promoting a political alternative, but it was clearly regarded to be bad taste and a sign of the lack of good manners. This phenomenon was partly related to the sacral background of the ruler, as it has been a corollary of the model of the pater familias, and partly it derived from such a hierarchical structure of power where real autonomy had no place left. In the Western political culture these autonomies have had a historically important role. In the society of nobles of the East Central European region – and particularly in Poland and Hungary – a special autonomy of the nobility evolved and it was embodied in the county. The county /the voivodeship in Poland/, as an administrative centre could function as a specific sub-centre of power, particularly against the objectives of the central power, mainly when the latter one strove to promote the adaptation of the entire society to the centre by its reform policy. In other periods, when the reform movement was initiated from the counties, like in the second part of the 18th and the first part of the 19th centuries, the relationship of the political centre and the counties was the reverse, but naturally the critical element was even then alive in the behaviour of the county self-government. Consequently, the critical trait did not disappear from the paternalist political culture of Central Eastern Europe. The socialist socio-political system had brought about a significant change in this respect too in the countries of the region, which adapted, together with the East European political model, the doctrine of the infallibility of the political leadership, primarily of the leading party, and subsequently of its head, whose weight had outgrown his intra-party organizational position, making the phenomenon characteristic of the political system itself. The appearance of this element was almost a necessary one in the socialist political system which had unfolded in Russia as it was considerably influenced by the Asian

political culture through the earlier Russian state organization and the traditional modes of political activity. The appearance of the doctrine of 'infallibility', which had eliminated the historically somewhat developed critical element from political culture and mostly even from political leadership, considerably strengthened the paternalist trait of the political culture of the Central Eastern European societies. The phenomenon would require a separate analysis, as socialist ideology was based on the rational tradition evolved in European thinking and grown fully by enlightenment /Eisenstadt 1975:13/, which theoretically could not tolerate the doctrine of infallibility. Though it is true that the political ideas of enlightenment turned into their opposite for a short time during the Jacobine dictatorship, when trust in human reason had become irrational and the 'goddess of Reason' become an idol, but these ideas even with the irrational excess ultimately did not unfold the paternalistic trait in the just developing 'new' political culture. Whereas in the European socialist political systems a curious symbiosis had developed between advocating the rationality of enlightenment, the reality of 'scientifically shaping the society', and a contradictory faith in the infallibility of the party and its leader, which was occasionally manifest even in the solution of scientific problems. A political leadership relying on such a faith could not tolerate open criticism, or, for a long time even a limited one, which had ultimately become a crime. This characteristic feature incorporated into the socialist political system – which had become a significant element of political socialization, was an actual practice almost in every organization from the schools to the political party, despite the often expressed contradictory slogans – changes only slowly. The centre and sub-centres of the political system even today hardly tolerate certain forms of criticism. But even this period has not completely eliminated the element of criticism from the political culture.

The ambiguous place of the critical element in the political culture is related to a specific intolerance, to a slight appreciation of other people's opinion and this is an indication of the low level of conflict tolerance.

Personal relations in the political decisions, in developing the power base and the serving hierarchy have always been significant in the political cultures evolved in the Eastern periphery and semi-periphery of Europe, they have preserved something of the family and kinship and even from the historical forms of the patron-client relationship. The significance of personal contacts in politics has been specifically strengthened by the socialist political system; even today it functions on the basis of partly kinship, and partly patron-client relationships. Its growing strength during the recent decades has been related to the fact that the element of dominance has become far more weightly than the element of expertise in the society itself, in its institutions and organizations, and beyond the emphasis on the element of dominance or politics personal relations are frequently hidden when political reliability is quoted as an argument.

III.

The question occurring at the types of paternalist political culture which have evolved in different regional and cultural contexts, is the following: what legal culture is associated to these types?

We have distinguished two phases in the development of paternalist political cultures in societies both in the Asian regions as well as in the Eastern periphery /semi-periphery/ of Europe. In Asia we spoke about the expressly traditional period and the phase of development that can be characterized by the beginning of modernization, which partly coincided with the pre-colonial and colonial period and the one after independence, whereas in the European periphery we differentiated between the phases prior to and subsequent of the socialist society. The basically paternalist feature /perhaps most weakened in Japan/ of the political culture /including the culture of the politicians as well/ survives even after the 'traditional state' is left behind. It has 'got through' these undoubtedly difficult changes, and the period after a major turn built upon this feature to a considerable extent.

Similar differences can be found when the development of the legal cultures of this region is analyzed.

That much can already be stated that a difference may be observed in legal culture – also in its relationship to paternalist political culture – whether the society evolving the respective legal culture had or had not got into a situation which may be characterized by the pressure for adaptation and if so, when. This pressure – as we have seen – appeared with the unfolding of the uniform world system in the case of the Asian regions, it grew during colonial rule /if there was one/, and by now it proves to be a dominant factor in many respects. In the Eastern periphery of Europe – though with different intensity and under different conditions – the pressure for adaptation had been active practically from the early stages of the societies of the region. The pressure for adaptation, however, gained strength, or weakened by phases, depending upon the historical situations, and differences may also be found in the 'direction' of adaptation too. The societies of the East Central European region for instance, have historically adjusted themselves to the Western centre, but the pressure for adaptation has become particularly strong in the form of adaptation to Eastern Europe during the period after World War II. Nowadays the impact of the uniform world system appears to be increasingly overwhelming, even though it is through the mediation of the system of politico-economic institutions existing in the region and influenced by specific regional interests.

Taking into consideration all these differences apparently at least two types of the legal culture /but presumably with subgroups/ are linked to the paternalistic political culture. These two types are – mentioning now only a proposed terminology – the 'orienting' and the 'normative' legal cultures.

1. The demand of the paternalist political leadership of the Asian region for legal regulation and the attitude of its political culture toward legal regulation was dual prior to the strong manifestation of the pressure for adaptation. On the one hand there was a legal system of sacral nature /the strength of sacral nature developed in accordance with the cultures characterizing the society/ having a dominant position almost similar-

ly to the European natural law. This legal system – as it was stated about the so-called shastric law based on the Dharma-shastra – was a transcendental one independent of human will, consisting of rules governing the activity and behaviour of men, but they were not influenced by man /Baxi 1986:220/. This law rests upon the notion of authority /while the European one is founded upon the notion of legality/ showing the way to be followed by man as a model /Lingat 1973:258/. This is why shastric law could go beyond the political communities of India, it could appear elsewhere too, for instance in Thailand, and could influence other South-East Asian societies too through certain mediations and modified by Buddhism in many respects. Confucianism had a similar role in the Far East. In China the term for law was 'fa', which was originally related to the great cosmogonical principles governing the world, indicating what are the principles that should be utilized in the governance of the society after having been put into the form of rules. These rules which were also called 'fa', ultimately meant the duties identified by imperial edicts, but no interpretation of 'fa' included the Roman legal concept of lex. Perhaps it can be best interpreted as a legal model /Vandermeersch 1985:21--23/. The 'li' concept of Confucian philosophy also means a more general ethical foundation, the right rule of behaviour changing by status, which the legal norms may only express /Ch'Ü 1965: 230-231, 282-283/.

Here again I have to refer to the differences not to be described in detail now, but Hooker was presumably right when he regarded the concept of law to be found in these more or less sacral texts such a regulation of human behaviour which is a part of the nature of nature things /Hooker 1978:98/, and consequently which describes "both a social system and an ideal moral or ethical order conceived as a unitary whole", its foundation is "not the principle of legality but rather the implementation of an ethical order" /Ibid: 108/.

A specific pragmatism derived from this interpretation of law despite its apparent rigidity and 'transcendental' nature. This pragmatism partly allowed space to the realization of local customs, and to royal legislation in some cases, the 'pro-

ducts' of which could be even elevated to the level of shastric law by interpretation and by the interference of the term of good custom in India and Thailand. Shastric law could promote change, and, according to some authors, even modernization, by its absorbing capacity, as it allowed a relative consistency, a relative ascertainability and certainty /Derrett 1968:316, Rudolph and Rudolph 1967:274, Baxi 1986:228-230/. An example to the possibilities of change is, how initially law incorporated in the Dharmasutras, in the first Aryan law books ignored commercial activity, which was later on elaborated by the commentators of the Manusmriti including already the impact of Buddhism /Shrirama 1986:20/.

However, one should not forget a very important feature which was worded by Kasemsup for the Thai legal system, in connection with the royal enforcement of dharma, but it is of broader value: "The role of the King ... was not as the creator of law, but as the administrator of law to enforce temporary measures to keep social order" /Kasemsup 1986:282-283/. /Two further remarks are associated with this: partly the royal ordinances were valid only during the reign of that particular King in the Thai legal system, and partly dharma itself advised the Kings to observe the customs./ The ruler also had a significant role in enforcing 'li', in the sense that government is the task of man, of 'great man'. Hsün-tzü stated that "without a great man, even if the law is complete the sequence of application will be in disorder and will be unable to meet the change of events, and will lead to disorder" /Ch'Ü 1965:257/.

Thus, the other side of the demand for regulation, the governance of <u>everyday life</u> was partly satisfied by customs and partly by the ordinances of the ruler, but both functioned to accomplish theoretically the abstract, ideal social and moral condition. Therefore, frequently this second level of regulation can also be less assessed as a normative one in the Western sense of the word, and did not develop such legal principles either, which could have made predictability and normativity as components of <u>'calculating' human behaviour</u>. Just by way of reference: the principle of "nulla poena sine lege" for instance, hardly appeared in these cultures. In China, for

example, law was not only secret for a long time, until the 6th century B.C. /and when the Chin state made certain penal norms public in 513 B.C., Confucius prophecied the decay of the state/, but the nulla poena sine lege was of so minor importance, that even one of the later codes ordered the whipping of everybody who acted in a manner he was not supposed to /Vandermeersch 1985:203/.

But the interpretation of shastric law – scholarly, and later on even that of the judges – actually took place far away from the society as a whole. People were not even expected to know this law, thus it influenced their behaviour only through the possible legal court procedures. It is interesting that later on various attitudes appeared in the different cultures because of the pressure for adaptation and in keeping with the different influences. In Thailand, which was never colonized, a curious repugnance of law survives even today, moreover the legal profession "is not highly regarded either in the belief that a good person does not need to know the written law, nor to go to court, if he conducts himself in compliance with usages, customs and morals". /Kasemsup 1986:284/. Approximately this is the situation in China too, where legal regulation in the Western sense of the term only appeared very late and receded into the background again with communist rule. Nowadays efforts are visible in China to make modern legal norms but so far they have been related to the modernization of the economy. In India, on the contrary, British legislation was started at an early stage which ultimately had a specific impact upon Indian legal culture. It is commonly known that Governor-General Warren Hastings attributed great significance of shastric law in the second part of the 18th century and he included experts of traditional law in the newly established system of law courts. But Cornwallis, who was appointed Governor-General in 1786, already aimed at the building of a modern legal system. This objective could not be realized without disputes. As opposed to Cornwallis, who after all represented Benthamian principles in his intentions as a legislator, Munro rather recommended the 'paternalist' model, namely a government based on personal authority, and an administration of justice built on the village

panchayats and applying the local customs, etc. Ultimately the Cornwallis-model was applied by the codices of the second part of the 19th century and also in the system of legal courts. As a consequence the authority of the law court, the prestige of the legal profession acquired a place in the Indian legal culture which was similar to the British one, and the image of the 'litiquous Indian' also developed.[4]

This, however, already leads us to other important elements of legal culture, to the treatment and solution of disputes. It is commonly known and perhaps needless to prove that the model of dispute-treatment in the legal cultures of the Asian regions analyzed here is mediation, conciliation, efforts towards a consensus, from which the 'winner-take-all' stand of law suits is alien.

The paternalist political culture – satisfied by the above outlined nature and function of legal regulation – promotes this attitude as the ruler or political leadership in general is not interested in interfering into the conflicts of individuals. All the more it aims at maintaining the existing order and peace, the view of the world and society which expresses harmonious immobility /or at least continuity/. So the familiar attitudes in connection with litigation, which regard it a shame /like in the Thai legal culture/, almost a declaration of war on another person and a support of the bureaucracy /like in Korea; Friedman-Macaulay 1977:1026/, or perhaps immoral as in traditional Japan, because it disturbs the harmonious social relations /Kawashima 1969, though in contemporary Japan the litigation ratio has become much higher than in Scandinavia/, or the nature of the entire legal system decreases the inclination towards litigation /like in China; Ch'Ü 1965:284/, really reach a point where the dispute is not isolated from its overall social context and the solution intends to promote the undisturbed harmony of this context /Baxi 1986:227/. All this is rela-

[4]Mendelsohn considers the cultural stereotype of the 'litiguous Indian' to be a consequence of the British laws related to land ownership, which, with the modern regulation of ownership and tenancy relations necessarily directed those to the law courts. /Mendelsohn 1981: 843-844/.

ted to such specifities of legal cultures which grant less weight to the individual, which require the maintenance of community ties, which ascribe the place of man in society by a regulation associated with status, etc. The greater significance of the community, and the natural community at that, is of defensive nature against the individual, and as such it is a part of primary importance of the political power and the paternalist political culture related to the latter one.

From all this derives also the place of the organization participating in conflict treatment in legal culture. Traditionally influencing the judge, for instance, even by bribing him is not alien from such a type of legal culture. This is initially inbuilt in certain political cultures /according to the extremely scarcely known data such was for instance the traditional Tibetan legal culture/, but the impact of other factors can also be noted. Thus in most of the traditional legal cultures litigation of individuals with statuses situated too distantly from each other was practically unimaginable /particularly a law suit against individuals much higher in the hierarchy/. The significance of status in litigation survives in many places even today. A 'natural' consequence deriving from paternalist political leadership and culture is the central nature of punishment in legal regulation and thus in legal culture as well. I have already quoted Manu's statement, but such a central place of punishment can also be found in the Confucian outlook. 'Li' prevents what is going to happen, while law /attempts to/ prevent what has already happened." If 'li' is realized, then there is no need for law, but if not, then law punishes, even if its effectiveness is less that that of education /Ch'Ü 1965:248-250, 283-284. Linking punishment and law is also a significant part of the legal outlook of the so--called legalists opposed to classical Confucianism. /ibid.241/.

In connection with the reforms introduced by Cornwallis I have already indicated that the paternalistic political leadership and culture under a pressure for adaptation brought about changes in the place of law and also in the organizations related to law. This change – the reception of the modern legal system or some of its parts, and indigenous law making built to

a considerable extent on modern legal principles – partly further moulded legal culture and partly the basic traits of the traditional legal culture conditioned the implementation and actual effectiveness of the rules born out of new law making. The same duality appeared in the different status positions of the organizations developed in connection with the implementation of law: modern roles linked to modern positions of status have been frequently realized by a "role-orientation" 'brought' from the traditional structure and culture. In fact, this was already visible in the organizations which evolved in the wake of the reforms introduced by Cornwallis in India. In Bengal, for instance, the darogha-system, established as a police organization in the 'modern' sense of the word, essentially functioned on the basis of features characteristic of the maintenance of order based on the zamindari system, which frequently led to the hushing up of criminal deeds among others /Yang 1985: 39-47/. But similar phenomena can be found in the contemporary Indian public administration too, in the undoubtedly modern system of which the traditional approach to role, linked to viewing law as being of orienting nature, creates considerable problems /Goyal 1968, Panadikar-Kshiragar 1971/.

The new legal system developed after independence, or in a broader sense, the one which has evolved in the process of modernization and its elements also shape legal culture. As I have already mentioned, the British organization of the law courts and the socially prominent role of the judge together with it, has enhanced confidence in the functioning of the modern law court for example in India, and the growth of the number of litigations and a decline in the efficiency of the traditional juridical organizations together with it, /Meschievitz-Galanter 1982, Baxi 1982/ until the functioning of the modern law courts in the given socio-cultural and political context, becoming dysfunctional in many respects, has resulted in a crisis of the administration of justice. Since the role of the police had been a significant one locally even during British rule, and in a sense it has even grown, and, in addition, the 'traditional' "role-orientation" mentioned in connection with the darogha-system, did not completely disappear either,

and the social problems continued to multiply, while the judicature had its dysfunctional activities, and all this was supported by other circumstances of political nature, so the place and functioning of the police has become increasingly manifest. This pushes back the significance of the traditional British interpretation of the law court in post-independent India, but supports the trend present in all the Asian regions, that is the strengthening of the function /'the administration of justice' in some cases/, which actually fits well into the traditional paternalist political culture too /Baxi 1986a/.

In the post-independence situation, however, the impact of the principles of the socialistic transformation of the society upon the political goals set for the society could be felt and to some extent can still be felt in a considerable part of the Asian region too. These goals, even though they are related to the solution of problems deriving from the socio-cultural conditions of the given country /like for example, positive discrimination in the case of the untouchables, or the scheduled castes and tribes in general in India/, meant tasks that could not be fulfilled immediately or in the short run in general. The 'fulfilment' of these tasks by law making /in the interest of overcoming shortage created by the unrealistic objectives set/ has led to the creation of legal norms that could not be implemented, so the already ambiguous position of modern legal regulation within the traditional legal culture /the socio-political components of which are still alive to a large extent/ has become a particularly problematic one. Ultimately this legal regulation was built into the range of orienting legal norms /to use Chiba's concept: as a modern legal postulate/, the actual implementation of which is not even expected in a normal situation, as it is obviously impossible in many cases.

The paternalist political culture – which originally developed in association with the legal culture of orienting nature, after the appearance of the pressure for adaptation, made the unfolding of a legal culture of normative type /or a least of a normative nature/ possible, even though only as a model, yet with emphasis on normative regulation. But as a consequence of the growing pressure for adaptation another feature

of the political culture, so far known mostly in Europe, has unfolded and gained strength: an attitude of the law maker aiming at the regulation of every social relationship /inducing the subject to be obedient by setting his duties in detail/, which was further corroborated by the conditions of the economy of shortage. The dysfunctional consequences of this legal regulation producing a mass of legal norms that cannot be implemented, have, to a large extent maintained the orienting legal culture, which, in its turn, restricts the effectiveness of modern regulation. The problem is interesting because the legal postulates, evolved in connection with modernization /at times wording the demand for the transformation of the traditional structure or its phenomena/, act in the interest of the survival of orienting culture of a traditional nature.

2. The interrelationship between the paternalist political culture and the legal culture evolved in the Eastern peripheries of Europe produces phenomena that are similar in many respects, but there are basic differences in respect of the fundamental trend.

In the Eastern peripheries of Europe actually two legal cultures differing in many respects have evolved. One is the East European legal culture the orienting nature of which has been stronger and survives in many respects even today. The Byzantine influence – also through the shaping of the political culture in which, as I have already mentioned, the paternalist nature of the political centre was enhanced also by its entanglement with the Church – curiously has rather strengthened the orienting legal culture with the legally less restricted operation of the central power. Later on, as a consequence of pressure for adaptation the law making role of the political centre largely developed, but its effectiveness was weakened in the receiving medium. Compared to this, the different features of the political culture of the East Central European region, already referred to, and its historically continuous adaptation to the Western centre, the penetration of Roman law have made legal culture also different.

Not discussing now the East European legal culture,[5] the basic features of the legal culture of the East Central European region can be summarized in the following.

The pressure for adaptation, which had been effective from the initial stages of the consolidation of these societies in Europe, was manifest also in continuous and conscious legislation. The function of this legislation to shape the society was expressly manifest, and quite frequently it meant the open /though not declared/ reception of foreign legal elements or rules.

These legal principles and rules are the consequences of a specific development in the centre of Europe too. Since Max Weber the relationship between the European legal development and the evolution of capitalist conditions, the appearance of the estate of the legal profession has been known. Recently H. J. Berman has convincingly expounded that the so-called "Papal revolution"[6], which took place in the 12th century, opened the way for the appearance of modern, systematized law. This "revolution" not only founded the European reception of the 'resurrected' Roman law in the wake of the development of the economic conditions, but essentially spread the idea of the "rule of law", of law as the conscious regulation of social relations,

[5] In the evolving societies of Eastern Europe, just as in the states of the Balkans, the impact of classical Roman law did not unfold, but a later, specifically Byzantine variant of it appeared. This highly differed from the original classical variant by its nature, moulded by the special Byzantine power and political conditions as contrasted to the texts, incidentally also complied in the East-Roman Empire. This Byzantine law influenced the development of the Russian, Rumanian, Serbian and Bulgarian law partly through the mediation of the Orthodox Church, and partly by royal legislation following the Byzantine pattern. /From the related literature see particularly Soloviev 1959, Obolensky 1982, Kaiser 1980./

[6] The "Papal revolution" is H.J. Berman's expression by which he characterized the period following the reform of Cluny, the reign of Gregory VII and his successors. The Church acquired the most important characteristics of the state at that time, unfolded its own hierarchical executive and administrative organization, legislation, judicature, etc. Thus it was the Papacy which created the first, modern, Western system of government and law /Berman 1983:521/.

and that too within the limitations of legality. "The land shall be built by law", says the first Scandinavian law book, and this includes the view already expounded by the 13th century English, French and German scholars of law, namely that law is obligatory for the King too, and the subjects may have the right to resist against unlawful royal measures, and the different elements of the developing feudal system – canon law, royal law, municipal law, etc. – constituted an uniform system in a delegated manner, in an arrangement theoretically guaranteeing the supremacy of law. In this system the mutually related order of obligations also appeared, even between those who were situated above each other in the social hierarchy, thus reducing the opportunities of the arbitrary assertion of power /Berman 1983: 528-537/. This development transformed the perception of King and state. Earlier the King was the guardian and realizer of 'good old law', the administrator of justice. But already in the middle of the 13th century the new perception appeared, according to which the Holy Roman Emperor /Frederick II/ was simultaneously "pater et filius Justitiae", as father of justice he was the creator of law, and as her son, he was her subordinate, and ration, as the source of all law was obligatory for him too. The same change took place in England with Bracton's law book /De legibus et consuetudinibus Angliae/, according to which the King was independent at governance, but was obliged to keep the "old freedoms" in respect of the administration of justice. The image of the 'legislator' ruler ultimately gained its definite traits in the philosophy of St Thomas Aquinas: the monarch was free from the duress of law, but he was subject to the guidance of natural law of divine origin. Actually in the 13th century the acceptance of the principle of 'public weal', of the raison d'état also gave the monarch the accepted possibility of law making /Bónis 1972: 71-81/

Urban development /between 1050 and 1200, when the population of Europe doubled and urban population grew by about ten times/ also had a significant role in the unfolding of the principles of Western legal development, when trade, founding urban growth, had an unprecedented expansion, naturally demand-

ing legal protection, the legal description of transactions, etc.

East Central Europe, which had adapted itself in many respects to the Southern, Mid-Western and Western regions by the time of the pagal revolution, was already capable, by its own conditions, to take over a legal culture bearing all these developmental characteristics /moreover, this taking over was in a sense almost continuous by cyclical adaptation/, but it maintained a number of such structural features which also moulded the elements adapted during the course of legal development. Only to mention a few: the rule of law had its impact on royal legislation, but – as it is justified for instance by the Hungarian history of law – royal law making produced legal norms only for the life time of a given King right until the early 16th century, and even later on so many repetitions can be found in the web of legal norms that obviously they needed repeated confirmation until they were realized. Further on: I have already mentioned when outlining the political culture of the region, that a defense against reforms directed from the top downwards considerably impaired the paternalistic political leadership, creating the bases of resistance in Hungary and Poland in the autonomy of the so-called comitats and voivodeship respectively. The nobility, jealously defending their rights against royal power /with the attached organizations of the implementation of law too/, could practically reach a position when the Acts became lasting legal norms only if customary law also accepted them. In Hungary, for instance, neither law court rulings, nor diplomas refer to Acts but to the old customs of the country /antiqua regni consuetudo/ until the 16th century, and if so, it was quite an uncertain indication: "according to the newest laws of the country" /iuxta novissimas regni constitutiones/, without any specification of content.

Though the principle of mutual obligations already appeared in the royal bills containing privileges of nobles, but it hardly penetrated further on and the structure of the judicature made the litigation of people in inferior position against their superiors in the hierarchy extremely difficult, and even impossible.

The East Central European region was under the influence of Roman law, the principles of Roman law appeared in the most different law books and even in royal legislation, yet a real reception did not take place. However, the absolute power of the King /absoluta potentia/ in the face of custom could be justified on the basis of the principles of Roman law, who "in the concrete case may overcome the limitations of customary law, which he otherwise respects" /Bónis 1972:70/, and he may even disregard law. In practice the subjects frequently pressed the King to depart from certain laws, but the real basis of absolute royal power was rarely safeguarded by his effective power, and when it was so – for instance during the reign of King Matthias in Hungary – already the idea of the hierarchical source of law, including codification took shape along the pattern of Roman and canon law, as contrasted to the 'old law' /Bónis 1972: 70-80/. The principles of Roman law, and canon law still in the 13th century, promoted the ordering of customary law and its conservation to some extent in Hungary until the Tripartitum[7] made in the 16th century, though undoubtedly by taking over a lot of concepts and solutions, yet not a complete reception was realized. This diverted somewhat the development of Hungarian law and legal culture together with it, from the Western legal systems, thus repeatedly raising the necessity of adaptation later on.

These traits of legal development founded two specificities of the legal culture which had a strong impact later on as well.

The first one is the joint presence of normative legal thinking and the historical outlook, a conscious 'reform law

[7] The Tripartitum opus iuris consuetudinarii inclyti regni Hungariae contains the legal rules collected and systematized by Chief Justice István Werbőczy in 1514. /The Tripartitum was first printed in Vienna in 1517./ The Tripartitum, the introduction of which was written by Werbőczy on the basis of Roman law, and the arrangement of the rules of customary law was also based on Roman legal concepts, though was passed by the Diet, yet it never became an Act as the royal promulgation was missing, yet, for centuries it was realized as customary law, having a great impact on the development of law in Hungary.

making' and the attitude of resistance relying on customary law, and the second one is the emphasis on entitlement, which later on meant a reference to the rights of certain strata /the nobility/ and local communities /town/ at first, but subsequently it effectively strengthened the sense of rights in the individuals too in its implications.

It already derives from the features so far described that in this legal culture the social position of the law court and the judge is an ambivalent one. This ambivalence is already expressed in the fact that the Hungarian equivalent of 'judge' i. e. 'biró' originally meant a person who possessed power, a person whose power position authorized him to judge. Though in the tribal and clan societies meting out justice was naturally less separated from the other forms of power, in the East Central European region judicature and the other forms of the exercise of power were practically intertwined in the long run. /In Hungary for instance the separation of the organization of law courts from the administration, and together with it the establishment of the principle of the independence of judges by law was done only in 1869./ Until that date, that is to say that during the period when the country belonged to the Habsburg Monarchy, and after liberation from Turkish rule, practically until the middle of the 18th century, the judicature of the landlords, the so-called manorial court – county judicature jointly with the administration, the judicature of the municipal councils, and even the right of the elected judges of villages, who were the heads of village administration to pass judgements, continued to exist parallel to the evolving state administration of justice. The situation was similar in the regions of Poland, which belonged to the Habsburg Monarchy, but somewhat different features were present in those parts which were annexed to Russia.

As a result of development, which could only be indicated here in brief, the judge never acquired such a significance which he developed in the Anglo-Saxon legal system. He continued to work as a special, high level bureaucrat even in the modern system. Even after the separation of the judicature and the enactment of the principle of independence, as his independence

was strongly influenced by the fact that his appointment and promotion depended on the minister of justice who made the relevant proposals to the Head of the state. Thus, the features of the political culture also influenced the activities of the judges. An 'accepted' routine of the settlement of disputes of the political power was, for instance, the political law suit, which was conducted on the basis of penal norms on high treason, treachery, etc., in such a way that the dominant regime could identify the interests of the 'homeland' or the state with its own interests according to need. Consequently, any alternative policy, which could be evolved already with difficulties, could be eliminated even by a penal procedure if it seemed to be a dangerous one.

The inclination towards litigation manifest in the political culture of the region, and particularly of Hungary – which is equally proved by the law suits of the nobles at the county and royal courts during the period of the 'traditional' society and the law suits of serfs at the manorial courts – indicates the importance of the law court as an institution participating in the settlement of disputes. Though we have no data about other institutions of conflict treatment and their functioning, yet from the nature of the cases – often very insignificant disputes – brought to the various courts /including the ecclesiastic ones, which enjoyed exclusive rights for example in cases related to marriage/ we may infer that the excessive weight of the law courts in the settlement of disputes was by all means a reality. The conduct of disputes in law courts, and the corroboration of law by a law court essentially derived from the strong sense of entitlement and from the interpretation of law as a right.

Punishment was also an important element in the development of the law of the region, even though it was not so unambiguously worded as for instance the importance of 'danda' in India. Punishment, however, as a political means was built into the paternalist political culture, and its effect was naturally manifest beyond the direct political interrelationships too.

The growing pressure for adaptation was coupled by an internal support during the course of the 19th century. The de-

velopment of the internal elements of the capitalist economy and society also required a new legal regulation. It is curious, that this development and the related legal regulation of the region – also because of the ethnically alien imperial framework – appeared occasionally as an alien element in legal development, and this trait, or, more precisely, their assessment as such, was further strengthened after the suppression of the various national uprisings and revolutions. The principles of natural law, becoming rational, which accompanied Western legal development, appeared relatively more effectively in the process of this law making and played the role of legal postulates. Rational law making as an idea was the corollary of efforts towards developing the society along Western pattern particularly from the second part of the 19th century onwards. Whereas the most important ideological base of resistance was a reference to historical legal development, the maintenance or revival of a regulation considered to be a domestic one and mainly grown out of feudal private law right until the middle of the 20th century. /An interesting manifestation of the latter one was, for instance, in Hungary the collection of popular legal customs alive among the peasants in the 30s and 40s and demand to consider them as a basis for law making. – To this see: Kulcsár 1980:79-102./

The impact of the legal culture as a receptive medium, which had become a normative one, emphasizing individual rights as against the collective ones, and increasingly pressing the family also behind the individual had created an interesting situation at a time when this region got into a new and very pressing situation of adaptation. In the period after World War II, when the adoption of the institutions corresponding to the model evolved by Soviet development, and even of the political culture which transformed the economic, political and legal systems /and further on also the structure of the society/ of these societies, a large scale law-making evolved. The basic features of this law-making can be grasped in the following:

– the desire to break away from the old one – occasionally even from the basic principles produced by law making;

– unlimited law making /even without the participation of

the legal profession in some cases/, as the instrument of the solution of social problems, which may be used almost without restraint, together with its consequences[8];

– as a consequence of the distance between the economy of shortage and the ambitious goals partly the quick growth of the symbolic legal norms, and partly that of the legal regulation of technical and bureaucratic type at the lower levels of the system of legal sources;

– consequently pushing normativity effectively regulating human behaviour behind the symbolical and technical regulation.

This law making, which, in addition, directly employed punitive measures in the interest of the implementation of political and economic decisions, when the conditions of their implementation were lacking, largely produced dysfunctional phenomena. These dysfunctional consequences partly further enhanced the social and economic difficulties, partly brought new features into the legal culture, differing from the earlier ones. /Only to mention one example: the penal regulations created a considerable extent of criminal activities in such layers where it was unknown earlier. Further on: the penalties meted out by thoughtlessly applied criminal procedure for acts not considered criminal by the society, reversed its social acceptance to the contrary from the intended one./ The authority of law and the social prestige of the legal profession further deteriorated as a consequence of artificially conceived political law-suits serving political objectives /not only the so-called show-trials, but a mass of trials of less publicity against practically innocent people/.

The effectiveness of law has been damaged by short term, often retroactive legal norms, which frequently not only alienate the expected /mainly economic/ behaviour by their detatchment from the real conditions, but are practically impossible to be followed because of their contradictory nature and great

[8]To the utilization of law disregarding the specificities of law, and to the problems which occur as symptoms of the change of law due to such a practice see Kulcsár 1986a.

quantity. Thus essentially the arbitrary impeachment, utilizing the law court remained to be a possibility even after the period of the so-called personality cult, which was recurrently used by the frequently changing policy as its own instrument. /In Hungary for instance, in the 1970s some of the chairmen of the agricultural co-operatives functioning well were called to account by criminal legal procedure for offending the economic regulators at a time when the anti-peasant and antiagricultural policy gained impetus temporarily; later on, in the early eighties law suits of similar type were brought to court in connection with the mood hostile to private enterprise, etc./

Consequently a curious development of the legal culture can be observed. After the decrease of litigation the number of civil law suits started to increase for some time, but it was because of the great number of matrimonial cases. Actually for the parties engaged in matrimonial dispute it was difficult and also not necessary to evade the law court /because of the regulation allowing for easy divorce and of juridical practice/. Yet signs of evading law and the system of law courts already appeared mainly in the case of conflicts and disputes occurring in economic life.

The empirical surveys show that the knowledge of law is higher in the case of traditional values /human life, property, family, etc./, but it is low in the case of norms made in the field of economy, public administration, etc. This circumstance unambiguously indicates that the cognitive element of legal culture is weak just in the case of legal norms aiming at the conscious shaping of the society. The problem, however, indicates deeper interrelationships too. If legal regulation – either in the case of a process, or a phenomenon or organization – breaks away from reality, it is contradictory, confuse and impossible to observe, then the given process, phenomenon or organization evolves a regulation in its own spontaneous manner which suits its own specificities and conditions, subsequently appearing in behaviour and becoming a real guiding force despite, besides, or below law, but it diminishes the effectiveness of law by all means. And this obviously leaves its traces even in legal culture, and weakens not only its cognitive elements,

but may negatively alter attitudes towards law. And the surveys do indicate, that the prestige of law is diminishing in the East Central European region.

Surveys on the legal knowledge of the Hungarian society have unambiguously indicated the knowledge and approval of the legal norms embodying values of traditional nature /occasionally even stronger than it was safeguarded by the legal norms in force/, in the mean time a contrary behaviour can also be observed. Divorce as a social phenomenon, for instance, is condemned in an abstract manner, almost independently from the changes of the legal norms. /83 per cent of the respondents said that the increase of the number of divorces is a 'bad thing'/, yet the real value judgement of the society is expressed by the high proportion of divorces. Naturally, the separation of the abstract judgement and the actual behaviour is not only manifest in the case of divorce, and this also influences the assessment of the survey data on the high prestige of law. Apparently people accept and even require the respect of legal norms in general, yet they easily look for opportunities of evading law, even by availing themselves to personal contacts /perhaps even in the form of corruption/ characteristic of the political culture whenever it is the case of realizing their own interests.

The question can also be put in a way how far legal regulation does contribute to the spread of the values serving as its basis? According to Hungarian data, if traditional values also acknowledged by new legal regulation, their strengthening can be generally observed /though the assessment of theft to the injury of social and other property is not separated/, even though the separation of the abstract assessment and concrete behaviour is also a fact. But wherever law is contradictory or uncertain, so is social assessment. In Hungary, for instance, medical care is free of charge, yet people almost generally try to overcome the gap between the deficiencies of the public health organization and care lagging behind the expectations by giving gratuity to the doctors. So far the relevant legal norms have treated this essentially corrupt phenomenon ambivalently, social assessment is also uncertain, whereas in prac-

tice giving and accepting, and occasionally even demanding gratuity has been a fact. Legal regulation of taking economic risk is also uncertain. Taking risks is expected by the legal norms /and mainly by the new concept of economic management/, born in the process of economic reforms, but practice is uncertain, whereas the penal norms make it an expressly dangerous thing. In the case of the legal norms regulating economic life it can be observed that the general content of the legal norm is known but the approval of its content could not be evolved. A succint example to this is the manufacture of articles that are not readily available, without licence, which is punishable by 81 per cent of the respondents, but the approval is not so extensive, as only 25 per cent demands punitive procedure too. Perhaps it is family law where a certain change of values is the most manifest. Though for instance the proportion of those regarding man to be the head of the family, as 57 per cent of the respondents of the survey answered in the affirmative, but 27 per cent already thought, in keeping with the intentions of legal regulation, that there is no such thing as head of the family in Hungarian law, and more than 57 per cent knew that the married parties may have separate property, and they mostly had correct notions on the content of such separate property.

The data quoted – and now not quoted – only allow suppositions but not such well founded consequences on the basis of which one could give an unambiguous answer to the question put earlier. Presumably no unambiguous answer can be given, as the value content of the legal norm can expect social acceptance if – and legal regulation can only be one means – it is compatible with the entire value system /for instance the value system of the present Hungarian society is quite a contradictory one/, and secondly, if practice justifies its realization. But this presupposes the freedom of legal regulation and particularly of legal practice from contradictions.

IV.

In his time Montesquieu stated that "les lois inutiles affaiblissent les lois nécessaires, celles qu'on peut éluder

affaiblissent la législation" /italics mine/ /Montesquieu 1973 II:296/, and to continue the idea with yet another quotation from Montesquieu: "Il y a des lois que le législateur a si peu connues, qu'elles sont contraires au but même qu'il est proposé " /ibid: 283/. And, writing on Lex Voconia: "Il n'est pas impossible que le législateur eut obtenu une grande partie de son objet, lorsque sa loi était telle, qu'elle ne forçait que les honnêtes gens à l'éluder " /ibid, 203/. These statements can hardly be assessed as obsolete, rather they call attention to the fact that there are, or there may be such elements in the functioning – origin and implementation – of law which adversely influence the changes of legal culture. The examples quoted from the immortal work on De l'Esprit des Lois indicate three such elements, which are actually interrelated. Because if such legal rules are made which may be eluded, then these can hardly be regarded as well considered. The legal culture is particularly adversely influenced by the event when the law maker himself, the law court or other law enforcement organization is forced to 'circumvent' legal norms because of various circumstances. Such a phenomenon is the outcome of overambitious law making. As a consequence, when a legal norm on the level of an Act remains to be an orienting, symbolic one, it is the mostly restrictive legal norms made at lower levels, which grant the real normative content. But this is essentially nothing else but the circumvention of a legal norm by a legal norm. Legal regulation, the juridical and administrative system associated with the paternalist political culture and particularly with its 'second' phase characterized by a pressure for adaptation, quite frequently produces this phenomenon thus infusing uncertainty and doubt into the legal culture.

At the time of a major social change the fate of the legal culture is a problematic one anyhow, as law making or legal practice frequently turns against legal principles alive for millennia or centuries, against legal principles that may have become general values. Thus new legal regulation is in a disadvantageous position in many respects, but if it is surmounted by such a legal regulation which could and should be circumvented, moreover, the legal norms are violated by the machinery

of law itself, almost as a routine, then this circumstance partly strengthens the traditional values alive in legal culture, and partly reduces the normative force of legal regulation and changes 'legalistic' legal culture into an 'orienting' one in the long run.

The two variants of the paternalistic political culture studied here are historically associated to two types of legal culture. But as a consequence of the appearance and particularly of the growing strength of the element of pressure for adaptation in both /though at highly different times/ legal regulation used as a substituent instrument has been exceptionally enhanced and this – besides some other consequences – has approached the two types of legal culture surveyed here, strengthening certain elements of the other in each of them. Apparently in the region studied in this presentation the features of orienting legal culture gain strength to the extent of the survival of the paternalist political culture, due to a legal regulation largely intended to be a normative one, but not taking into consideration the prevalent social conditions.

ПОЛИТИЧЕСКАЯ КУЛЬУТУРА – ПРАВОВАЯ КУЛЬТУРА
КОНФЛИКТЫ – ГАРМОНИЯ

К. Кульчар

Анализом взаимосвязей политической культуры с правовой культурой автор стремится раскрыть те исторические факторы, которые сформировали возможные конфликты и гармонию двух культур. Принимая за основу анализа южно-азиатскую и юго-азиатскую разновидность патерналистской политической культуры и те формы проявления, которые развивались в восточно-европейских регионах, автор изыскивает связи этих политических культур с "ориентативными" и "легальными" типами правовой культуры.

CULTURE POLITIQUE – CULTURE JURIDIQUE
CONFLITS – HARMONIE

K. Kulcsár

L'analyse des rapports entre la culture politique et la culture juridique s'efforce de découvrir les facteurs historiques qui ont créé les conflits éventuels ou l'harmonie entre les deux cultures. En prenant pour point de départ la variation de la culture politique paternaliste sud-asiatique et sud-est-asiatique ainsi que son aspect qui s'est formé dans les régions de

l'Europe orientale, l'analyse cherche le rapport entre ces cultures politiques et le type "orientatif" et "légal" de la culture juridique.

LITERATURE

BAXI, U. /1982/: The Crisis of the Indian Legal System, Vikas Publishing House Pvt. Ltd. New Delhi.

BAXI, U. /1986/: People's Law in India, The Hindu Society. in: Chiba, M. /Ed./ 1986.

BAXI, U.: /1986a/: Law, Struggle and Change in India. An Agendum for Activist. in: Relevant Sociology Vol.III. No. 1,2.

BERMAN, H.J. /1983/: Law and Revolution. The Formulation of the Western Legal Tradition. Harvard University Press, Cambridge /Mass./ and London.

BÓNIS, Gy. /1972/: Középkori jogunk elemei /Elements of Our Medieval Law/. Közgazdasági és Jogi Kiadó, Budapest

CHIBA, M. /Ed./ /1986/: Asian Indigenous Law. in: Interaction with Received Law. Routledge and Kegan Paul, London

CH'Ü-T'UNG-TSU /1965/: Law and Society in Traditional China. Paris/The Hague.

DERRETT, J.D.M. /1968/: Hindu Law, in Derrett, J.D.M. /Ed./: An Introduction to Legal Systems. New York-Washington.

DEUTSCH, K.W. /1973/: Social and Political Convergence in Industrializing Countries – Some Concepts and the Evidence in: Hammond, N. /ed./: Social Science and the New Societies. Michigan State University, East Lansing.

EISENSTADT, S.N. /1975/: Socialism and Tradition. in: Eisenstadt, S.N. – Azman, Y. /Ed./: Socialism and Tradition. Humanities Press, Atlantic Highlands, N.J.

FRIEDMAN, L.M. /1977/: Law and Society. Prentice Hall, Englewood Cliffs, N.J.

FRIEDMAN, L.M. – MACAULAY, S. /1977/: Law and the Behavioral Sciences. Bobbs-Merril, Indianapolis.

GOYAL, S.K. /1968/: Bureaucracy: A Sociological Study of Levels of Orientation of Clerks Towards the Norms of Bureaucracy in: Indian Sociological Bulletin, July.

HOOKER, M.B. /1978/9/: A Concise History of South Eastern Asian Law. Clarendon Press, Oxford.

KAHN–FREUND, O. /1966/: Comparative Law as an Academic Subject. in: The Law Quarterly Review. Vol. 82. January.

KAISER, D.H. /1980/: The Growth of the Law in Medieval Russia. Princeton University Press, Princeton.

KASEMSUP, P. /1986/: Reception of Law in Thailand, A Buddhist Society, in: Chiba, M. /Ed./ 1986.

KAWASHIMA, R. /1969/: Dispute Resolution in Japan. in: Aubert, V. /Ed./: Sociology of Law. Penguin Books Ltd. Harmondsworth.

KULCSÁR, K. /1980/: Rechtssoziologische Abhandlungen. Akadémiai Kiadó, Budapest.

KULCSÁR, K. /1983/: The Role of Law Making in Modernization Process in: Acta Iuridica 1-2/1983.

KULCSÁR, K. /1983a/: Social and Historical Variations of Possibilities, Journal of Sociology of Law, 11/1983.

KULCSÁR, K. /1985/: A jog szerepe a társadalmi változásokban – a jog változása /The Role of Law in Social Changes – The Changes of Law/ in: Jog és Törvényesség /Ed./; Petrik, F. Közgazdasági és Jogi Kiadó, Budapest.

KULCSÁR, K. /1986/: The Role of the Political System and State in Social Transformation in East Central Europe. /Socio-Historical Background and Regional Specificities/ in: The Role of the State in Social Transformation under the Impact of the World Crisis: The Case of East Central Europe. Ed.: Kulcsár, K. Published by the Institute of World Economics of the Hungarian Academy of Sciences and sponsored by the United Nations University, Budapest.

KULCSÁR, K. /1986a/: Law and Social Change – the Change of Law. Prepared for the Seminar "Law and Social Change", New Delhi, August 24, 1986.

KULCSÁR, K. /1987/: A politikai kultura – A fogalom és a jelenség. /Political Culture – The Concept and the Phenomenon/, Társadalomkutatás, 1/1987.

LINGAT, R. /1973/: The Classical Law of India. University of California Press. Berkeley.

MENDELSOHN, O. /1981/: The Pathology of the Indian Legal System. in: Modern Asian Studies. Vol. 15. No. 4.

MESHIEVITZ, C.S. – GALANTER, M. /1982/: In Search of Nyaya Panchayats: The Politics of a Moribund Institution. in: Abel, R.L. /Ed./ The Politics of Informal Justice. Vol. I. Academic Press. New York.

MONTESQUIEU, C.L.S. /1973/: De l'Esprit des Lois. Tomes I-II. Éditions Garnier Frères, Paris.

NANDY, A. /1972/: The Making and Unmaking of Political Cultures in India. in: Eisenstadt, S.N. /Ed./: Post-Traditional Societies. W.W. Norton and Co. New York.

NEUMANN, F. /1957/: The Democratic and Authoritarian State. The Free Press. Glencoe, Macmillan, London.

OBOLENSKY, D. /1982/: The Byzantine Inheritance of Eastern Europe. London.

PANADIKER, V.P. – KSHIRAGAR, S.S. /1971/: Bureaucracy in India: an empirical study, Indian Journal of Public Administration. 2/1971.

PARSONS, T. /1969/: Politics and Social Structure. The Free Press. New York.

PROSAD SIL, N. /1985/: Political Morality vs. Political Necessity: Kautilya and Machiavelli Revisited. in: Journal of Asian History. Vol. 19. No. 2.

POUND, R. /1963/: The Spirit of Common Law. Beacon Press. Boston. /First published in 1921./

PYE, L.W. /1965/: Introduction: Political Culture and Political Development. in: Pye, L.W. – Verba, /Eds./: Political Culture and Political Development. Princeton University Press. Princeton.

PYE, L.W. /1985/: Asian Power and Politics. The Cultural Dimensions of Authority. The Belknap Press of Harvard University Press.

RUDOLPH, L.M. and RUDOLPH, S.H. /1967/: The Modernity of Tradition: Political Development in India: The University of Chicago Press, Chicago.

SHRIRAMA /1986/: Shaping of the Traditional Legal System in India. An Exploration into Scriptural Sources. in: Relevant Sociology. Vol. III. No. 1-2.

SINGH, Y. /1986/: Law and Social Change in India. A Sociological Perspective. in: Relevant Sociology. Vol. III. No.1-2.

SOLOVIEV, A.V. /1959/: Der Einfluss des byzantinischen Rechts auf die Völker Osteuropas. in: Zeitschrift der Savigny – Stiftung für Rechtsgeschichte. Romanist Abt. 76.

SZÜCS, J. /1983/: The Three Historical Regions in Europe, Acta Historica, 2-4/1983.

VANDERMEERSCH, L. /1985/: An Enquiry into the Chinese Conception of the Law. in: Schram, S.R. /Ed./: The Scope of State Power in China. School of Oriental and Asian Studies. London. The Chinese University Press. Hong Kong.

WALLERSTEIN, I. /1986/: Societal Development, or Development of the World System. in: International Sociology Vol. I. No.1.

YANG, A.A. /1985/: Crime and Criminality in British India. The University of Arizona Press. Tucson.

Acta Juridica Academiae Scientiarum Hungaricae, 31/1-2/,
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WERTE UND KATEGORIEN IN DER RECHTSSCHÖPFUNG

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Die Abhandlung beschäftigt sich mit der mitwirkenden Rolle der Werte und Kategorien in der Rechtsschöpfung. In diesem Rahmen analysiert der Author die Zusammenhänge: Rechtssicherheit und Allgemeinheit; Gerechtlichkeit und Besonderheit; Billigkeit und Individualität.

Kategorie und Wert

Unser Ausgangspunkt ist, dass die Rechtssetzung ein ausserordentlich zusammengesetzter, komplexer gesellschaftlich--rechtlicher Vorgang ist, einer der bedeutenden Komplexe der Totalität der gesellschaftlichen Verhältnisse. Aus dieser bündigen Feststellung ergeben sich, sowohl in Bezug der Rechtssetzung im allgemeinen, wie auch bezüglich gewisser Momente und Bezüge des Vorganges der Rechtssetzung gleicherweise bedeutende Folgerungen hinsichtlich unserer gegenwärtigen Erörterungen. Vor allem das, dass die gesetzgeberische Tätigkeit, der Gang der Rechtsschöpfung allein im Geflecht jener Zusammenhänge verständlich und zugänglich ist, die sie mit dem Ganzen der Gesellschaft, der Totalität der wirtshcaftlich-gesellschaftlichen Verhältnisse am engsten und unmittelbarsten verknüpft. Der Vorgang der Rechtsschöpfung ist auch in sich eine, aus zahlreichen Momenten und Relationen sich zusammensetzende Erscheinung, unter welchen Momenten wir jetzt nur zwei zu untersuchen versuchen; die Analyse der, im Gang der Gesetzgebung als eigenartigen Widerspiegelungsvorgang figurierenden wichtigsten Kategorien, und der in der eigenartigen Formung dieser Kategorien

entscheidend mitwirkenden Werte, bzw. ihrer gegenseitigen Verbingund. Es braucht nicht gesagt zu werden, dass wir kaum die annähernd erschöpfende Untersuchung der in der gesetzgeberischen Tätigkeit bedeutender Kategorien bzw. Werte unternehmen können. Es handelt sich bloss - quasi beispielsartig - um das aufblitzen lassen der, nach unserer Beurteilung wichtigsten Momente und Relationen. Wie auch das selbstverständlich ist, dass so die Kategorien, wie auch die Werte bloss im Netz jener Zusammenhänge verständlich sind, die sie mit den gesellschaftlich--wirtschaftlichen Verhältnissen, dem gesellschaftlichen Sein verknüpfen.

Wie allbekannt es auch ist, muss doch kurz angedeutet werden was wir überhaupt unter Kategorie verstehen, besonders unter jenen Kategorien, die in dem Reschtsschöpfungsvorgang eine bedeutende Rolle spielen oder spielen können, wie auch unter jenen Werten, die auf die gesetzgeberische Tätigkeit, auf die Bildung und Gestaltung der Kategorien selbst im Vorgang der Rechtsschöpfung einen entscheidenden Einfluss ausüben. Wir fassen die Kategorien im Marxschen Sinne, als Formen des bestimmten Seins, als "Existenzbestimmungen"[1] auf, also nicht als Aussage über das Seiende oder Entstehende, als reine logische Form, auch nicht als irgendein ideales formendes Prinzip der Materie, sondern als Widerspiegelungen der in der Natur und in der Gesellschaft auffindbaren objektiven Sachlagen. Im Vorgang der Rechtsschöpfung handelt es sich - selbstverständlich - um solche Formen, Definitionen des gesellschaftlichen Seins, deren Erscheinung, Rolle und Fuktion in Recht, im Rechtssetzungsvorgang, die Verwirklichung der grundlegenden gesellschaftlichen Bestimmung des Rechts, das Ordnen der gesellschaftlichen Verhältnisse, optimal fördern. Im Lauf der Rechtsschöpfung, bei der Gestaltung des Inhaltes, der Hypothese, der Disposition und der Sanktion der Rechtnorm, geht letzten Endes die eigenartige, der grundlegenden Bestimmung des Rechts entsprechende Widerspiegelung bestimmter gesellschaftlicher Relationen, Situationen, Verhalten vor sich, und zwar so, dass sie

[1] MEW. Bd 13. Berlin, 1975. pp. 631-639.

die erwähnten Momente und Bezüge der gesellschaftlichen Verhältnisse den gesellschaftlichen Zielen und Bestimmungen entsprechend erwählt und homogenisiert, in bestimmten Kategorien ausdrückt. Und jetzt halten wir nicht das ausserordentlich reiche Kategoriesystem der rechtlichen Mittel und Institutionen vor Augen, sondern so eine allgemeine "Existenz-Definition" des gesellschaftlichen (natürlichen) Seins, als das Individuelle, das Besondere (Typische) das Allgemeine, die im Rechtssetzungsvorgang in eigenartiger, in zur ordnenden, regelnden Funktion des Rechts adaptierter Form, mit spezifischen Zügen bereichert erscheinen.

Es wäre ein grosser Irrtum und vollkommenes Missverständnis und eine Verkennung des wirklichen gesellschaftlich-rechtlichen Vorganges im Rechtsschöpfungsvorgang, bloss die eigenartige Widerspiegelung, Ausprägung in den, einfach der Bestimmung des Rechts entsprechend modifizierten Kategorien der gesellschaftlichen Verhältnisse, Situationen und Verhalten in dieser isolierten Unmittelbarkeit zu sehen. Das hat sich vielleicht bereits aus der Betonung der gesellschaftlichen Bestimmung des Rechts und daraus, dass das in der eigenartigen Darstellung der gesellschaftlichen Verhältnisse in bestimmten Kategorien eine wie wichtige modifizierende, ändernde Rolle hat, ergeben, dass wir die Rechtschöpfung als eigenartigen Widerspiegelungsvorgang keineswegs als Erkennung, gnoseologischen Vorgang betrachten. Das Ergreifen der gesellschaftlichen Relationen, Situationen und Verhalten im Gang der Rechtschöpfung und ihre Ausprägung in bestimmten Kategorien, richtet sich überhaupt nicht darauf, dadurch die gesellschaftliche Wirklichkeit noch besser, noch gründlicher nocht richtiger zu erkennen. Das grundlegende Ziel und die gesellschaftliche Bestimmung des Rechts und so der rechtssetzenden Tätigkeit ist nicht das Aufdecken der gesellschaftlichen Wirklichkeit, ihre stets wahrere Erkennung, sondern die Regelung, das Ordnen der gesellschaftlichen Verhältnisse und Verhalten, welche Aufgabe - selbstverständlich - kaum ohne die annähernd richtige Kenntnis der gesellschaftlichen Verhältnisse und Zusammenhänge zu lösen ist. Jedoch ist das Erkennen der gesellschaftlichen Verhältnisse nicht Aufgabe des Gesetzgebers noch des Rechts; es handelt sich bloss darum, dass

der Rechtsschöpfer im Lauf seiner Tätigkeit die angesammelten wissenschaftlichen gesellschaftlichen Kenntnisse verwendet. Die grundlegende Abweichung der Rechtsschöpfung als Widerspiegelungsvorgang von den Erkennungs-, den gnoseologischen Vorgängen steht ganz klar vor uns, wenn wir das entscheidende Moment beachten, das die im rechtsschöpferischen Vorgang vor sich gehende Widerspiegelung das Ergreifen der gesellschaftlichen Relationen und Verhalten in eigenartigen Kategorien grundlegend bestimmt. György Lukács, indem er untersucht, dass das Recht, die Rechtsordnung die wirtschaftlich-gesellschaftlichen Verhältnisse inadäquat, verzerrt widerspiegelt, macht darauf aufmerksam, dass im Fall des Rechts, im Rechtssetzungsvorgang "die Feststellung der Tatsachen, ihr Einreihen in ein System nicht in der gesellschaftlichen Wirklichkeit selbst verwurzelt ist, sondern bloss im darauf gerichteten Willen der herrschenden Klasse, die gesellschaftliche Praxis ihrer Absichten entsprechend zu regeln".[2] In der Rechtsschöpfung als Widerspiegelurgsvorgang wird also das Interesse, die Absicht und der Wille der in der Gesellschaft herrschenden Klasse oder Klassen, Schichte, Gruppen entscheidend. Das bestimmt nämlich den Charakter, die Richtung und den unmittelbaren Zweck der rechtlicher Regelung, das, dass unter den, in den zur Regelung kommenden gesellschaftlichen Situationen und Relationen sich ergebenden Alternativen welche das Recht präferieren, in den Vordergrund stellen, und für die Staatsbürger als zu befolgendes rechtliches Ziel setzen soll. Die, auf Grund der Interessen, Absichten und den Willen der in der Gesellschaft herrschenden Klasse, Schichte oder Gruppe geschehende Wahl unter den Alternativen deckt Stellungnahme, Wertung, Wertbestimmung, Billigung oder Verwerfung des auf die Verwirklichung des in der Rechtsnorm bestimmten Alternative gerichteten Verhaltens, seine Bejahung oder Verneinung, das - unter anderen aus der Art der zu diesem Verhalten geknüpften Rechtsfolge der Rechtsnorm ganz klar wird.

In der rechtsschöpferischen Tätigkeit bestimmt also entscheidend die Ergreifung und Widerspiegelung der gesellschaft-

[2] LUKÁCS, GY.: Über die Ontologie des gesellschaftlichen Seins, 11. Band. Budapest, 1976. p. 218.

lichen Verhältnisse und Momente diese Wertung, die Wahl jenes Wertes, das zwischen den, in der gesellschaftlichen Situation vorkommenden Alternativen, bzw. den diese verwirklichhenden Verhalten das eine als rechtlich vorgeschrieben und befolgenswert präferiert. Dass wir hier einer Wertung, Wertwahl, überhaupt mit Wert und Wertproblem gegenüberstehen, darauf lohnt es sich kaum ein Wort zu verschwenden. Wie auch darauf nicht, dass wir nicht allein in der Unmittelbarkeit des täglichen Lebens, doch auch in der von dieser sich loslösender rechtsetzenden Tätigkeit auf relativen Reichtum der Wertmesser und Werte stossen und die Wahl unter dieser ist auch immer relativer Art, grundlegend davon abhängend, welches gesellschaftliche (Klasser, Schichten, Gruppen, etc.) Interesse sich in der Tiefe der Wahl und der Bewertung befindet.[3] Vorangehend müssen wir bemerken, dass als wir als Gegenstand der gegenwärtigen Gedanken die in der Rechtsschöpfung eine Rolle spielenden wichtigsten Kategorien und Werte, sowie Zusammenhänge bezeichnet haben, haben wir überhaupt nicht als Ziel und Aufgabe gestellt, die in der Konkretheit des rechtssetzenden Vorganges eine Rolle spielerden Werte und Wertmesser zu betrachten, und die Verbindung dieser mit den im rechtsschöpferischen Vorgang erscheinenden wichtigsten Kategorien aufzudecken zu versuchen. Infolge der Relativität und subjektivem Reichtum der Werte und Wertmesser haben wir bezüglich der Möglichkeit einer solchen Untersuchung auch ansonsten Zweifel. Deshalb sehen wir die Aufgabe des gegenwärtigen Schreibens bloss darin, jene Werte bzw. einige dieser vom Aspekt und der Projektion der in der Gesetzgebung eine Rolle spielender wichtigsten Kategorien, die als gleichfalls relative Werte in der rechtlichen Regelung selbst, so in der Rechtsschöpfung erscheinen und über mehr oder weniger bestimmte Dauerhaftigkeit verfügen, - selbstverständlich nicht vergessend, dass sie als relative gesellschaftlich-rechtliche Werte immer über konkreten gesellschaftlichen Inhalt verfügen.

Es handelt sich darum, dass sich in der rechtlichen Regelung und im Ordnen im Lauf der historischen Entwicklung sol-

[3] "Antinomien der Rechtside" siehe RADBRUCH, G.: Rechtsphilosophie, Stuttgart, 1950. pp. 168-174.

che eigenartigen Züge, solches Spezifika gestalten, die sich mit ihrem jeweiligen konkreten gesellschaftlichen Inhalt zu sog. rechtlichen Werten kristallisieren, zu solchen rechtlichen Momenten fixieren, deren Erscheinung und Ausprägung in der rechtlichen Regelung dem Recht einen Wert verleiht, es zur werttragender gesellschaftlicher Objektivation macht. Um Missverständnisse zu vermeiden muss nachdrücklich der Reichtum, die häufige Widersprüchlichkeit, Relativität und Subjektivität dieser Werte betont werden. Denken wir bloss daran, dass der Rechtssetzer ebenso die stabile Rechtsordnung als die biegsame, sich den sich ergebenden gesellschaftlichen Ansprüchen besser anpassende elastische Rechtspflege als im Recht zu verwirklichenden Wert betrachten kann; die ausschliesslich auf die, durch die gesetzgebenden Organe ausgelassenen Rechtsnormen gebaute Gesetzlichkeit, wie das den Rechtsanwender besonders den Richtern gesetzgebende Macht verleihende Rechtssystem; die gesellschaftliche, politische Zweckmässigkeit, wie die gesellschaftlich-rechtliche Gerechtigkeit; das schriftlich festgelegte Recht sowie die gewohnheitsrechtliche Rechtsbildung etc. Der unerschöpfliche Reichtum der rechtlichen Werte gestaltet selbstverständlich auch die Wahl unter ihnen ziemlich unsicher, subjektiv, darüber gar nicht redend, dass der Reichtum der Werte einerseits ihre Relativität, anderseits ihre Widersprüchlichkeit zur Folge hat, da sehr oft die verschiedenen sog. rechtlichen Werte gemeinsam schwer zu verwirklichen sind, mehr noch, sie widersprechen sich derart, dass sich ausschliesslich der eine in der rechtlichen Regelung verkörpern kann. Die Relativität, Widersprüchlichkeit der rechtlichen Werte werden eklatant von den berühmten Erörterungen Gustav Radbruch "Die Antinomien der Rechtsidee" aufgedeckt, besonders jene Änderungen des Denkens von Radbruch, die sich hinsichtlich des Gewichtes und der ihn bezeichneten Rechtswerte im Lauf seines Lebens in seiner Rechtsphilosophie gezeigt haben.[4]

[4] PÉTERI, Z.: Gustav Radbruch és a relativista jogfilozófia néhány kérdése (Gustav Radbruch und einige Fragen der relativistischen Rechtsphilosophie) In: Kritikai tanulmányok a modern polgári jogelméletből, Budapest, 1963. pp. 439-401., pp. 376-397.

Im Gang der geschichtlichen Entwicklung bilden sich also solche Eigenarten des Rechts und der Gesetzgebung, die man in der Rechtstheorie, in der rechtlichen Regelung im allgemeinen positiv bewertet, als solche Momente betrachtet, die unentbehrliche unerlässliche Teile, Züge des richtigen, guten, wirklichen Rechts sind. Diese Eigenarten, Züge, Elemente des Rechts, der rechtlichen Regelung befestigen, stabilisieren sich gleichsam als "rechtliche Werte" im Bewusstsein für Menschheit.Die Befolgung dieser rechtlichen Werte als führendes Prinzip im Gang der Gesetzgebung und die Verwirklichung im rechtsschöpfenden Produkt, die Darstellung, im Recht gibt im täglichen Leben des Rechts, der rechtlichen Regelung den Gang, den Wert des Rechts, der rechtlichen Regelung; an diesem Wertmesser gemessen wird irgendeine Rechtsnorm, rechtschöpfendes Produkt oder Rechtssystem in der Unmittelbarkeit des Rechts und der gesellschaftlichen Praxis zum wertvollen oder wertlosen. Vielleicht schadet es nicht vorsichtig darauf aufmerksam zu machen, dass wir hier äusserst zweideutigen und trughaften Erscheinungen, Vorgängen begegnen. Weil es einerseits zweifellose Tatsache ist, dass das Alltägliche des rechtlichen Lebens, der rechtlichen Regelung von diesen Werten, bzw. das bisweilen quälende Dilemma der Wahl unter ihnen erfüllt. Anderseits hingegen ist es bekannt, dass die nach dem sog. rechtlichen Wert geschehende Beurteilung des Rechts in sich, zu subjektivem und relativem Ergebnis führt. Die Wahl und Verwirklichung irgendeines sog. rechtlichen Wertes in der Konkretheit der gesellschaftlichen Totalität, kann ja die verschiedensten Wirkungen auslösen. Denken wir bloss an den rechtlichen Wert der Gesetzlichkeit; die konsequente und restlose Verwirklichung, das Einhalten und Einhalten lassen irgendeiner rechtlichen Regelung und Rechtssystem, insofern es unmenschliche, gesellschafts-und-menschheitsfeindliche Inhalte in sich trägt und realisiert, erweist sich, vom Standpunkt des Bestehens und des Funktionieren des Rechts, wie sehr es auch Wert repräsentiert, in Beziehung der Gesamtentwicklung der Gesellschaft, der menschlichen Gattung gerade gegensätzlich als negativ, wertlos, nicht-Wert. Wir wollten damit bloss andeuten, - was den Fachleuten ja bekannt ist, - dass wir keineswegs den Standpunkt der relativistischen

Rechtsphilosophie bezüglich des Wertes bzw. der Werte des Rechts, der rechtlichen Regelung vertreten.[5] Wenn aber die vorherigen Erörterungen leicht den Anschein erweckt hätten, dass wir die Widerrufung unserer früheren Ansichten vorbereiten würden, dann finden wir es notwendig das sogleich damit zu beheben, dass wir nachdrücklich betonen: den Wert des Rechts und der rechtlichen Regelung bedeutet nicht die blosse Summierung, irgendwelche Synthese der erwähnten sog. rechtlichen Werte, der auf Grund dieser geschehenden konkreten Bewartungen, Wertpräferenzen und Wahlen. Den Wert des Rechts, der rechtlichen Regelung bestimmen also nicht unmittelbar die sog. rechtlichen Werte und die auf Grund dieser vor sich gehenden konkreten, individuellen, subjektiven und relativen rechtlichen Wertsetzungen, sondern jene gesellschaftliche Wirklichkeit in der unaufhörlichen Bewegung welcher sich die menschliche Gattung als Substand entfaltet. Es handelt sich darum, dass im Vorgang der ständigen Änderung un Gestaltung der gesellschaftlichen Verhältnisse sich das Gattungswesen die gattungswesentlichen Kräfte und Eigenarten des Menschen entwickeln, verwirklichen - selbstverständlich nicht im mindesten mit ungebrochener Gradlinigkeit, sondern am, mit Rückfällen Zurückweichen gefärbten Weg der ungleichen Entwicklung - als die Substantialität des gesellschaftlichen Seins. All das bedeutet bezüglich unseres eigentlichen Problems, des Zusammenhanges bzw. ontologischen Ursprungs der sog. rechtlichen Werte und der auf Grund dieser geschehenden konkreten Wertungen sowie des Wertes des Rechts, der rechtlichen Regelung soviel, dass sich jene sog. rechtlichen Werte und auf diese gebauten konkreten, individuellen, subjektiven, und relativen Wertsetzungen, Wertwahlen und Wertpräferenzen als wirkliche Werte erweisen, das Recht, die rechtliche Regelung wirklich wertvoll machen, die im Entfaltungsvorgang des im vorigen Sinn der Substantialität genommenen Wesens der menschlichen Gattung als schaffende Momente teilnehmen. Die im Rechtssetzungsvorgang sich verwirklichenden alternativen Entscheidungen und Wahlen also - ob-

[5] PESCHKA, V.: Grundprobleme der modernen Rechtsphilosophie, Budapest, 1974. p. 116.

wohl sie sich immer auf irgendein sog. rechtlichen Wert richten - erweisen sich nur dann als wirklicher Wert, wenn sie zur Verwirklichung und Entfaltung des Gattungswesens des Menschen beitragen.

Die wesentliche Verbindung der sor. rechtlichen Werte der Rechtsschöpfung und der rechtlichen Regelung mit der Substantialität der menschlichen Gattung untersuchend und die wertbegründende Art der Verbindung mit dem Gattungswesentlichem feststellend, wäre es jedoch ein Irrtum zur Konklusion zu kommen, dass die Bedeutung und Rolle der sog. rechtlichen Werte bezüglich des Wertes der Rechtssetzung und der rechtlichen Regelung irrelevant oder mindestens gleichgültig ist. Wir haben bereits darauf hingewiesen, dass diese sog. rechtlichen Werte und die auf sie gebauten konkreten, relativen rechtlichen Wertungen, Wahlen und Entscheidungen im Alltag der Rechtssetzung und der rechtlichen Regelung ohne Zweifel eine bedeutende Rolle erfüllen. Und wenn es auch wahr ist, dass nicht die Summierung, Synthese dieser sog. rechtlichen Werte, bzw. die auf ihnen ruhendem konkreten rechtlichen Wertungen und Wahlen bedeutet, kann auch nicht zweifelhaft sein, dass sich in diesen sog. rechtlichen Werten und den auf sie begründeten konkreten, relativen rechtlichen Wertungen der wirkliche, wahre Wert der rechtlichen Regelung, des Rechtssystems entfaltet, verwirklicht. Diese sog. rechtlichen Werte in der Rechtsschöpfung und die auf den rechtlichen Wert begründeten konkreten relativen rechtlichen Wahlen und Wertungen bilden ein vermittelndes Moment zwischen der unaufhörlich sich ändernder gesellschaftlich-menschlicher Substanz und dem Recht, der rechtlichen Regelung. Und bloss durch Vermittlung dieser und in diesen verkörpert kann sich der wirkliche, wahre Wert des Rechts verwirklichen. Die Rechtsschöpfungstätigkeit strebt in ihrer Unmittelbarkeit immer nach Verwirklichung bestimmter rechtlicher Werte; diese wertverwirklichenden Setzungen, diese konkreten relativen rechtlichen Wertwahlen und Wertpräferenzen erweisen sich jedoch bloss insoweit als wirklicher Wert, insofern sie die Entfaltung, Aneignung und Realisierung des, die objektiven Entwicklungstendenzen der gesellschaftlichen Gesamtbewegung zusammenfassende, sich ebenfalls in unaufhörlicher Änderung befindenden mensch-

lichen Wesens fördert. Der wirkliche Wert des Rechts, der rechtlichen Regelung entfaltet sich also nur durch Verwirklichung dieser vermittelnden, relativen und konkreten sog. rechtlichen Werte.

Sowohl aus dem Titel der Studie, wie auch aus ihren einführenden Zeilen geht sicherlich hervor, dass unsere Aufgabe keineswegs die konkrete Bereinigung der Verbindung der sog. rechtlichen Werte und der die wirkliche Quelle der Werte bedeutenden Gattungssubstantialität ist. Gerade im Gegenteil, ziehen unseren untersuchenden Blick in erster Reihe die sog. rechtlichen Werte, bzw. einige dieser auf sich, und zwar nicht in Richtung des Gattungswesentlichen, sondern in einem anderen Zusammenhang. Es handelt sich darum, dass diese sog. rechtlichen Werte sich im Recht selbst, in der rechtlichen Regelung, im Rechtssystem verwirklichen, verkörpern. Wenn also der Gesetzgeber die Verwirklichung irgendeines erwählten rechtlichen Wertes bestrebt, ist seine weitere Aufgabe das Suchen und Finden jener rechtschöpferischen und rechtlichen Mittel, Kategorien, mit deren Hilfe der bestimmte rechtliche Wert optimal zu verwirklichen ist. Unsere rechtschöpfungstheoretischen und rechtsnormtheoretischen Untersuchungen[6] lassen in dieser Beziehung auf einige ziemlich primitive und unsichere Feststellungen folgern bezüglich des Zusammenhanges einzelner sog. rechtlichen Werte und gewisser Kategorien der Rechtsschöpfung, der rechtlichen Widerspiegelung.

Rechtssicherheit und Allgemeinheit

Eine der wenigen Fragen in welchen die verschiedenen Richtungen und Konzeptionen der Rechtstheorie, von der Naturrechtslehre durch den rechtlichen Positivismus und der Rechtssoziologie, ganz bis zur marxistischen Rechtstheorie mehr oder weniger einverstanden sind ist, dass eines der grundlegenden Werte des Rechts ihre Sicherheit ist. Es erscheint fraglos, dass in der

[6] PESCHKA, V.: Die Theorie der Rechtsnormen, Akadémiai Kiadó, Budapest, 1982.

Reihe der sog. rechtlichen Werte der Rechtssicherheit ein besonderer Platz zukommt. Unter Rechtssicherheit verstehen wir im allgemeinen jene Eigenart des Rechts als gesellschaftlicher Objektivation, dass das Recht im vorhinein, bezüglich der Zukunft, klar und übersichtlich die Berechtigungen und Verpflichtungen mitteilt, von welchen jeder bestimmte Kenntnisse und Wissen sich aneignen, mit diesen rechnen kann, sein Leben diesen entsprechend, risikofrei einrichten kann, weil die Normen und Verordnungen des Rechts die die vorliegenden Berechtigungen und Verpflichtungen beinhalten sich im allgemeinen verwirklichen, diese sowohl von den Staatsbürgern wie auch von den staatlichen Organen gewöhnlich eingehalten werden. Die wichtigsten Züge der Rechtssicherheit sind also die Erkennbarkeit, Übersichtlichkeit, Sicherheit, Kalkulierbarkeit und die allgemeine Verwirklichung des Rechts. Das gesellschaftliche Wohlbehagen, die Ruhe, das Gefühl, dass er im täglichen Leben und den Verhältnissen der Gesellschaft frei von Reibungen, Gefahren, unangenehmen Überraschungen, mit einem Wort in Sicherheit leben kann, wird für den Staatsbürger bedeutend durch das Bewusstsein der Bestimmtheit, Festigkeit, Sicherheit des Rechts beeinflusst, dadurch dass der Staatsbürger in Kenntnis, Gewissheit der Rechtsnormen mit den rechtlichen, dh. gesellschaftlich ziemlich schweren Folgen seines Verhaltens, seiner Tätigkeit rechnen kann. Die Wirkung der Rechtssicherheit auf die gesellschaftlichen Verhältnisse und Vorgänge offenbart sich - zweifellos - auf jenem Gebiet des Lebens und Funktionierens des Rechts, das wir Realisierung des Rechts, das Einhalten und Anwenden des Rechts nennen. Die Schaffung der Bedingungen der Rechtssicherheit ist aber entscheidend Aufgabe der Rechtssetzung; die Gesetzgebung ist nämlich die eigenartige staatliche Tätigkeit, die das rechtlich allgemein Geltende, die zu befolgenden, zu verwirklichenden jene Rechtsnormen mit welchen die Staatsbürger rechnen können, die sie beachten müssen, wenn sie in ihrem gesellschaftlichen Verhalten sicher und ungestört sein wollen, zustande bringt, feststellt. Mehr noch, die Ausgabe dieser Rechtsnormen - und das ist untrennbares, wesentliches Moment der rechtsschöpfenden Tätigkeit geschieht immer mit der Drohung gewissen, ebenfalls kalkulierbaren staatlichen Zwanges.

Die Bedingungen eines wichtigen Momentes der in der Rechtssicherheit und der gesellschaftlichen Totalität zur Geltung kommenden Sicherheit schafft die gesetzgebende Tätigkeit - selbstverständlich - durch Nutzung und Anwendung der verschiedensten rechtlichen Mittel, Methoden Institutionen etc. Uns interessiert jetzt bloss die Kategorie des Rechtssetzungs Organes näher, die - nach unserer Beurteilung - die Gestaltung der Rechtssicherheit im Gang der Rechtsschöpfung am meisten fördert, die grundlegende rechtsschöpferische Bedingung der Rechtssicherheit bedeutet. Dem aufmerksamen Leser verraten wir nichts neues mehr, wenn wir diese Kategorie benennen, wir haben ja im Lauf des über die Rechtssicherheit Vorhergesagten betont, dass die Rechtssicherheit im allgemeinen die Erkennbarkeit, Übersichtlichkeit, Kalkulierbarkeit der Rechtsnormen und besonders die gewöhnliche allgemeine Verwirklichung annimmt. Kurz: es handelt sich um die Kategorie der Allgemeinheit. Um die logisch-philosophische Kategorie, mit welcher in Verbindung Hegel stets unterstreicht, "Es ist von der grössten Wichtigkeit sowohl für das Erkennen als auch für unser praktisches Verhalten, dass das bloss Gemeinschaftliche nicht mit dem wahrhaft Allgemeinen, dem Universellen verwechselt wird".[7] Um an das Allgemeine zu kommen, genügt es nicht bloss durch Abstraktion das was in den vielen unmittelbar, sinnlich gegebenen Einzelnen gemeinsam ist. "Wenn unter dem Allgemeinen - schreibt Hegel - das verstanden ist, was mehrern Einzelnen gemeinschaftlich ist, so wird von dem gleichgültigen Bestehen derselben ausgegangen und in die Begriffsbestimmung die Unmittelbarkeit des Seins eingemischt."[8] Das in dem Einzelnen sich offenbarende wahre Allgemeine ist also nicht das durch den Durchschnitt oder aus den vielen Einzelnen am Weg der Abstraktion gewonnene Gemeinschaftliche, sondern das Gemeinschaftliche und das Wesentliche, also das gemeinsam Wesentliche. Im selben Sinn spricht Marx über das Allgemeine als Abstraktion, als er die Allgemeinheit der Kategorien der

[7] HEGEL: Enzyklopädie der philosophischen Wissenschaften im Grundrisse, Erster Teil. In: Die Wissenschaft der Logik. Frankfurt am Main, 1970. p. 312.

[8] HEGEL: Wissenschaft der Logik. Zweiter Teil. Leipzig, 1934. p. 263.

Politökonomie analysiert und die erwähnten Erörterungen Hegels auf materialistische Weise deutend feststellt, dass "das Allgemeine oder das durch Vergleichung herausgesonderte Gemeinsame" das ist selbst vielsichtig, ein vielfach "Gegliedertes, in verschiedene Bestimmungen Auseinanderfahrendes", "eine verständige Abstraktion" wenn man neben der Gleichheit nicht "die wesentliche Verschiedenheit vergisst". In Beziehung der allgemeinen Abstraktionen, des Allgemeinen unterstreicht also auch Marx die Wesentlichkeit der Gemeinschaft, der durch Abstraktion gewonnenen gemeinsamen Züge.[9]

Nach all dem ist es kaum überraschend, dass im rechtssetzenden Vorgang die Bedingung der Rechtssicherheit als rechtlicher Wert durch so eine Kategorie repräsentiert wird, die die herrschende, entscheidende Kategorie des Rechts als gesellschaftlicher Komplex, Totalität ist. Das kategorielle Übergewicht der Allgemeinheit im Recht, in der, das Produkt der rechtsschöpferischen Tätigkeit bedeutender Rechtsnorm, besonders in der Geltung dieser,wird durch tiefliegende gesellschaftliche Vorgänge bestimmt. Wir müssen an die wichtige Feststellung von Marx erinnern, nach der "jede neue Klasse ... die sich an die Stelle einer vor ihr herrschenden setzt, ist benötigt, schon um ihren Zweck durchzuführen, ihr Interesse als das gemeinschaftliche Interesse aller Mitglieder der Gesellschaft darzustellen, d.h. ideal ausgedrückt: ihren Gedanken die Form der Allgemeinheit zu geben, sie als die einzig vernünftigen, allgemein gültigen darzustellen."[10] Diese gesellschaftliche Gesetzmässigkeit stabilisiert sich als wesentliche Eigenart der Rechtsnorm. Es handelt sich nämlich darum, dass bis die Allgemeinheit der Ideologie - nach Marx -[11] darauf beruht, dass die neue "revolutionierende" Klasse "... im Anfang ihr Interesse wirklich noch mehr mit den gemeinschaftlichen Interessen aller übrigen nicht herrschenden Klassen zusammenhängt ... sich unter dem Druck der bisherigen Verhältnisse noch nicht als besonderes Interesse

[9] MEW.Bd. 13. p. 617.

[10] MARX-ENGELS: Die deutsche Ideologie, Berlin, 1953. pp. 45-46.

[11] MARX-ENGELS: Die deutsche Ideologie, Berlin, 1953. p.47.

einer besonderen Klasse entwickeln konnte, ... nicht als Klasse, sondern als Vertreterin der ganzen Gesellschaft auftritt" bestimmt jene gesellschaftliche Notwendigkeit die Allgemeinheit der Geltung der Rechtsnorm die bereits die Auflösung dieser Koinzidenz des Klasseninteresses mit dem gesamtgesellschaftlichen Interesse ausdrückt. Obgleich das besondere Interesse der revolutionierenden Klasse, als neuer, besonderer herrschender Klasse sich bereits herausgebildet und offensichtlich geworden ist, erklärt der Gesetzgeber diesen besonderen gesellschaftlichen (Klasse) Inhalt, im Interesse des Erhaltens des status quo und des Ordnens der gesellschaftlichen Verhältnisse unverändert als Allgemeinheit, in der allgemeinen Geltung der Rechtsnorm. Die kategorielle Herrschaft der Allgemeinheit im Recht, in der Geseztgebung und besonders in der Rechtsnorm wird also paradoxerweise von der gesellschaftlichen Herrschaft der Besonderheit ihres Inhaltes bestimmt. Die Rechtsnorm repräsentiert ihren besonderen gesellschaftlichen Inhalt als allgemeinen. Ihre gesellschaftliche Aufgabe und Bestimmung richtet sich gerade darauf, den besonderen Inhalt zur wirklichen Allgemeinheit der gesellschftlichen Totalität zu gestalten. Im Interesse dessen lässt sie das gesellschaftlich Besondere als Allgemeines erscheinen. Die Erscheinung des Besonderen des gesellschaftlichen Inhaltes in der Rechtsnorm als Allgemeines aber drückt eben die Geltung der Rechtsnorm, bzw. die Allgemeinheit dieser Geltung aus.

Der Gesetzgeber also, durch seine eigenartige Tätigkeit, mit der er den besonderen gesellschaftlichen (Klassen) Inhalt in der Rechtsnorm als allgemeinen darstellt, besonders damit, dass er die Rechtsnorm mit allgemeiner Geltung versieht, bringt gleichzeitig eine entscheidende Bedingung eines sog. rechtlichen Wertes, der Rechtssicherheit zustande. Die Allgemeinheit der Rechtsnorm, besonders ihrer Geltung bedeutet grundlegend, dass die Vorschriften der Rechtsnorm sich auf jeden gleicherweise, gleichermassen beziehen, verpflichtend sind. Eine durch Marx hervorgehobene Eigenart des Rechts ist nämlich, dass "das Recht kann seiner Natur nach nur in Anwendung von gleichem Massstab bestehen".[12] Die, rechtsschöpferisches Produkt bedeutende

[12] MARX-ENGELS: Ausgewählte Schriften Bd. II. Berlin, 1953. p. 17.

Rechtsnorm erscheint als solches Mass in der Gesellschaft, das für jeden und für jede Situation gleich ist. Das - wie Marx darauf an der selben Stelle aufmerksam macht - nimmt vorweg eine gewisse Abstraktion an, das, dass man die Personen und die gesellschaftlichen Situationen "von einheitlichen Standpunkt, nur von einer bestimmten Seite" z.B. die Individuen bloss als Arbeiter betrachtet. Die Rechtsnorm betreffend bedeutet das soviel, dass die Rechtsnorm als gleiches Mass, in den Mitgliedern der Gesellschaft bloss Rechtssubjekte sieht und sehen lässt, für die dieses Mass ohne jede Unterscheidung zu beziehen dh. geltend ist. Aber nicht nur bezüglich der Personen, der Subjekte der Rechtsnorm, sondern auch der anderen inhaltlichen Momente (Fall, Sachlage, Verhalten etc.) ist die Situation nicht anders. Wie sehr auch diese als Typen und typische Elemente auf der Ebene des Besonderen (davon wird im weiteren noch die Rede sein) im Inhalt der Rechtsnorm formuliert sind, sogleich sie als "gleiches Mass" erscheinen, werden sie der Allgemeinheit dieser "Gleichheit" untergeordnet. Wenn Marx davon spricht dass das Recht als "gleiches Mass" keine Klassenunterschiede anerkennt[13] unterstreicht die Allgemeinheit der Rechtsnorm als Bedingung der Rechtssicherheit auch das, dass die Rechtsnorm, von den Klassen- und anderen Unterschieden abgesehen, für jeden und in der Rechtsnorm formulierte jede Situation, jedes Verhalten verpflichtend ist. Das Erscheinen der Rechtsnorm als gleiches Mass, dadurch als Bedingung der Rechtssicherheit bringt die Allgemeinheit der Geltung der Rechtsnorm dadurch zustande dass die unter den sie besonderen und typischen Inhalt (ihre Situation, Lagen) der Rechtsnorm gehörenden jeden Fall, jedes Verhalten ohne Ausnahme unter die Geltung der Rechtsnorm stellt, unter die Allgemeinheit der Geltung der Rechtsnorm einreiht. Die verschiedenen individuellen Fälle, Situationen und Verhalten, insoweit sie in den Typus des Rechtsnorminhaltes einreihbar sind, sind gleich und mit gleichen Mass, den Verfügungen der Rechtsnormgemäss zu messen, zu beurteilen, dh. die Rechtsnorm ist für sie im allgemeinen verpflich-

[13] MARX-ENGELS: Ausgewählte Schriften. Bd. II. p. 17.

tend und gültig.

Gerechtigkeit und Besonderheit

Der jeweilige führende Stern der Rechtsschöpfung und der rechtlichen Regelung überhaupt, ist die Gerechtigkeit. Kann der Gesetzgeber mehr, schwerer zu Verwirklichendes unternehmen, als das, solche Rechtsnormen zu schaffen, mit solcher rechtlichen Regelung zu dienen, die jeden mit Zufriedenheit, dem Bewusstsein erfüllt, dass man solche Folgen seines Verhaltens bestimmt hat, die er verdient und die anderen ebenso gebühren. Kann in der rechtlichen Regelung ein grösserer Wert sein, als das, dass sie gerecht ist? Es ist die "ewige" Aufgabe und der Kampf des Rechtsschöpfers die Gerechtigkeit der Rechtsnormen, der rechtlichen Regelung zu erreichen. Doch was ist Gerechtigkeit? - das ist so eine Frage, auf die die Menschheit seit den griechischen Philosophen bis heute die Antwort sucht. Es kann auch nicht unsere Aufgabe sein, die Definition der Gerechtigkeit als rechtlichen Wert auch bloss zu versuchen. Wir machen bloss auf einige solche Momente aufmerksam, die zu gewissen Kategorien des Rechtschöpfungsvorganges, der rechtlichen Regelung eine besondere Zuneigung zeigen. Bereits die, den Zusammenhang der Rechtssicherheit und der Allgemeinheit berührenden Erörterungen zeigen in diese Richtung; die Allgemeinheit der Rechtsnormen als gesetzgeberisches Produkt, besonders ihre allgemeine Geltung, das, dass sie für jeden gleich, gleicherweise verpflichtend sind, weist auf die, als Wert der Gesetzgebung, der rechtlichen Regelung bestimmte Gerechtigkeit hin. Die rechtliche Gerechtigkeit bedeutet nämlich vor allem Gleichheit, in dem Sinn, dass die Verfügungen des Gesetzgebers, die Rechtsnorm für jeden gleich sind, mit gleichem Mass dienen. Das Recht - wie besprochen - ist in Bezug eines jeden gleich, gleich geltend; die Rechtsnormen müssen gleicherart, unterschiedslos auf jeden angewendet werden. Das ist so eine Eigenart des Rechts und der rechtlichen Regelung die - wie verkehrte Situationen und Resultate sie auch produziert - dem gesellschaftsontologischen Wesen, namentlich dem Monismus des Rechts und der rechtlichen Gerechtigkeit daraus entspriesst, dass in einer gebenen Gesellschaft nur

einerlei Rechtssystem geltend ist. All das was wir jetzt hier als eine Beziehung der rechtlichen Gerechtigkeit gewürdigt haben, unterscheidet sich kaum von der, in der Rechtsetzung und der rechtlichen Regelung eine bedeutende Rolle spielenden, als Wert herausgehobenen Rechtssicherheit, was nicht bloss die Relativität dieser sog. rechtlichen Werte zeigt, und das, wie eng diese miteinander verbunden sind, sondern gleichzeitig auch das, dass diese Kategorie, die bezüglich der Rechtssicherheit in der Gesetzgebung - man könnte sagen - einen herrschenden Platz und Bedeutung einnimmt, mehr noch, überhaupt als entscheidende Kategorie des Rechts erscheint, die Allgemeinheit der andere führende Wert des rechtsschöpferischen Vorganges, auch in Hinsicht der rechtlichen Gerechtigkeit ihre Wirkung fühlen lässt.

Doch die in der Rechtsschöpfung und der rechtlichen Regelung sich äussernde Rolle der rechtlichen Gerechtigkeit erschöpft sich keineswegs in dem, wie auch ihre Verbindung mit den Kategorien der Rechtsetzung nicht darin, dass sie in Beziehung mit dem Allgemeinen steht. Diese Gleichheit der rechtlichen Gerechtigkeit und die, davon untrennbare Allgemeinheit der Rechtssetzung, der rechtlichen Regelung bedeutet - wie wir wissen - nichts anderes, als das, dass auf die Rechtssubjekte, im Fall identischer Sachlagen die selben Rechtsnormen, gleiches rechtliches Mass angewendet werden muss. "Das Recht - schreibt Marx - kann seiner Natur nach nur in Anwendung von gleichem Massstab bestehen."[14] Aber diese im Recht sich darstellende Gleichheit eben demzufolge, dass sie sich auf nicht in gleicher Situation lebende Menschen bezieht, für in verschiedenen gesellschaftlichen Klassen, Schichten, Gruppen lebende und in verschiedenen Situationen sich befindenden Menschen ohne Unterschied gleicherweise die selbe Rechtsnorm gültig ist, bedeutet in Wirklichkeit Ungleichheit - wenn es beliebt - Ungerechtigkeit. Das gleiche Recht anerkennt keine Klassenunterschiede, betrachtet das ungleiche Talent, die Fähigkeit, den Fleiss und folgerungsweise die Leistungsfähigkeit des Individuums stillschweigend als natürliches Privileg. Solcherart musste das auf ungleiche Indi-

[14] MARX-ENGELS: Ausgewählte Schriften Bd. II. p. 17.

viduen angewandte gleiche Recht "statt gleich ungleich sein".[15] Im diesen inneren Widerspruch des Rechts und der rechtlichen Gerechtigkeit vermeiden zu können "müsste das Recht statt gleich, ungleich sein".[16] Das macht zweifellos eine gewisse Auflockerung und Beschränkung, Konkretisierung und Bereicherung der Allgemeinheit des Rechts notwendig. Es handelt sich darum, dass der Gesetzgeber in der Rechtsnorm einen besonderen gesellschaftlichen Inhalt als allgemeine rechtliche Gerechtigkeit darstellt. Und wir denken hier und jetzt nicht allein an die, im Zusammenhang mit der Rechtssicherheit berührte abstrakte Besonderheit des rechtlich-gesellschaftlichen (Klassen) Inhaltes, obgleich die fraglos die ganze rechtlich-gesellschaftliche Sphäre bestimmt, sondern an die konkrete, rechtliche Formierung dieser durch den Gesetzgeber in der Rechtsnorm, im Inhalt, in der Hypothese, Disposition, Sanktion der Rechtsnorm. Dass wir hier einem durch den Rechtsschöpfer verrichteten ausserordentlich komplizierten und zusammengesetzten Vorgang gegenüberstehen, ist sonnenklar. Der Gesetzgeber geht bei der Ausarbeitung der gesellschaftlich--rechtlichen Gerechtigkeit des Rechtsnorminhaltes vor allem aus dem besonderen gesellschaftlichen (Klassen) Charakter des gegebenen Rechtssystems aus, stellt konkret zu dem gemessen die verschiedenen Sachlagen, Verordnungen und Rechtsfolgen fest. Da jedoch - wie besprochen - die Fähigkeiten, Leistungen, Situationen etc. der in der Gesellschaft sich meldenden Menschen nicht gleich sind, muss er, damit das Recht annähernd gerecht wird auch diese gesellschaftliche Ungleichheit in Betracht ziehen, doch nicht in der Individualität ihrer konkreten Erscheinung - das ist ja offensichtlich unmöglich - sondern auf einem mässigeren, niedereren Abstraktionsgrad als das Allgemeine. Das Recht - und das kann nicht genügend betont werden - wäre kein Recht mehr, wenn es seine von der Rechtssicherheit und der erwähnten Beziehung der rechtlichen Gerechtigkeit untrennbare Allgemeinheit aufgeben würde. Doch in der Hülle dieses Allgemeinen formuliert es besonderen gesellschaftlichen (Klassen)

[15] MARX-ENGELS: Ausgewählte Schriften. Bd. II. p. 17.

[16] MARX-ENGELS: Ausgewählte Schriften. Bd. II. p. 17.

Inhalt, besondere Situationen, Normen. Und so verwirklicht die rechtliche Gerechtigkeit in der eigenartigen dialektischen Einheit ihrer allgemeinen und besonderen Züge, im Ineinanderspielen und in ihrer Widersprüchlichkeit einen wichtigen Wert des Rechts: seine Gerechtigkeit. Was bedeutet diese Besonderheit? Um welche Kategorie handelt es sich hier? Um die logisch-philosophische Form, die den Übergang vom Einzelnen zum Allgemeinen, bzw. vom Allgemeinen zum Einzelnen vermittelt, durch welche der Umschlag des Einzelnen und des Allgemeinen ineinander vor sich geht. Die Besonderheit ist so eine vermittelnde logische Kategorie, in der so die Individualität wie auch das Allgemeine immer behoben-bewahrt erscheint. Die Besonderheit bedeutet keinen fixen Punkt oder vermittelndes Glied, sondern einen ziemlich breiten und reiches Bewegungsgebiet vermittelnden Abschnitt zwischen dem Einzelnen und dem Allgemeinen. Die Besonderheit ist immer vom Einzelnen zum Allgemeinen und verkehrt führendes vermittelndes Feld, vermittelnde Mitte: "Sie (die Besonderheit) ist nicht bloss eine relative Verallgemeinerung, nicht bloss ein Weg von der Einzelheit zur Allgemeinheit (und vice versa), sondern die - durch das Wesen der objektiven Wirklichkeit hervorgebrachte und dem Denken aufgedrängte - notwendige Vermittlung zwischen Einzelheit und Allgemeinheit. Und zuvor eine Vermittlung die keineswegs bloss ein einfaches Vermittlungsglied zwischen Einzelheit und Allgemeinheit bildet - diese Funktion ist allerdings eines der wichtigsten Wesenszeichen der Besonderheit -, sondern in dieser Funktion durch ihre Erfüllung auch eine selbständige Bedeutung erhält."[17] Gerade durch diesen vermittelnden Charakter und dieser Rolle wird die Besonderheit für die Verwirklichung der vorherig angedeuteten Beziehung der Gerechtigkeit im Recht vornehmlich geeignet. Die rechtliche Gerechtigkeit nämlich, wenn sie sich nicht mit der Genehmigung und Konservierung der tatsächlichen Ungleichheit - sozusagen - Ungerechtigkeit begnügt, muss die Ebene des Allgemeinen verlassen und genehmigen, dass sich

[17]LUKÁCS, GY.: Die Eigenart des Ästhetischen. 2. Halbb. Neuwied am Rhein, Berlin-Spandau, 1963. p. 197.

im Recht auch solche inhaltlichen Elemente ausdrücken, die sich dem Einzelnen nähernd im vermittelnden Feld des Besonderen befinden. Was noch auf kurze Erleuchtung wartet ist eben diese Besonderheit des durch den Gesetzgeber in die konkrete Rechtsnorm geschütteten rechtlichen Inhaltes, die die andere Seite, das andere Moment, die andere Beziehung der rechtlichen Gerechtigkeit verwirklicht.

Das bekannteste und am häufigsten erwähnte Beispiel ist die Formulierung des Marx'schen Prinzip der Zuteilung der Arbeit entsprechend in den Rechtsnormen. "Das jeder nach seiner Arbeit" Prinzip bedeutet - wie bekannt - Ungleichheit, jeder beteiligt sich ja im Verhältnis seiner Arbeit, also nicht gleich, mit besonderer Beachtung dessen, dass es sich um die Arbeit von nicht über die gleichen Fähigkeiten verfügender, ungleicher Individuen handelt. Das über solchen Inhalt verfügende Recht erscheint - wie jedes Recht - mit allgemeiner Geltung und ist so für jeden verpflichtend. Die, dieser Rechtsnorm entsprechende Gerechtigkeit bedeutet soviel, dass dieses Prinzip, das Prinzip der Zuteilung gemäss der Arbeit, auf jeden gleich und gleichartig zu beziehen ist. Das Prinzip also, dass jeder nach seiner Arbeit beteiligt werden soll ist mit allgemeiner Geltung für jeden rechtlich verpflichtend, dh. im Gang der Verteilung der Güter ist dieses Prinzip und Mass entsprechend den Vorschriften des Rechts für jeden gleich und gleicherart anzuwenden. Die rechtliche Gerechtigkeit in ihrer unmittelbaren Erscheinung entspricht also wirklich der vollständigen und allgemeinen Gleichheit, die, das Prinzip der Zuteilung nach der Arbeit beinhaltende Rechtsnorm muss ja auf jeden gleich angewendet werden. Doch im Lauf solcher Verwirklichung der rechtlichen Gerechtigkeit realisiert sich das Prinzip der Zuteilung nach der Arbeit, die - wie Marx darauf hinweist - in Wirklichkeit Ungleichheit, keine Allgemeinheit sondern Besonderheit bedeutet. Das Recht folgt nämlich in diesem Fall, bei dem Verteilen der Güter nicht dem Prinzip der allgemeinen Gleichheit, dh. lässt nicht einem jeden gleich zukommen, sondern stellt diese Allgemeinheit an der individuellen Arbeitsleistung des konkreten Individuums gemessen fest, und zwar nicht auf Ebene des Einzelnen, erklärend, dass immer vom konkreten Individuum, bzw. von seiner

Arbeit abhängend seine Beteiligung festzustellen ist, sondern auf der Ebene des Besonderen, dadurch dass das Mass des Beteiligung zum Allgemeinen erhoben wird, erklärend, dass für die vorliegende Arbeit die betreffende Person mit so viel beteiligt wird, als die Gesellschaft solche Arbeit im allgemeinen entlohnt. Das in individueller Situation auf individuelle Arbeit bezogene allgemeine Beteiligungsmass repräsentiert die Besonderheit. Zu der Beziehung der Gerechtigkeit der Rechtsnorm, der Gerechtigkeit des konkreten Inhaltes der Rechtsnorm gesellt sich also nicht die Kategorie des Allgemeinen, sondern die des Besonderen. Jedoch wendet sich der Rechtsschöpfer bei der Feststellung der Gerechtigkeit des Rechtsnorminhaltes nicht nur bei der Anwendung des Prinzips der Beteiligung nach der Arbeit an die Kategorie des Besonderen, sondern auch bei anderen inhaltlichen Momenten, wie z.B. die Unterscheidung nach Geschlecht und Alter, die Qualität des Beamten, das Verschulden etc. Was aber hier besonders wichtig ist, ist, dass wie sehr auch die Kategorie der Besonderheit die Gerechtigkeit des Rechtsnorminhaltes beherrscht, erscheint dieser besondere rechtliche Inhalt, bzw. die besondere rechtliche Gerechtigkeit dieses, immer in der Kategorie der Allgemeinheit, der allgemeinen Gleichheit der rechtlichen Gerechtigkeit. Nur in der Einheit der unbehebbaren Wechselwirkung dieser zwei Beziehungen der rechtlichen Gerechtigkeit und der in diesen eine Rolle spielender zwei Kategorien kann sich annähernd die Gerechtigkeit als die auch im rechtschaffenden Vorgang zu verwirklichender Wert verwirklichen.

Billigkeit und Individualität

In der rechtlichen Regelung kommen häufig solche Fälle vor als im Vorgang der Verwirklichung der rechtlichen Gerechtigkeit die zwischen dem Allgemeinen und dem Besonderen - soeben angedeuteten - Spannungen so einen Grad erreichen, dass die Gerechtigkeit des Rechts überhaupt, die rechtliche Gerechtigkeit fraglich wird. Der Gesetzgeber das voraussehend, sucht so ein Mittel, so einen Wert, der geeignet ist die inneren Spannungen der rechtlichen Gerechtigkeit aufzulösen, die darin verbogene Ungerechtigkeit zu mildern. Dieser Wert ist die Bil-

ligkeit die die rechtliche Gerechtigkeit "korrigiert" deren "korrektives Prinzip" ist.[18] Die Ausrichtung, Berichtigung, Korrigierung der rechtlichen Gerechtigkeit auf Grund der Billigkeit, ändert im Wesentlichen die Gerechtigkeit des Inhaltes des Rechts, löst diese durch eine andere Gerechtigkeit ab. Eben diese Vertauschung, dieser Wechsel der Gerechtigkeiten im Inhalt des Rechts bringt die Situation zustande, dass sich der neue Gerechtigkeitsinhalt des Rechts für die eine Partei vorteilhafter, günstiger "milder" enweist als der frühere war. Doch ist das bloss die eine Seite der Anwendung der Billigkeit, die neue Gerechtigkeit des rechtlichen Inhaltes bedeutet ja für die andere Partei nachteilgere Beurteilung. Die Anwendung der Billigkeit als Korrektion der rechtlichen Gerechtigkeit löst nicht allein die besprochene Allgemeinheit, Gleichheit der rechtlichen Gerechtigkeit auf, sondern der Gesetzgeber macht das, um an der, unmittelbar in der Allgemeinheit und Gleichheit der rechtlichen Gerechtigkeit erscheinenden, aber die inhaltliche Besonderheit des Rechts repräsentierenden "Ungleichheit" zu ändern. Anders ausgedrückt stehen wir bei der, auf Grund der Billigkeit geschehender gesetgeberischen Regelung so einem komplizierten und zusammengesetzten gesellschaftlich-rechtlichen Vorgang gegenüber, dass dieser in seiner Unmittelbarheit, unmittelbaren Erscheinung bloss die Allgemeinheit und Gleichheit der rechtlichen Gerechtigkeit begebt, doch ist das ein unerlässlicher Schritt um die, das Mass des Inhaltes des Rechts bedeutende Besonderheit zu modifizieren. Es handelt sich darum, dass nach der rechtlichen Gerechtigkeit, infolge der allgemeinen Geltung des Rechts das Mass, das der besondere Inhalt des Rechts bestimmt, auf die gegebene Situation, Parteien, Sachen gleicherweise und gleich angewendet werden muss. Damit es nicht dazu komnt, ist es notwendig die in der Allgemeinheit der rechtlichen Gerechtigkeit sich darstellende Gleichheit aufzulösen. So besteht kein Hindernis mehr, auf die gegebene Situation, Parteien nicht die in dem besonderen Inhalt des Gesetzes bestimmte Ge-

[18] SZABÓ, I.: Méltányosság a szocialista jogban (Billigkeit im sozialistischen Recht.) Jogtudományi Közlöny, 4-5/1976.

rechtigkeit, sondern die Gerechtigkeit irgendeiner anderen Besonderheit zu beziehen. Die Besonderheit des rechtlichen Inhaltes nämlich nimmt - wie besprochen - irgendein Kriterium an, zu welchem wir Zuwendungen, Dienstleistungen, die Strafe etc. messen, proportionieren. So z.B. als das Recht das Prinzip der Lohnung nach der Arbeit vorschreibt, beinhaltet es die Gerechtigkeit, dass die Zuwendung eines jeden in Proportion zur verrichteten Arbeit festzustellen ist. In der Proportionierung ist also die verrichtete menschliche Arbeit das entscheidende Kriterium. Wenn diese rechtliche Gerechtigkeit infolge der bekannten und gebilligten Ungleichheit der Menschen so eine verkehrte Situation hervorruft, das einige viel mehr, andere (wegen ihrer Fähigkeiten, der Grösse ihrer Familie, etc.) viel weniger bekommen, bedeutet die billige Beurteilung im konkreten Fall, dass der Gesetzgeber das Prinzip des Lohnes nach der Arbeit nicht auf jeden gleich und gleicherart anzuwenden verordnet, sondern sich auf die Billigkeit berufend, im gegebenen Fall, nicht auf Grund der Arbeit, sondern auf der der Situation der Familie, der Zahl der Familienmitglieder, etc. proportioniert und korrigiert damit quasi die tatsächliche Ungleichheit, die in der Gleichheit der Proportionierung nach der Arbeit verborgen ist. Ähnlicherweise geht der Gesetzgeber auch in den Fällen vor, als er die Verantwortung für Schäden beschränkt, in Bedacht der schlechten materiellen Situation des Schadenstifters, oder wenn er den Schuldunfähigen auf Grund seiner materiellen Situation zum Schadenersatz verpflichtet. In dem einen Fall wird die materielle Lage der Parteien das Kriterium sein das die Grösse des gegebenen Schadens als Proportionsgrund ablöst, bis im anderen die Schuldfähigkeit, bzw. Unfähigkeit den Platz der materiellen Situation der Parteien als Gerechtigkeitskriterium übergitt. In Wirklichkeit geschieht also im Fall der billigen rechtlichen Regelung, im besonderen Inhalt des Rechts formulierten Mass, Änderung im Kriterium. Es ist somit sonnenklar, dass die billige rechtliche Regelung eigentlich "für die eine Partei billig, für die andere unbillig ist", dass das "billige" Recht immer zugleich strenges Recht vom Standpunkt der anderen Partei ist.[19]

[19] BÖRSI, GY.: Összehasonlító polgári jog (Vergleichendes bürgerliches Recht.) Budapest, 1975. p. 442.

Diese inneren Widersprüche der billigen rechtlichen Regelung entspriessen eigentlich aus der Eigenart der Billigkeit, die die Billigkeit an die Einzelheit anknüpft. Aus den vorigen Erörterungen geht es sehr wohl hervor, dass die, in der Allgemeinheit sowie in der Besonderheit der rechtlichen Gerechtigkeit verborgene Gleichheit, Ungleichheit bzw. ihre stetige innere Spannung und den Widerspruch, die, den Wert der Billigkeit vor Augen haltende rechtliche Regelung nur dadurch mildern, auflösen, bzw. zu neuen Widersprüchen vertiefen kann, wenn sie die Allgemeinheit, Besonderheit der rechtlichen Regelung dem Einzelnen nähert, in Richtung und Beziehung des Individuellen modifiziert. Gyula Eörsi richtet die Aufmerksamkeit gut auf die Verbindung des rechtlichen Wertes der Billigkeit mit der Kategorie des Individuellen, als er betont, dass das Problem der Billigkeit darin besteht "inwieweit im einheitlichen Recht des wirtschaftlichen und gesellschaftlichen Kontaktes spezielle individuelle Umstände berücksichtigt werden können..."[20] Die Kategorie also, die in der rechtlichen Regelung den rechtlichen Wert der Billigkeit begleitet ist die Einzelheit. "So ist das Einzelne - wie Hegel schreibt[21] - ein qualitatives Eins oder Dieses. Nach dieser Qualität ist es erstlich Repulsion seiner von sich selbst, wodurch die vielen anderen Eins vorausgesetzt werden; zweitens ist es nun gegen diese vorausgesetzten Andern negative Beziehung, und das Einzelne insofern ausschliesst." Aus diesem, eine andere Individualität voraussetzenden und gleichzeitig ausschliessenden Sein des qualitativen Eins oder Dieses folgen solche charakteristischen Züge des Individuellen, wie seine Einfachheit und Einmaligkeit, Unmittelbarkeit und Eventualität, die - wie das aus der kurzen Skizze der billigen rechtlichen Regelung sicher hervorgegangen ist - die Billigkeit als rechtlichen Wert im allgemeinen charakterisiert und so von der die Allgemeinheit wie auch die Besonderheit repräsentierenden rechtlichen Gerechtigkeit unterscheidet.

[20] Ibidem, p. 441.

[21] HEGEL: Wissenschaft der Logik. Zweiter Teil. p. 263. (Op. cit.)

ЦЕННОСТИ И КАТЕГОРИИ В ПРАВОТВОРЧЕСТВЕ

В. Пешка

Статья посвящена роли ценностей и категорий в правотворчестве. В рамках этого автор подвергает анализу взаимосвязи между устойчивостью права и всеохватностью, правдивостью и специфичностью, а также единичностью и справедливостью.

VALUES AND CATEGORIES IN THE LEGISLATURE

V. Peschka

The paper deals with the role of values and categories in the legislative activity. In this framework the author analyzes the relations between legal consistency and generality, equity and speciality, justice and individuality.

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BARGAINING, LAW-ENFORCEMENT, AND ENVIRONMENT PROTECTION*

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The present paper analyzes bargaining as a core phenomenon in regulating high risk technological ventures. The model of bargaining is based on a number of empirical studies in different social and legal systems. Most of these examples are related to environment protection. Some of the problems encountered in environment protective regulation are, to a certain extent, present in other high-tech high-risk regulations like recombinant DNA /bio-engineering/, and nuclear plants. /Because of some similarities in handling and latent possible consequences drug control and administration might be included./

In spite of considerable differences between these scientific-technological ventures they have at least one essential in common. All of these ventures may have lasting and irreversible effects on the human race or at least an undefinable number of human beings where this number is so great that it has a lasting and, to a certain extent, irreversible effect on the human race.

In the present paper an outline of the bargaining element in environment protection is given followed by a generalization of the consequences of the bargaining approach in the regulation of other high-risk high-tech ventures. Then, paying due respect to differences, a sketch of the resulting legal structure follows.

I.

It is a commonplace in the literature of antipollution law that the solutions adopted in individual countries to combat pollution and protect the environment are considerably different according to the social, political, economic and legal

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structure and conditions and traditions of a given society. The level of deterioration of the environment and the nature of the environmental element to be protected /air, soil, water, etc./ result in further differences. To make the picture even more complicated environment protection and its regulation are not static; they have their own reflexive development. Only an evolutionary model of environmental legislation and law-making may offer a satisfactory understanding of the effects of anti-pollution activity /Elliott et al.: 313/. This, however, diminishes some of the most striking differences in regulation to a problem of asynchronism. What we have to compare and analyze is the effect of the law-making; consequently the legal analysis comprises an implementation assessment. The time span of a period of implementation to be analyzed should take into consideration the environment change or stabilisation cycle.

In the present paper first of all English, Hungarian, Swedish, West German, and US environment protection solutions are used as examples. Notwithstanding enormous differences, a few basic similarities were observed. These similarities, on the other hand, result in fundamental changes in the structure of law.

The first common feature in environmental regulation is related to the problem of knowledge. Knowledge of, and information on, the environment deteriorating effects of a given technology are never complete, at least in three senses:

aa/ side effects and the combination of effects are not calculated; they are often incalculable or too costly to be calculated;

bb/ ulterior or long term effects are not considered;

cc/ the possibilities to observe /detect/ pollution are technically limited not to speak of financial limits /costs of monitoring and detection/. In Germany and in Hungary the average occurrence of an on the spot control of a big industrial polluter is about two per year and it is limited to 30 minutes of monitoring. Monitoring in England is characterized by extreme inter-plant variability.

There is always an element of arbitrary choice in the definition of healthy integral environment and, on the other

hand, the protection of a given desired environmental status quo requires measurement which is by far not too reliable. Even the very strict German water control measurement system allows an at least 30 per cent margin of error. This margin amounts to a theoretical 80 per cent in Hungary. The Director of the West German Umweltbundesamt /Federal Authority of Environment Protection/ stated that in environment law "one can, through changes in measurement procedures, obtain nearly all effluent standard value" /Freiherr von Lersner: 39/.

The distribution of knowledge is uneven: big industrial producers are generally better informed. Compared to the control authorities and esp. the public they have better expert knowledge too, at least as far as direct consequences of their activities are concerned. The public as polluter may be informed about his own activities, that is about the effluents, yet knowledge of possible consequences is obviously minimal. This lack of knowledge on behalf of the general public as a pollution victim, is to a certain and changing extent, present in the political organization/s/ /parliament, interest groups etc./ which are aimed to represent the environmental interests of the public. In the present paper the analysis is restricted to undustrial polluters.

The asymmetry in knowledge and esp. that in information is reflected in the relation between environment protective organizations and agencies and the /industrial/ polluters. Legislation, even if supported by skilled bureaucracies, lacks expertise and time. The same kind of shortage of resources characterizes the relations which are established between the anti-pollution /control/ agencies and the industrial polluters. Experts employed at polluting plants and equipment to observe and analyze pollution used by plants outnumber considerably the resources available to the control agencies.

Environment protection has, therefore, to cope with uncertainty under the constraint of information /and knowledge/ disparity. The solutions applied are different, as mentioned above, though in every country the protection of the environment is an unquestioned value. Its hierarchical place in respect to other protected values might be different; generally,

no all-comprising statement of value hierarchy is articulated. On the contrary: emphasizing the preeminence of environment, the hierarchical problem is generally neglected and any formal clear cut statement on the issue is carefully avided. A pragmatic yet disguised ranking order is, of course, present everywhere.

In some countries as in Germany and, to some extent, in Sweden there are explicit statements in statutory provisions that environment protection is to be kept within the bounds of technical knowledge and economic feasibility. This means that a license for a plant is or might be dependent on the best available or on the generally accepted technology /Westerlund/. That was the position of the original bill which later on has been developed into the US Clean Air Act of 1970. "Recall that, among other things, the 1970 act ordered the automobile industry to produce a virtually pollution-free car within five years and mandated EPA to set national pollution standards to protect all Americans against adverse effects from pollution with an adequate margin of safety irrespective of cost or technical feasibility" /Elliott et al.: 336/. In England or Hungary the explicitmaking of the problem is carefully avoided.

On the level of implementation or environmental effects the similarities are striking: an implementation deficit is present everywhere /Mayntz; Hawkins, Elliott, Hanf, etc./. Most of the improvements seem to be more or less related to technological and economic changes which have little to do with environmental concerns. The impact of other improvements, including regulation induced changes, prove to be dubious sometimes. In Hungary e.g. some water protection measures, esp. high fines resulted in technological solutions which,on the other hand created problems of hazardous /solid/ waste. This is, of course, not to mean that anti-pollution regulation is always counter-productive. On the one hand, however, deterioration is cumulating, and,on the other one has to compare the environment with the expectations of the public. These expectations are increasing with general welfare. /The correlation is, however, non-linear./

One may observe the above deficit not only contrasting the non-ending environmental crisis with the legislative goals.

The implementation deficit is a fact acknowledged by official measurements. Either the emmission standards are insufficient to safeguard a desired state of the environment or the standards are not observed and the authorities are unable /unwilling etc./ to enforce them. Or, maybe, the target state of the environment as defined is still not instrumental to an agreeable environment on the long stand. Or, to use a more realistic approach, all these failures are present.

Legislation and implementation in the observed countries differ in the accepted division of labour, that is there are remarkable differences so far as different levels or stages of the protective evolution are involved in building into the system the non-enforcement.

Anti-pollution regulation is never complete at the level of fixing a relevant legislative text. Certainly this is not a unique feature of environmental law: law-making is often related to social conflicts which are only temporarily and partially solved at the legislative level /Sajó/: law application is but a continuation of that conflict with other methods /and certainly under a different set of rules of the game/. What makes anti-pollution legislation special in this respect? Here a fair possibility to reshape the normative /statutory/ arrangement during implementation is built into the legislative solution itself.

On the one extreme point, the English water management authorities understand the vaguely stated standards of the law as possible arguments and, if necessary, even treats in a bargaining process where they try to convince identified polluters to limit their pollution to a reasonable extent /Hawkins/. The main concern of the officials is to protect the river irrespective of the individual polluting behaviour. Lack of strong adherence to emission standards characterizes the long standing approach of the /former/ Alkali Inspectorate. The Inspectorate prefered 'voluntary agreements' under constraint. A typical English solution was applied when the London Council and the interested industries agreed upon reductions in use and delivery of high sulfur coal.

In Sweden a centralised agency deals with licensing pollu-

ting industrial activities. The body is composed of representatives of the industry and the environment protection agency. In the bargaining some binding standards and emission values have an important role; on the other hand, the interested party has a wide range of maneuvres using arguments of generally accepted technology and /economic/ feasibility.

In Hungary emission standards are elaborated by the environment protection agencies /National Water Board etc./. These standards are compulsory and a failure to comply with them results in fines. Licences on new plants are dependent on compliance with standards. It is a recurrent complaint on behalf of the industry that they were never asked about the standards. The local enforcement agencies enjoy considerable freedom in imposing fines: the National Water Board elaborated a comprehensive guideline on efluent components to be measured and to be taken into consideration. The range of discretion /which is certainly limited by the guidelines/ results in a 1 to 12500 ratio, that is theoretically speaking, a company may pay about 12 thousand times more for the same amount of pollution. What really happens is that the enforcement agency plays a bargaining game somewhat similar to that in England. If the polluter promises to follow the suggestions of the agency he will pay little and, if possible, his claim of measurement inaccuracy will be honoured. The Hungarian Water Board acts also as a major entrepreneur in water cleaning and sewage disposal: in a number of reported cases the reduction in fines was related to the acceptance of a cleaning project elaborated and realized by the Board.

In a recent re-regulation of air protection some industrial and local interests were honoured by the legislation: at a time of drastic changes in emission standards, esp. of SO2, power stations burning high sulfur coal were exempted from the stringent rule. The coal-power industry is already in crisis. It is not a formally organized industry, yet it has considerable influence partly through the Ministry for Industry /which failed to protect other branch interests, e.g. that of the chemical industry/ and partly through a political lobby in the Party Headquarters.

Germany is generally credited to be on the other extreme of anti-pollution solutions with its great concern for foreseeable and calculable legal solutions on the legislative level and restricted administrative discretionary power. The German solution is apparently trying to restrict discretionary power partly by offering strict emission standards at the legislative level and by accepting special judicial review against possible unlawful discretion. A closer look on the German scene proves, however, that restrained bargaining is present here too, though mainly on a different level. This level is primarily the level of law-making. There is, of course, considerable bargaining at the implementation level too, esp. in licensing. Authorities are inclined to accept economic feasibility considerations against environmental concerns /this holds true even in nuclear plant licensing in matters of safety! cf. Wolf/.

A typical feature of the German legislation is that the compulsory standards are elaborated in commissions with strong industry representation. Comparing the American Toxic Substance Control Act and the German Chemicals Law /ChemG/ Schneider characterizes the German setting as a corporatist one "where powerful organizations represent and control entire sectors". In such a setting "the government can reduce implementation problems in public policy by giving these organizations routinized access to governmental policy-making in exchange for securing policy-conformist behaviour in their domains" /Schneider:176/. The involvement of the industry in anti-pollution legislation is also due to information and knowledge disparities.

According to implementation studies /Mayntz, Bohme/ industry /e.g. the chemical industry in the case of water emission standards/ had a decisive say in setting the standards, or was able to conclude favourable gentlemen's agreements with the government. It may not be surprising that the state of the environment was protected on a level not considerably above the actual state.

The public had very little say in the process and its political representation had no power, interest, or knowledge to protect the public environmental interest, partly because they had to rely on the public administration which had, on its be-

half to rely on information and resources offered by the concerned industries. Even if the drafting expert commissions were formally independent or parliamentary bodies, they had an overwhelming professional /consequently technologically biased/ and industry-oriented membership.

The restrictive German approach is best illustrated in its contrast with the American solution. In the case of chemicals the Americal law requires manufacturers to notify the EPA 90 days before a chemical is produced. The agency has licensing powers. "The German law, in this respect, is less extensive and less burdensome for both industry and government." "The actual number of regulated chemicals is much smaller... But on the other hand, in defining when and how a chemical has to be tested, the ChemG is very specific. By being as precise as possible, the German Act provides industry with a high degree of security in its decision-making environment." /Schneider:177-78/.

The apparently extremely broad protection of the public under the above-mentioned American law turns to be renegotiated against the public at the implementation level. Since the Reagan administration came to power, the Act has been implemented in its weakest possible version /Gusman/. This renegotiation at the implementation level, that is at the elaboration of more concrete regulatory standards and environment protection procedures and measures whith normative validity is present in many other cases of American environment protective law-making. /A typical example is the ambitious Clean Air Act of 1970./ As Elliott et al. /316/ put it: the time of aspirational law-making is followed by a period of legalistic bureaucracy and then by that of statutory revisionism. The American legislator promises full protection irrespective of industry and local interests and agency resources and then it has to admit that the time limits set were irrealistic. Delay after delay is accepted and a reevaluation of the policy is inevitable due to "effective counter-organization by industry to deregulate and repeal parts of the legal structure created by the legislative, judicial, and administrative victories won by environmentalists." /Elliott et al.: 317/.

Generally speaking three main types of environmental bar-

gaining arise from the above empirical materials: bargaining before law-making; bargaining at the regulatory /still normative/ stage; bargaining at the enforcement /individual/ level. All these processes are restrictive because they offer only limited participation to the public. All of them are based apparently on technical reliability and indubitable safety. Contrary to these expectations and promises in each type of regulation a fundamental place is left to discretion which creates a playground for bargaining. Environment protection is, to a considerable extent, left to the mercy of polluters. The German Chemical Act represents an extreme point in this respect "since assessment of a chemical is based on data provided by industry", "/T his approach places a great deal of emphasis on the collective self-responsibility" of the chemical industry. However, there is still some suspicion, especially from environmentalists, that these data lack credibility " /Schneider:181/.

Leading German scholars often complain about the discretionary power granted to the administration. In many fields of environment protection /water, air etc./ this is an enormous power and it does not safeguard predictability. /Össenbühl: 836 writes in this respect of "apocryphe delegated legislation"; e.g. licenses are revocable in a four year period construction. The discretionary power is, once again, overwhelmingly influenced by the expertize of the industry as the public administration relies heavily on technical and feasibility opinions of the industry /e.g. which concentration amounts to 'dangerous'; how to measure it, etc./.

Political science analysis emphasizes organizational differences in explaining the above differences. The existence of corporatist settings in a society may have considerable effects on the environmental decision-making and implementation and the lack of organized industry interests may increase the importance of the individual /enforcement/ bargaining /see England and Hungary/. Non-corporatist organizational setting, however, may have similar results to corporatist solutions /e.g. the exemption granted to high sulfur coal burning power stations in Hungary/. Even the often mentioned differences between the American and German legal solutions are not easily explained by dif-

ferences in corporatist formations. It is true that there was no co-operation or corporatist formation in the American chemical industry which explains partly the passing of the Toxic Substance Control Act. On the other hand, the Air Quality Act of 1967, like the Motor Vehicle Air Pollution Control Act of 1965 were passed exactly because the concerned industries in these cases were well-organized. As state legislation and local authorities were not accessible partners "the soft coal industry strongly supported passage of Senator Muskie's bill" /Elliott et al: 333/.

What really matters of the development of environmental law and environment protection is that even if interest representation is possible, under special circumstances, without well-organized groups, in the process of environmental protection big polluters will have an opportunity to negotiate or renegotiate the pollution problem. The resulting law is the result of restrictive bargaining.

Environmental law will, consequently, be characterized by features which have to do with bargaining. Law as a non-definitive result of bargaining seems to differ from that envisaged by traditional concepts of law. Legal theories emphasize the hard core element in law which makes it applicable and which, notwithstanding 'hard cases', offers an objective and formal existence to law. "A system of rules is formal insofar as it allows its official or nonofficial interpreters to justify their decisions by reference to the rules themselves and to the presence or absence of facts stated by the rules, without regard to any other arguments of fairness or utility" /Unger: 204/. Anti-pollution acts and regulations apparently offer a well quantifiable and fact-related set of rules. Formally, most of the activities which concern the environment may be subsumed under these rules. What really happens is, however, only partially controlled by the set of rules. Even if these rules offer a kind of initial distribution of power this cannot outbalance the already mentioned disparities which are due to information and resource inequalities. In regulation and enforcement new activities take place which cannot be characterized as pure implementations of environmental law or its goals. And the

non-deducible activities often have serious, even decisive, consequences for the environment.

II.

The non-fulfilment of the promise of environment protection and predictability is a result of the nature of bargaining. In the legal literature the properties of bargaining are generally analyzed from the point of view of extra-judicial settlement of disputes /mediation, etc./. The model of bargaining as it evolved in environment regulation and enforcement is somewhat different. For the present study the following elements of bargaining are of great relevance /lack of space limits a detailed review of most of their consequences/:

- goals
- participants /their relations/
- informations
- methods applied /lying, information withholding etc./
- results /zero-sum or positive sum games – and for whom/.

First of all, negotiation or bargaining in environment protection is inevitable because of the unquestionable value of environmental integrity. Polluters, the authorities, and the public emphasize the desire and unavoidable necessity of environment protection. Hardly any other possibilities than bargaining remain for the industry. The environmental agencies, on the other hand, are inclined to accept bargaining because they lack the resources to define completely the situations. They are committed to the cause of environment protection, at least they have to convince their constituency that the necessary steps are taken.

As Fisher and Ury /88/ suggest, bargaining may turn into 'principled bargaining' where negotiators appeal to principles and 'objective criteria'. Emphasis is on joint gains and common efforts and participants are taken as collaborators rather than adversaries. /Objective criteria are, however, mainly dictated by technocratic, mainly industrial one-sidedness e.g. the concept of available technology instead of actual risk assessment. Even procedural or fairness standards and arguments based on

these standards may degenerate into "tactical tricks" /Raiffa: 268/.

Given the acceptance of common goals bargaining is not centered around norms /values/: it is limited to an apparently neutral establishment of objective technocratic criteria. Most of bureaucrats in environment protection agencies are 'cosmopolitans' /Gouldner/, i.e. they share most of the technocratic beliefs of the polluters. They are inclined to adopt a common, technology biased system of criteria. At this point, however, the possibilities of public or non-technocratic control are reduced. The politician is supposed to act on behalf of the public /to use a very idealistic model which, however, has been long established as legitimation of law's authority/. The politician's role is, however, reduced to that of an "implementation organ of a scientific intelligence which on its behalf develops, under the actual circumstances, the objective constraint of the available technics..." /Habermas, 1968:122/. The legitimation of the norm or, for that matter, that of environment protective activity /which amounts – by force of the factual – to norm/ will be technocratic: it will be based on the belief in professional expertise. One can easily cite cases of catastrophic insufficiencies of environment protection plans and regulations where the cause of the catastrophe is to be found in uncontrolled and self-relying technocratic approach. Just like law seems to be too serious a matter to be left completely at the mercy of lawyers, environment is also too serious to be left to technicians.

Nevertheless, the political control is mainly limited to periods of environmental catastrophes. The public control on pollution and dangerous /high risk/ activities will be short lived and it dies with some public commission. The solution of the problem will be redelegated to some bureaucracies, possibly to the one which failed to cope with the problem before the catastrophe.

The West German reaction to Tchernobil is really instructive. A Radiation Providence Act /Strahlenschutzvorsorgegesetz/ was passed in 1986. Its only practical effect was that it curtailed access to information in cases of radiation /Günther--Tretschok/.

The recurring failures of environment protective measures constantly undermine the technocratic credibility and consequently the legitimacy of technocratic law.

"Minimally, we might say that a negotiation succeeds if it does not break down without producing a settlement" /Luban: 402/. Strict adherence to one's constituencies interests may endanger the success of negotiation. On the other hand, and from an objective ethical point, as Luban rightly points out, not even the satisfaction of the participants can be taken as decisive. In environmental issues a final criterion of evaluation is offered by the state of the environment: this, however, may again be one-sided, as it may and does conflict with other values and interests /employment, freedom etc./.

A second problem with bargaining is related to its pragmatic nature. "When they consent to negotiate, parties are aware that these are the terms of the situation, and therefore they have in effect waived their rights to restrained treatment" /Luban: 405/. Bargaining parties give up their concept of rights, though rights play, may under special circumstances, a modest role as threats /e.g. a contingent use of property rights when one threatens to turn the issue into a court case/. Instead of right and value oriented arguments the discussion is mainly technocratic which brings once again into the play elements of information withholding and manipulation.

Further distortion of information results from bargaining. Participants of environmental bargaining are generally not the interested parties but their representatives only. In order to achieve an agreement /which in this context amounts to 'result'/ they may withhold information vis à vis their own clients.

A third inconvenience results from secrecy. Efficient bargaining requires secrecy. This, however, excludes, once again public control /which was already impeded by the technical language of the bargaining/.

Bargaining, contrary to traditional models of democratic law-making and adjudicative law-application, refuses arguments of desert. Given the often mentioned disparities between the bargaining parties and especially those on behalf of the insufficiently represented general public there is a standing danger

that the weaker party will settle for less than it deserves. To put it in a more environmentalist language: the solution adopted will be suboptimal for the environment. From the ethical point of view one may quote an argument elaborated by Owen Fiss in respect of litigation settlement: "when the parties settle, society gets less than what appears, and for a price it does not know it is paying. Parties might settle while leaving justice undone" /Fiss: 1085/.

Certainly, bargaining has a number of advantages in solving environmental problems: its pragmatism e.g. makes possible the accommodation of plural perspectives which are essential in solving complex interrelated problems like that of environment protection /an agreement to reduce a certain kind of pollution while allowing in exchange another kind of pollution might be reasonable under cost considerations/. Another advantage is related to the possibilities of establishing ongoing relationships which may result in reducing transaction costs /Kuflik/. In the case of environment protection, however, considerable inconveniences arise from the long-standing and more and more 'intimate' relations of the bargaining parties: their problem handling becomes even more restricted.

Our problem concerns here, however, the transformation of law which results from environmental /and other hight tech/ regulations and the related problems of legal philosophy. Certainly, as Nietzsche put is "the initial character of justice is the caharacter of a trade... Thus justice is repayment and exchange on the assumption of an approximately equal power position" /148/. Taking into consideration the restricted nature of environmental bargaining and the immanent power disequilibria it is hardly justifiable in terms of /procedural/ justice.

Before drawing attention to these peculiarities we have at least to make credible the assumption that the trends observed in environmental legislation and implementation are present in vital high-tech and high-risk contemporary ventures. It should be noted that in the case of nuclear power plants and gene technology the risks are even greater. In the case of gene technology the consequences are even more remote and even less predictable while the use of nuclear energy poses the problem of al-

legedly low risk with definitely irreversible consequences. In the case of other industrial activities the polluting consequences are direct and sure: the problem is whether these consequences are acceptable. Another difference concerns competence: gene technology is still a problem for scientists /with imminent industrial application/. Pollution, on the other extreme, is mainly considered as a side problem of routine technological processes.

Let us consider nuclear plant safety in Germany. According to Wolf the German legislation follows in this respect the solutions applied in environment protection. The relevant regulations including licensing standards on safety are elaborated with the massive collaboration of the regulated industry.

The legislation itself applies a selective approach instead of a sample one for the protection of the population. The licensing does not take into consideration non-safety aspects of the installation of a plant /e.g. employment consequences/. The core questions are resolved by delegated legislation and technical norms. Even the regulation concentrates on procedural questions. The AtG, like the anti pollution law contents itself with protection against hazards "according to the state of science and technics". No stoppage has been ordered because of discovery of more reliable safety techniques. Radiation levels are established by the law, measurement and other implementation aspects are left, however, to technical commissions, "which win a power of definition in fundamental questions of reactor safety" /Wolf: 251/. This amounts to power of establishing sites for the planned plants.

Like in other cases, it is only after a long and secret preparatory period, when a great number of possibilities is already excluded, that the interested public and the anti-nuclear forces may have a voice. Then the issue may come up to court review. /Courts are lenient to review technological problems of national importance, at least in Europe./ The whole nuclear plant installation problem remains one of the concerned industry.

As to gene technology there are considerable differences among countries. As to research in molecular biology and rela-

ted areas generally self-regulation by the concerned scientists is the most often adopted solution. After an initial period of great concern and care the concerned scientific community got accustomed to the dimensions of the problems. Considerations of competence became more and more prevalent and risk assessment studies minimized the possibilities of public danger. /As a matter of fact no accidents were reported or were of no known impact./ Around 1979 the concept of care and risk underwent fundamental changes and nowadays a quite self-confident and 'permissive' attitude prevails. This has been criticized for not taking into consideration some ulterior discoveries which emphasize the unforeseeability element /Shatani/.

Commercial application may be dependent on licenses in some countries. The already risky pre-commercialization experimental release is often regulated. /Cf. the US National Institute of Health Guidelines: Points to Consider for Experiments Involving Release of Genetically Engineered Organisms. Federal Register, 1985./ Regulated or not /as in England/ genetically engineered organisms were actually released a few months ago in several European countries /Tageszeitung, July 27, 1987/. In the US the judiciary has been used to stop similar practices, and it is hard to say at the moment whether this will amount to real socio-legal control. In Europe law plays a restricted role in this respect. The German draft follows the usual solutions: licenses will be administered by state agencies which, on the other hand, will follow standards elaborated by scientists once again more and more acting as experts employed, or at least influenced through research grants, by the industry. The German standards reflect the scientific concepts of licensing dangerous chemicals. Only considerable quantities are considered dangerous there. This approach is, of course, illegitimate in gene technology /Winter: 192/.

Legislations are surprisingly restrained in all these fields. This is partly explained by corporatist tendencies and forces, partly by lack of resources, interest, and understanding of the problems to be faced. Politicians are scarcely interested in problems of mankind: their mandate is certainly not from humanity. The lack of interest, however, does not diminish

the importance of the problem: the segmented solutions /which amount to non-solution/ to trends which have long or ever lasting effects on mankind do have already considerable impact on societies. Self-regulation by interested /expert/ groups as admitted by legislation on account of the lack of the general /ethical/ dimension which is obviously present in these problems.

The problem makes itself evident in law too. The above trends of bargaining in spheres of life which are essential for mankind and seminal even for contemporary societies transform the structure of law. Predictability is promised, but a non-followable technical and secret discourse takes place. Traditional law-making and law-applying authorities /parliaments and courts/ are reluctant and unable to deal with high-risk and high-tech problems. This amounts to a decline in authority and power of traditional legal fora. Democratic control of law-making and procedural fairness are endangered. As a result the trends observed e.g. by Unger /196/ in postliberal law, viz. the move towards purposive legal reasoning and procedural or substantive justice continue to deteriorate to the detriment of the authority of law. Not only generality is corrupted but even the value content of the law is compromised which, among others, was and is the source of its authority. Law cannot be respected any more neither as a system of commands of the highest authority in society, i.e. the state, nor as the embodiment or instrument of fundamental ethical or social values and goods. The first is impossible because the bargained law is hardly a state-production or /for the Rousseauist/ the result of a general will of democratic law-making which is binding because of the process of its making. The second possibility of justification is also wellknown: here we present it in a recent formulation by Habermas. According to Habermas in the sate-of-law /Rechtsstaat, rule of law system/ morality is, like in the case of natural law; not existing any more above law: it evolves into positive law without loosing its integrity. It is purely procedural in its nature /Habermas, 1987:15/.

The problem with law through bargaining is that it lacks this procedural morality because the language of communication

is purely technical and /cf. above/ it is secret or at least restricted. For others, who expect substantial morality, justice etc. from law /e.g. Unger, above/ contemporary law fails to solve the problems of mankind: it lacks of substantial values which are related to mankind. /For a Marxist approach to the problem see Peschka who states that values in law have to do with 'Gattungswesen'/.

LITERATURE

ELLIOTT, D.C. – ACKERMANN, B.A. – MILLIAN, J.C.: Toward a Theory of Statutory Evolution: The Federalization of Environmental Law, Journal of Law, Economics, and Organization, 1/2/1985.

FISHER, R. – URY, W.: Getting to YES: Negotiating Agreement Without Giving, in: Houghton Mifflin, Boston, 1981.

FISS, O.: Against Settlement, Yale Law Journal, 83/1984.

FREIHERR VON LERSNER, H.: Das Umweltbundesamt im Vollzug der Umweltpolitik des Bundes, in Bitburger Gespräche, 1983.

GOULDNER, A.: Cosmopolitans and 'Locals', Administrative Science Quarterly, 1957.

GUSMAN, S.: Implementing US Toxic Substances Control Act – An Interim Report, Zeitschrift für Umweltpolitik, /2/ 4, 1982.

GÜNTHER, U. – TRETSCHOK, D.: Vom Strahlensschutz zur Informationsherrschaft über Strahlen – Das Strahlenschutzvorsorgegesetz 1986. Kritische Justiz. 1/1987.

HABERMAS, J.: Technik und Wissenschaft als "Ideologie", Frankfurt/M. 1968.

HABERMAS, J.: Legitimität durch Verfahren, Kritische Justiz, 1/1987.

KUFLIK, A.: Morality and Compromise, in: Pennock, R.J. – Chapmen, J.W. /eds./: Compromise in Ethics, Law, and Politics. Nomos XXI New York. 1979.

LUBAN, D.: Bargaining and Compromise: Recent Work on Negotiation and Informal Justice, Philosophy and Public Affairs, 4/14. 1985.

OSSENBÜHL, F.: Die Bewertung technischer Risiken bei der Rechtsetzung, DÖV 1981. 833 ff. et. seq.

PESCHKA, V.: Gedanken über die Eigenart des Rechts, Acta Juridica, 1-2/1983.

RAIFFA, H.: The Art and Science of Negotiation, Harvard U. Press. Cambridge, 1982.

SAJÓ, A.: Socio-legal Change and Social Conflict, Acta Juridica, 1-2/1983.

SCHNEIDER, V.: Corporatist and pluralist patterns of policy-

-making for chemicals control: comparison between West Germany and the USA, in: Cawson, A. /ed/: Organized Intersts and the State. Studies in Meso-Corporatism. Sage. London etc. 1985.

SIBATANI, A.: Offene Frage in der Debatte um die Sicherheit der Gentechnologie, in: Kollek et al. /Hrsg./

WINTER, G.: Über den Umgang des Rechts mit neuen Techniken. Das Beispiel Gentechnologie, in: Kollek et al. /Hrsg./

WOLF, R.: Rectsordnung und Technostruktur: Die Grenzen regulativer Politik im Bereich der Kernenergie, Jahrbuch für Rechtssoziologie und Rechtstheorie, 1982 /B/.

UNGER, R.M.: Law in Modern Society, New York 1976.

ТОРГ, ПРАВОРЕАЛИЗАЦИЯ И ОХРАНА ОКРУЖАЮЩЕЙ СРЕДЫ

А. Шайо

Торг, появляющийся в регулировании технологических предприятий с большим риском, рассматривается автором как центральный элемент данного процесса регулирования. Модель торга основывается на эмпирических исследованиях, относящихся к различным общественным и правовым системам. Подавляющее большинство рассматриваемых примеров касается охраны окружающей среды. Часть явлений, появляющихся в регулировании охраны окружающей среды, имеется также в других предприятиях с развитой технологией и большим риском, в таковых, как, например, генетические интервенции и атомные электростанции. Из-за сходства и по поводу их латентных последствий к ним сложно отнести и апробацию медикаментов.

Несмотря на значительные различия между указанными технологическими предприятиями их общей чертой является то, что они оказывают бесповоротное, вечное влияние на человеческий род, или, по крайней мере, на неопределенное большое число людей, на это число столь велико, что действие, влияние оказывается бесповоротным для всего человеческого рода.

В статье рассматривается момент торга процессов регулирования, а затем дается анализ влияния торга на регулирование способов с передовой технологией и большим риском.

NEGOCIATION, DROIT ET PROTECTION DE L'ENVIRONNEMENT

A. Sajó

L'étude traite la négociation qui a lieu au cours de la réglementation des entreprises technologiques comportant de grands risques, en tant qu'élément central de ce processus de réglementation. Le modèle de la négociations se fonde sur des études empiriques de différents systèmes sociaux et juridiques. La plupart des exemples examinés concernent la protection de l'environnement. Une partie des phénomènes qui se manifestent au cours de la réglementation de la protection de l'environnement entrent également en jeu à l'occasion de la réglementation des entreprises de grands risques, utilisant des technologies développées, comme par exemple les interventions génétiques et les centrales nucléaires. En raison des similitudes et des conséquences latentes éventuelles, l'autorisation des médicaments peut également y être comprise.

Malgré les divergences considérables existant entre les entreprises technologiques mentionnées, leur trait commun consiste dans le fait qu'elles exercent un effet irrévocable et durable sur le genre humain ou au moins sur un nombre inappréciable d'hommes et ce nombre est si élevé que l'effet produit sur l'ensemble du genre humain est irrévocable.

L'étude donne un aperçu sur la phase de négociation du processus de réglementation, suivi d'une analyse de l'effet du marché exercé sur la réglementation des procédures comportant de grands risques, utilisant une technologie développée.

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L'étude donne une vue d'ensemble de l'histoire de l'évolution après la seconde guerre mondiale de l'administration publique hongroise. Elle analyse en détail les changements intervenus dans la division territoriale du pays et leur effet sur le système des organes administratifs locaux et territoriaux. Pendant plusieurs années après la seconde guerre mondiale – avec un effectif fondamentalement changé – les anciens services administratifs continuaient à fonctionner et c'est seulement en automne 1950 que le système des conseils s'est établi. La structure et le fonctionnement de l'organisation des conseils furent réglementés par trois lois successives (de 1950, 1954 et 1971) dont les contenus se différaient considérablement l'un de l'autre. Or, l'organisation changeait continûment aussi pendant la période entre les lois relatives aux conseils: dernièrement par exemple le 1 janvier 1984 a été supprimée la division en districts, supprimant en même temps les services administratifs de district. L'auteur fait connaître le système administratif dit "suburbain" qui remplace les districts et dans ce cadre l'évolution des rapports entre les conseils communaux, municipaux et départementaux. Il présente des données importantes non seulement quant ou nombre des organes locaux et territoriaux, mais il montre aussi les tendances de l'évolution et les changements de conception ayant caractérisé la modernisation de l'organisation de l'administration.

Par la suite l'étude s'occupe des organes administratifs décentralisés (subordonnés directement aux organes centraux), ainsi que des organes centraux de l'administration publique. Il, l'auteur ne se prive pas de remarques et de critiques, en présentant quelques points néuralgiques de l'administration publique hongroise. Il s'étend aussi sur les discussions de principe qui s'étaient dégagées dans les cadres de la science administrative.

1. L'administration publique est sans doute le sous-système le plus complexe, le plus difficile à s'y reconnaître du système des institutions du mécanisme politique. Cette constatation est aussi bien valable pour la structure d'organisation de l'ad-

ministration publique, l'ordre de son fonctionnement que pour la réglementation juridique qui les détermine. En même temps, l'activité de l'administration intervient en tout moment dans notre vie quotidienne, c'est pourquoi le bon travail ou le mauvais des autorités administratives est d'une importance conciale déterminant un point de vue de notre moral de citoyen, même s'il n'influe pas toujours directement, mais pour la plupart d'une manière latente sur nos conditions de vie.

Nous devions avancer cela pour pouvoir indiquer tout de suite qu'il serait vain d'essayer, dans les cadres d'une étude restreinte, de présenter l'évolution de l'administration hongroise après la seconde guerre mondiale, dans le détail ou en abrégé. Un livre ne suffirait pas pour cela, et encore moins une courte étude! Ce que nous allons donc tenter, est une entreprise bien plus modeste. Profitant de l'occasion de l'anniversaire, nous allons jeter un coup d'oeil cur le chemin parcouru, mais nous ne prétendons pas à un l'inventaire, à rendre compte de tout, mais seulement à éclaircir quelques tendances de l'évolution, importantes à notre avis, formuler un ou deux enseignements ou conclusions et surtout à méditer sur ce qui nous reste à faire.

Changements du système d'organisation de l'administration

En parlant de l'organisation de l'administration, il paraît utile de distinguer quatre sous-système de cette d'organisation: ceux des organes des conseils, des organes subordonnés directement aux organes centraux, du groupe des organes centraux à compétence spéciale, de l'administration, ainsi que le Conseil des Ministres avec les services qui lui sont organiquement liés. L'habitude on nomme les deux premiers: administration locale territoriale et les deux derniers en terme collectif: administration centrale. Néanmoins, avant de parler de ces sous-systèmes, nous devons d'abord mentionner brièvement les problèmes de la division territoriale de pays.

1. C'est dans le chapitre relatif aux conseils que notre Constitution s'occupe de la question de la division territoria-

le. La solution d'avoir inséré la disposition y relative dans ce chapitre de la Constitution n'est pas heureuse à notre avis, nous pourrions même dire que c'est une erreur. C'est que la division territoriale du pays n'est pas exclusivement une question de l'organisation des conseils et ne peut même pas être considéré comme un élément formant la structure de l'ensemble de l'administration, car sa signification dépasse de loin la sphère de celle-ci. C'est qu'il n'y a pas seulement le domaine de fonctionnement des services de l'administration qui s'adapte à la division territoriale, mais aussi celui d'autres organes politiques et de l'Etat, comme notamment les organisations du parti, les tribunaux et les parquets.

Depuis l'adoption de la Constitution, la réglementation de la division territoriale a changé plusieurs fois au niveau de la Constitution, et encore plus souvent — sous l'effet des dispositions prises pour l'aménagement territorial — a changé la division territoriale elle-même. Nous ne sommes probablement pas loin de la vérité si nous considérons comme le plus important parmi tous ces changements celui qui a supprimé, avec effet du 1er janvier 1984, les districts en tant qu'unités territoriales. (Loi II de l'an 1983). C'est ainsi que le système administratif local et territorial à trois: département — district — commune, comptant pour "classique", a changé apparemment en un système à deux échelons, — à lueur de la réglementation incluse à la constitution. C'est que la Constitution ne fait même pas d'allusion à ce qu'il existe une unité territoriale plus petite que le département, mais plus grande que la ville ou la commune. Or, il y a dans le pays 139 unités de telle sorte. Aussi pudiquement que nos règles juridiques évitent-elles l'expression de la "banlieue", ceci est une catégorie existante, vivante qui a — comme n'importe quelle autre unité territoriale de l'Etat — son rôle déterminant lors de l'établissement de la sphère de fonctionnement des divers organes politiques et étatiques. En analysant les règles positives, l'empressement paraît déjà comique de ne pas vouloir donner l'impression que la division territoriale de banlieue ait pris la place de celle de district d'autrefois. Cet effort convulsif mène parfois à une réglementation difforme. Selon le point 3 de l'arrêté 21

(1983 NET du Conseil Présidentiel de la République Populaire) relative à la détermination de la compétence territoriale des tribunaux, par exemple il est dit: "... la compétence territoriale des tribunaux locaux s'étend sur les villes énumérées ci-dessus ... ainsi que sur les communes pour lesquelles elles interviennent dans la direction départementale". Eh bien, à la place de la deuxième demi-phrase, de la disposition citée, il aurait été plus simple et aussi plus juste de dire: "... ainsi que sur les banlieues qui s'y joignent". C'est que la formulation actuelle du texte n'est pas acceptable pour deux raisons.

L'une est – qui ne demande même pas d'être expliquée plus amplement – la "bagatelle" que les villes n'interviennent point dans la direction départementale, car c'est une absurdité conceptuelle. Les services du conseil municipal pourvoient, en effet, le concours des services du conseil communal. La reconnaissance de l'autre raison demande déjà une certaine compétence professionnelle. C'est qu'il s'agit du fait la sphère que de competence d'un conseil de grande commune subordonnée directement ou du département fait partie de la banlieue de villes en tant qu'unité géographique (actuellement il y a 32 conseils de ce genre, mais leur nombre augmente en perspective). Or les services du conseil municipal n'interviennent nullement dans la direction départementale du conseil mentionné, justement à cause du statut juridique de celui-ci. En résumé: nous n'avons aucune raison de cacher qu'en effet, il existe dans le pays 139 "banlieues" de ville (bien que parmi celles-ci 19 ne soient encore que des "banlieues de grandes communes") qui influencent effectivement les dons aines de compétence des divers services.

Néanmoins, les unités de base de la division territoriale du pays sont les communes et les villes. Quant au nombre de celles-ci, il est utile de partir de la situation de l'année 1950, étant donné que c'est alors que furent créés en Hongrie les conseils locaux. Avant la naissance des conseils nous avions 3251 agglomérations à statut de commune, dont le nombre s'est réduit à 3169 pour l'automne 1950. Après la tendance à augmenter quelque peu dans la décennie suivante – en 1960 nous avions 3210 communes – une diminution continue s'est présentée, à la suite de laquelle le nombre de nos communes s'est réduit

à 2933 pour nos jours.[1] Plusieurs causes sont entervenu dans cette réduction. La première et la plus réjouissante est que de nombreuses communes ont obtenu le statut de ville. D'autres communes, autonomes auparavant, ont perdu ce statut par contre, à la suite de la réunion de communes. La réunion peut être la conséquence d'un progrès dynamique, lorsque les agglomérations proches l'une de l'autre deviennent pratiquement contigues, mais elle peut être aussi l'effet du dépeuplement d'une commune. Dans ce dernier cas l'agglomération dépeuplée perd son statut de commune et son territoire s'intègre à celui d'une commune voisine. Il ne faut pas passer sous silence non plus que maintes fois c'est la ville qui "engloutit" des communes vivables, situées à 5 à 8 kilomètres, de manière que le statut de commune de celles-ci a cessé et elles devenaient parties de la ville. Le nombre de villes montre une augmentation dynamique: depuis 1950 il a presque doublé. Alors qu'au moment de l'établissement conseils locaux nous n'avions que 57 villes en tout, aujourd'hui nous en comptons 125, dont 120 sont entourées de banlieue. Les organes de conseil de la capitale, Budapest et de quatre villes: Hajduböszörmény, Százhalombatta, Tokaj et Turkeve n'interviennent pas dans la direction départementale des conseils communaux. Malgré l'accélération du processus de se développer en villes, le pays a encore de nombreux territoires où les villes manquent. Là, c'est une grande commune se développant rapidement et étant sur le point de devenir ville qui remplit ce rôle s'étendant sur son milieu d'attrait sur le plan de l'administration, comme sur celui du ravitaillement et des services. Dans quelques années ces 19 agglomérations obtiendront aussi le statut de ville.

Au point de vue de division territoriale, parmi nos villes seul le statut de la capitale peut être considéré comme spécial, d'une part car la capitale n'appartient au territoire d'aucun département, d'autre part car elle se divise en arrondissements. Autrefois nous avions encore quatre autres villes "à statut départemental" qui avaient les mêmes particularités.

[1] Les chiffres et données figurant dans l'étude reflètent l'état du 1 janvier 1986.

Entre temps, cependant, cette catégorie a cessé d'exister: les cinq villes départementales actuelles, quant à la subdivision territoriale ne diffèrent pas des autres villes. (Bien que la constitution permette aussi aux villes de province de se subdiviser en arrondissements, cette possibilité ne se réalise pas actuellement et les arrondissements ont disparu même dans les villes où ils existaient auparavant.)

Les unités les plus stables de la division territoriale du pays, — à côté de la capitale — sont les départements. Depuis l'établissement du système des conseils, le nombre, les chefs-lieux des 19 départements, à l'exception d'un, n'a pas changé. Bien qu'il y ait eu plusieurs fois quelques petites corrections de limites de département, celles-ci n'ont pas touché des territoires d'une grandeur qui compte.

Quels sont les soucis concernant la suite du développement de la division territoriale? Nous y comptons le réglement du statut juridique des communes naissantes, respectivement de celles qui se dépeuplent. Le réseau d'agglomérations d'aucun pays n'est constant, ainsi le nôtre non plus. Bien que cela nous fasse de la peine, nous devons en prendre acte: de nouvelles agglomérations naissent, d'autres se dépérissent Ce processus peut être accéléré ou ralenti, il n'y a qu'une chose qui est impossible: ne pas tenir compte des faits. Jusqu'à ces derniers temps, nos règles juridiques ne réglaient point la question de savoir de quelle manière dans quelles conditions une nouvelle agglomération peut obtenir le statut de commune. (Il n'y eut de réglementation juridique que concernant les conditions de la constitution d'un nouveau conseil communal. Ceci n'a cependant pas résolu le problème de l'établissement d'une commune, car dans la pratique une nouvelle commune ne reçoit pas en général un conseil pour elle, mais devient une commune associée d'un conseil commun avec une autre commune.) Ceci a été à l'origine de tensions notables entre les agglomérations villageoises. C'est que d'une part — surtout dans quelques uns des centres agricoles de grande exploitation — sont nées des agglomérations comptant 1000—1200 habitants, ayant eau, gaz, éléctricité, des immeubles à plusieurs étages qui ne pouvaient pas obtenir le statut de commune, mais appartenaient à une

autre commune sous l'appelation de "zone habitée de l'enceinte". D'autre part, en revanche ont conservé presque jusqu'au déménagement des dernières familles leur statut de "commune" les villages qui l'avaient obtenu autrefois, mais après, pour une raison quelquonque, se mirent à dépérir et ce processus ne pouvait pas être arrêté. Nous avons encore actuellement des agglomérations de 40 à 50 habitants, à statut de commune. Nous estimons qu'à propos de cette question nous devons distinguer deux choses, l'une de l'autre. L'une est le devoir de l'administration de satisfaire les besoins divers de la population. Ceci ne peut pas être lié au statut de l'agglomération, étant donné qu'il n'y a pas que les habitants de l'intérieur des communes, mais aussi ceux qui habitent "l'enceinte" et même la population des hameaux s'attendent à juste titre à ce que l'Etat s'occupe d'eux (p.ex. quant au ravitaillement en articles de consommation fondamentaux, aux soins des vieillards seuls etc.) Une tout autre chose est le statut juridique de l'agglomération qui doit, en effet, s'adapter à la tendance de développement ou de dépérissement qui caractérise durablement la vie de l'agglomération et au changement du nombre des habitants.

2. Parmi les organismes de l'administration publique ce sont les services administratifs du conseil qui sont le plus conformes à la division territoriale du pays, du fait que ceux-là sont établis localement jusqu'au niveau des communes. Or, la division territoriale et la sphère de compétence de chacun des services de l'organisation ne coïncidaient jamais au niveau des communes, le nombre des unités administratives communales restait toujours inférieur à celui des communes. Tenant compte aussi de ce fait, nous devons constater que la tendance dominante des dernières quarante années fut l'éloignement de l'organisation administrative des agglomérations communales. Ceci se présente à la lueur des chiffres de la manière suivante: alors qu'au moment de la naissance du système des conseils 2978 conseils communaux furent organisés dans 3169 agglomérations à statut de commune, aujourd'hui 1363 conseils fonctionnent en tout dans 2933 agglomérations à statut de commune. Autrement dit cela veut dire que 2269 agglomérations communales ne disposent pas de conseils autonomes et dans 1570 commu-

nes ne siège pas de conseil local. Avant d'énoncer cependant une conclusion sommaire, à savoir que: "l'administration s'était retirée de la majorité des communes", essayons de jeter un coup d'oeil derrière les chiffres mentionnés.

Au moment de passer au système des conseils, l'objectif politique fondamental était qu'autant que possible les organismes de nouveau type du pouvoir populaire: le conseil, son comité exécutif et l'organisation des branches spéciales de l'administration, soient présents dans toutes les agglomérations. Conformément à cela, dans le fond c'est le principe d'organisation "une agglomération communale – un conseil" qui s'est fait valoir, car pratiquement un conseil fut créé dans chaque agglomération ayant plus de 200 habitants. Bien qu'il y eût même alors des "villages-nains" au nombre minime d'habitants, en tout 170 conseils locaux communs se constituèrent, étendant leur autorité sur 361 agglomérations communales. Par la suite le nombre des unités de conseil a encore augmenté: ainsi en 1960, 3024 conseils fonctionnaient dans les 3210 agglomérations communales, et dans ce cadre le nombre des conseils locaux communs n'a pas augmenté, mais a diminué par rapport à 1950.

Il y en a qui estiment que ce fut une erreur originelle, de fragmenter de telle manière l'organisation de l'administration publique. Nous ne sommes pas de cet avis. Nous pensons que la transformation révolutionnaire et fondamentale qui s'était déroulée dans les décennies après la seconde guerre mondiale, et qui avait touché tous les domaines de la vie de la société, a exigé la présence de l'Etat partout où vivaient des gens, dons dans les agglomérations. Grosso modo c'est vers le milieu des années soixante qu'il devint évident que le démembrement exagéré de l'organisation administrative faisant un obstacle au progrès, car la décentralisation des pouvoirs fixée comme but politique est irréalisable sans un appareil spécialisé bien préparé, apte à exercer ses pouvoirs à un niveau élevé. Or, l'Etat n'a pas pu – et ne pourrait pas aujourd'hui non plus – assurer un tel appareil spécialisé pour trois mille agglomérations. Le gouvernement se trouvait donc dans un état de contrainte de décider: ou bien il renonce à la décentralisation des pouvoirs, ou bien il la réalise, mais au prix de la diminu-

tion radicale des unités d'administration communale. Il a choisi cette dernière solution. C'est dans cet esprit qu'il y a eu des réunions de communes, ou bien l'application de plus en plus fréquente de la forme d'organisation de conseil commun de plusieurs communes. Aujourd'hui nous en sommes déjà qu'au niveau communal, de nombre des conseils communs dépasse celui des conseils autonomes (664) et 2269 agglomérations communales appartiennent aux 699 conseils communs. (Le conseil commun dont la sphère de compétence s'étend sur 12 agglomérations communales remporte le record.)

En jetant un coup d'oeil en arrière, il faut dire objectivement que la diminution du nombre des unités administratives, dont nous venons de parler, et par conséquence la concentration de l'appareil spécialisé, étaient inévitables. C'était la "condition préalable" de ce que la majorité des compétences attribuées auparavant aux districts, reviennent présent aux communes. Car il est vrai que l'organisation s'est éloignée d'une certaine façon des agglomérations, mais il n'est pas égal à la population si ses affaires sont réglées dans la commune voisine ou si elle doit se rendre pour cela dans la ville la plus proche.

Ce que le temps n'a pas justifié, ce fut la jonction rigide de l'organisation administrative et du système de représentation populaire. C'est que l'eesentiel du modèle implanté chez nous du conseil commun au niveau communal consiste en à qu'il "poussait" toute l'organisation administrative au niveau du groupe d'agglomérations et de cette façon les communes associées sont restées non seulement sans appareil spécialisé propre, mais aussi sans propre organe de représentation, étant donné que de 2 à 12 agglomérations à statut communal avaient un conseil commun, un comité exécutif, une administration. C'est ce qui a donné l'apparence que l'Etat "s'était retiré des communes", ce qui était d'autant plus fâcheux qu'au cours de l'intégration, plus d'une fois des agglomérations viables, comptant 2 à 3000 habitants devinrent des "communes associées non-sièges".

Il faut encore ajouter que plusieurs processus d'intégration – séparément en général motivés, mais pas toujours –

touchaient, ou nous pourrions aussi dire: frappaient ensemble les petits villages. Dans l'intérêt d'obtenir la grandeur optimale d'exploitation, des coopératives agricoles, s'étendant à plusieurs communes fusionnaient. Dans le domaine de l'enseignement, les petits villages furent privés d'écoles et d'enseignants, les écoles ayant un petit nombre d'élèves furent supprimées et il restait une école pour 2 à 5 communes. S'y ajoutait l'intégration des conseils, puis – pour combler "concentration" d'organisations sociales comme les clubs sportifs, l'association des pompiers et même parfois les organisations locales du parti. C'est-à-dire qu'on a réussi à briser les formes d'organisation créant et formant une communauté qui permettemt à une agglomération humaine de s'appeler "commune" dans le vrai sens du mot. Nous ne prétendons pas et nous ne pourrions pas prétendre que la capacité de retenir la population des petits villages a diminué exclusivement sous l'effet des mesures d'integration mentionnées. Toute une série d'autres facteurs formant également le moral y ont contribué, du manque d'eau potable saine jusqu'aux mauvais transports communs. Or la perte de sa propre représentation était indiscutablement une des raisons pour lesquelles la population des petits villages a pris de plus en plus conscience de sa position désavantageuse.

C'est pourquoi chacun s'attendait avec espoir à la création des "assemblées locales des conseillers" dites et attendait dans certaine mesure de cette forme d'organisation la renaissance de la vie publique locale. C'est qu'à la suite d'une modification de loi de l'année 1984, après les élections de 1985, les communes associées appartenant au conseil commun, mais n'étant pas sièges de l'administration – sans que cette mesure ait supprimé leur appartenance au conseil commun – furent dotées d'un corps propre de représentation populaire autonome, bien que n'ayant qu'une compétence d'attributions limitée, notamment des assemblées locales des conseillers. En effet cette assemblée n'est pas autre chose que la corps des conseillers, élus à l'agglomération donnée, au conseil commun communal. L'assemblée locale des conseillers a un certain droit de décision, mais uniquement dans des affaires touchant exclusivement les habitants de l'agglomération en question, alors que

dans d'autres affaires – de la sphère de compétence du conseil commun et de ses services – elle a le droit de donner son avis ou son consentement. La compétence de l'assemblée locale est réglementée en partie par des règles juridiques centrales, en partie par le conseil communal commun, dans ses statuts d'organisation et de fonctionnement. Cette assemblée locale peut disposer de ses propres moyens financiers; mais il n'a pas d'appareil d'office de service; ce sont les services et l'appareil du conseil commun qui accomplissent les tâches administratives indispensables à son activité, comme par exemple l'envoi de ses décisions aux intéressés par la poste.

Selon les expériences faites jusqu'ici, la création de ces assemblées locales a répondu aux attentes: dans la plupart des communes ces nouvelles sortes d'assemblée devinrent l'attrait lumineux central de la vie publique locale, représentant avec conséquence les intérêts de la population locale non seulement devant le conseil commun et ses services, mais aussi devant les autres organismes intervenant dans l'approvisionnement de la commune. Les habitants s'adressent avec confiance à cette assemblée qui d'une part prend les mesures nécessaires dans son propre ressort, d'autre part remplit un rôle d'intermédiaire spécial entre les citoyens et le conseil communal commun. Au bout de compte: le rôle de politique sociale de l'assemblée locale est bien plus grand qu'on ne puisse penser sur la base de sa compétence de décision relativement limitée.

Nous devons aussi parler du nouveau système du rapport entre les organismes des conseils municipaux et communaux. Car autant que nous avons souligné en parlant de la division territoriale du pays que la banlieue, en tant que catégorie géographique est une réalité existante, nous devons ajouter avec autant de poids: depuis le 1er janvier 1984, cependant, dans les cadres de la banlieue, le système de rapports entre les conseils concernés est tout différent de ce qu'il a été à l'époque de la direction par les districts ou même avant, dans les cadres de l'administration suburbaine. Ce qui a donné le premier coup à la direction par les districts, ce fut le fait que depuis la période de préparatifs de la troisième loi relative aux conseils, à titre d'essai, il fut possible de soustraire

certains conseils communaux à la tutelle des districts, et de les placer sous la tutelle des villes. Cette forme d'organisation fut institutionnalisée par la troisième loi sur les conseils, en tant qu'administration de la banlieue et elle écartait petit à petit la direction par les districts. Cette même modifiait fondamentalement la position des districts du fait qu'elle supprimait les corps (conseil, comités et comité exécutif) au niveau de district, et à leur place – avec attributions différentes – elle établissait des offices de district sous la direction d'une personne. Ce qui a permis ou favorisé finalement la liquidation de ces offices et en même temps celle de la division territoriale en districts, ce fut que par la suite

– s'est dégagée considérablement l'autonomie des conseils communaux, s'est affermi leur appareil spécialisé;

– dans diverse organes de l'Etat (p.ex. à la police, aux tribunaux, au parquet, au contrôle populaire) puis plus tard aussi dans le parti, se créèrent de plus en plus d'unités d'organisation de ville et de district réunies;

– les offices de district remettaient plusieurs tâches spécialisées aux services du conseil municipal, fonctionnant au chef-lieu du district, lesquels, à partir de ce moment fonctionnaient, pour remplir ces tâches, avec la compétence de ville et de district;

– de plus en plus de conseils communaux sortaient de la sphère de compétence des offices de district et se rattachaient aux organismes d'un conseil municipal, en tant que conseil communal de banlieue.

Tenant compte des processus énumérés, est née la décision politique qui a fixé comme but en perspective, la création de l'administration des conseils locaux et territoriaux à deux échelons. Par rapport à ce but le fonctionnement du système d'administration suburbaine de nouveau type est donc de toute façon un état provisoire – même si ce n'est pas pour un ou deux ans. On pose souvent la question de savoir si: cette transition était – vraiement nécessaire, s'il n'aurait pas été plus pratique de passer tout de suite à l'administration à deux échelons? Pour trouver la réponse, nous devons prendre en considération ce qui suit.

– Le nombre des conseils communaux est assez élevé, malgré l'intégration exécutée, p. ex. dans trois départements il dépasse les cents (148 dans le département de Borsod, 120 dans le département de Pest et 107 conseils communaux fonctionnent dans le département de Szabolcs). Il n'y a pas de possibilité réelle à une date prévisible pour diminuer radicalement ce nombre. En même temps la direction et le contrôle de tant d'unités de conseil et aussi des conseils municipaux d'un seul centre, à côté des donnés actuels des réseaux téléphonique, routier et de transports – sont tout simplement impossibles.

– L'effectif des spécialistes qualifiés des conseils communaux s'est renforcé sans doute au cours des années écoulées, mais pas partout et non pas dans la mesure souhaitée. (Un rôle y fut joué, certes, par la rémunération insuffisante du travail administratif). C'est pourquoi on ne pouvait pas, d'une part, décentraliser tous les ressorts de première instance, autrefois attribués aux districts, vers les communes, d'autre part il fallait prendre acte du fait que l'appareil spécialisé fonctionnant dans les communes a encore parfois besoin d'aide professionnelle qu'on pourrait difficilement lui donner à partir du chef-lieu du département.

C'est sur ces considérations que se base la structure administrative de banlieue dont l'essence consiste en ce qu'elle renforce les relations directes entre département et commune, en ce qui concerne la relation ville-commune elle assure l'adjonction entre les corps (offrant la base par là de la coopération fondée sur l'adjonction) alors qu'elle oblige les fonctionnaires municipaux et les organismes administratifs spécialisés de prendre part à la direction départementale. Etant donné que cette direction est le droit des organes départementaux, ce sont eux qui fixent le mode et la mesure de ce concours. Le concours peut s'adapter avec souplesse aux besoins, c'est-à-dire il y a lieu de différenciation et il ne faut pas appliquer des schémas rigides. D'après les expériences, le concours des organies de conseils municipaux à la direction départementale se réalise surtout dans les activités suivantes:

a/ Contrôle de la légalité des décisions des corps communaux (conseil et le comité exécutif). Ceci se fait en partie

préalablement, en partie – ultérieurement. C'est préalable, dans le sens qu'il faut inviter le président du conseil municipal aux réunions des corps communaux et lui envoyer – annexé à l'invitation - le projetdes résolutions. Ainsi le président à la possibilité de faire d'avance, à propos d'un projet illégal, sa remarque écrite ou orale à réunion, directement ou par la voie de son délégué. Le contrôle ultérieur se fait par le secrétaire du comité exécutif du conseil municipal, à qui il faut envoyer le procèsverbal des réunions communales. Si le secrétaire du CE du conseil municipal constate une violation de la légalité, il peut proposer à l' organe qui avait pris le décision de l'annuler. (Dans la pratique cela réussit dans la plupart des cas.) Dans le cadre du contrôle de la légalité, le secrétaire du CE n'a pas d'autres attributions que de faire la proposition. Si sa proposition reste sans résultat, il peut s'adresser au secrétaire du CE du conseil départemental qui suspend l'exécution de la décision du corps ayant violé la légalité, au maximum pour 60 jours, et en même temps appeler le corps communal à rétablir la légalité. Si cela ne se fait pas, le comité exécutif du conseil départemental annule la disposition ayant violé la loi. Dans une partie des départements, nous avons rétréci le concours des organismes municipaux dans le contrôle de légalité et c'est le secrétaire du comité exécutif du conseil départemental qui exerce directement le contrôle de légalité – avec le concours du secrétariat – des décisions de tous les conseils de grandes communes, ainsi que de leurs comités exécutifs.

b/ Contrôle sur place de l'activité des services de conseils communaux. En Hongrie, en général, tous les cinq ans un examen de contrôle, dit complexe, a lieu dans tous les conseils qui s'étand au contrôle d'ensemble de l'activité des corps, des fonctionnaires et de l'organisation administrative spécialisée. (Il y a bien des examens dans l'intervalle, se limitant à un secteur ou à un sujet quelconque.) Selon la décision du comité exécutif du conseil départemental, les examens de contrôle complexe sont menés dans les communes par les collaborateurs de l'organisation administrative spécialisée du conseil municipal ou celui départemental. C'est la birgade de composition mixte

(partie de spécialistes départementaux, parti ceux municipaux) qui est typique, à l'intérieur de laquelle le travail du corps et l'activité des fonctionnaires est examiné par des spécialistes départementaux. On y tend également à limiter le concours des collaborateurs municipaux et de renforcer le contrôle du conseil départemental.

c/ Organisation des conférences pour les dirigeants communaux. La conférence – et dans son cadre l'évaluation du travail accompli, et la détermination des tâches est un moyen important de la direction. Les dirigeants départementaux (les présidents de conseils locaux, les secrétaires de comités exécutifs, la section technique ou les chefs de section etc.) peuvent tenir la conférence en "un échelon", c'est-à-dire avec la participation de tous les dirigeants homoloques des conseils locaux, ou en "deux échelons", lorsque ce ne sont que les dirigeants municipaux qui participent à la conférence départementale, après, ils organisent une conférence pour les dirigeants des conseils communaux respectifs. Le déroulement des conférences dépend essentiellement du nombre des conseils locaux fonctionnant dans le département.

En ce qui concerne les activités énumérées sous a – c, il dépend de la décision du comité exécutif du conseil départemental dans quelle mesure les organes du conseil municipal interviennent – dans la direction départementale. En principe, il n'y a pas d'obstacle à écarter même entièrement le concours de la ville et à exercer la totalité des activités de direction et de contrôle par les organismes départementaux. (Pour le moment cela ne s'est pas encore fait dans aucun département.) Toute autre est la situation dans le domaine des affaires administratives où la sphère de la décision départementale est plus limitée. C'est que si dans une affaire administrative la loi a attribué le droit de prendre la résolution de première instance à l'organisme spécial de l'administration du conseil communal, selon la loi de procédure administrative c'est l'organe d'administration spéciale homologue du conseil municipal qui doit être saisi du recours, et le conseil départemental ne peut lui retirer ce droit. (Plus précisément la seule possibilité de le

retirer est, si le conseil départemental – par arrêté – place le conseil communal sous la direction départementale directe. C'est que de ce fait le système de recours se transforme et c'est l'organe d'administration spéciale compétent du conseil départemental qui devient l'autorité de deuxième instance.) Il y a des affaires administratives exigeant des domaines spécialisés, pour lesquelles on ne peut pas créer les conditions nécessaires dans tous les conseils communaux; c'est pourquoi dans ces affaires, l'organe d'administration spéciale du conseil communal ne peut exercer le droit d'autorité de première instance par la force de la loi, seulement sur la base de l'autorisation du comité exécutif du conseil départemental. S'il a une telle autorisation, le recours se fait de la manière mentionnée, alors que par manque d'autorisation, c'est l'organe d'administration spécialisée de la ville qui exerce ce droit en première instance, aussi sur le territoire de la commune. Enfin, pour la troisième catégorie de ces affaires – dont l'appréciation exige aussi des connaissances professionnelles spéciales – il n'y a pas de possibilité de décentraliser les pouvoirs, mais pour tout l'environnement urbain c'est l'organe d'administration spécialisée de la ville qui exerce le droit de l'autorité.

Pendant la période relativement longue (1954 à 1971) où la deuxième loi relative aux conseils était en vigueur, beaucoup étaient portés à assimiler le centralisme démocratique se faisant valoir dans l'organisation des conseils au système de direction existant alors. Depuis il s'est avéré que dans le cas même de la même organisation – cette fois-ci celle des conseils – le centralisme démocratique ne peut pas être identifié à une structure d'organisation quelconque. Entretemps fut supprimée la hiérarchie entre les corps de représentation populaire de divers échelons, déclaré le caractère d'autonomie des conseils, a cessé la double subordination des organes d'administration spéciale, a changé la direction centrale des conseils et toute une série de changements plus ou moins grands sont survenus dans les relations d'organisation et de direction, sans déranger le moins du monde le développement de notre système de conseil ou de remettre en question le caractère socialiste de celui-ci.

Au cours des dernières décennies nous a fallu en finir d'un bon nombre de préjugés. Par exemple on disait qu'il fallait accélérer le dépérissement de l'Etat et pour cela il fallait remettre de plus en plus de tâches de l'Etat à des organisations sociales. Depuis, il est devenu clair que dans la période qui est devant nous, nous devons nous efforcer de renforcer l'activité des organes de l'Etat, c'est pourquoi des activités menées encore pendant longtemps par des organisations sociales (assurances sociales, protection de travail) furent "étatisées". D'autres idées fausses étaient:

– La démocratie serait en proportion directe avec le nombre des conseillers. Nous étions obligés de reconnaître: ce n'est pas le nombre qui compte mais ce que sont les attributions réelles du corps constitué. C'est qu'au cas échéant un corps de cinq membres, mais investi d'une large autonomie de décision, peut être beaucoup plus "dêmocratique" qu'une assemblée de cent membres, mais condamnée à un rôle formel.

– L'administration serait une activité politique qui ne demande pas de connaissances spéciales, une formation professionnelle dérange plutôt le politicien. Or, nous avons appris que le progrès social et technique place l'administration devant des tâches de plus en plus difficiles et complexes, et ces tâches ne peuvent être accomplies que par un appareil constitué de spécialistes hautement qualifiés. Dans les corps l'exigence déterminante ne consiste pas en ce qu'ils soient constitués de laïques, et il ne nuit point aux dirigeants élus non plus, s'ils possèdent des diplômes supérieurs et connaissent à fond l'administration. C'est que du fait que l'élu connaît l'activité de l'administration, ses possibilités et ses limites, il ne devient pas un bureaucrate ou porteur des intérêts de l'appareil.

– La direction ne pourrait être efficace que si le système des organisations est uniforme. Depuis que la direction des organisations est transformée de plus en plus en une direction des activités, l'uniformité des organisations – malgré la protestation de certains porte-feuilles – est en train de disparaître et il faut espérer qu'elle disparaîtrait au plus tôt.

Nous devions démolir aussi des fétiches – estimés auparavant intouchables – comme par exemple le principe des élections

directes à tous les niveau, ou bien l'élection de toutes les personnes chargées de fonctions pour une période déterminée. Nous les avons demolis et nous sommes devenus plus forts de ce fait. Or, au cours du développement social certainement nous aurons encore des fétiches à démolir...

3. A côté de l'organisation du conseil, l'autre grand groupe des organes de l'administration locale et territoriale est celui des organes subordonnés directement aux organes centraux. Leur cercle est très large partant de la police à la direction du régime des eaux, de la garde financière et douanière aux directions départementales de l'Office Central des Statistiques, et leur activité dans l'ensemble est respectable aussi bien quantitativement que qualitativement. Cependant, alors que l'organisation du conseil est un groupe d'organes cohérents et formant un système qui se trouvait toujours au premier plan de l'attention politique et de vie publique, on ne peut pas dire la même chose des organismes subordonnés directement aux organes. Ceux-ci ne constituent pas un système cohérent, leur activité et leur système d'organisation sont hétérogènes et – même dans les milieux sous direction centrale de l'Etat ou des recherches scientifiques – ce qui les caractérise est qu'il ne s'agit jamais de problèmes embrassant l'ensemble de tel groupe d'organes, tout au plus l'attention se tourne passagèrement sur l'un ou l'autre type d'organes. Nous pouvons donc dire en général que les organes administratifs subordonnés directement aux organes centraux sont les déshérités de l'administration hongroise: ils se cachent dans l'ombre de l'organisation du conseil et on en parle et même on en sait beaucoup moins qu'il ne sait motivé et juste. Nous pouvons risquer la supposition: ni parmi les dirigeants de l'administration, ni parmi les chercheurs scientifiques (nous-mêmes y compris naturellement) il n'y a pas un seul qui ait une vue d'ensemble complète du fonctionnement ou de l'évolution de la compétence de ces organes. Il est caractéristique par exemple que lorsqu'à propos de la révision de la loi de procédure administrative nous avons fait le compte du nombre des affaires administratives, en ce qui concerne les organes de conseil nous avions à notre disposition des données et des chiffres exacts, tandis que pour les organes

subordonnés directement aux organes centraux nous étions obligés de nous fier à des évaluations improvisées, en disant: celui qui ne le croit pas, n'a qu'à chercher lui-même. (Or, personne n'a cherché depuis, bien qu'à la garde frontière ou à la garde financière et douanière le nombre des contrôles administratifs se compte par million et il ne faut pas sous-estimer le nombre d'affaires des organes d'assurances sociales non plus.)

Loin est de nous l'intention de disséquer en détail, dans le cadre de cette étude, les problèmes du développement de ce groupe d'organes. Nous nous bornons seulement à quelques remarques modestes, auxquelles nous nous rentons autorisés par notre matériel limité de connaissances.

L'une des remarques vient de ce que nous venons d'exposer. L'activité du Contrôle des mines ou de la Direction des Postes fait tout aussi bien partie de l'administration hongroise comme par exemple celle des services techniques des conseils, c'est pourquoi il est indispensable que les problèmes généraux des organes subordonnés directement aux organes centraux aient l'attention digne de leur importance.

Derrière les coulisses, les problèmes des organes subordonnés directement aux organes centraux furent les sources de beaucoup de conflits entre les porte-feuilles d'une part et l'organe estimant de porter les intérêts centraux de l'organisation des conseils (actuellement l'Office de Conseils du Conseil des Ministres) de l'autre. C'est que les premiers, – en défendant les intérêts réels ou supposés de leurs porte-feuilles – auraient voulu que les formes d'organisation renforcent de plus en plus la branche verticale de la direction, alors que le dernier protégeait l'intégrité de l'administration spécialisée du conseil, en essayant d'élargir parfois le cercle de ses tâches. La tendance mentionnée en premier visait à multiplier le nombre des organes subordonnés directement aux organes centraux, dans certains cas même au prix de la "mise en pièces" de l'administration spécialisée du conseil, alors que par l'autre tendance on essayait d'intégrer dans l'organisation de conseil de plus en plus d'organisations ou tout au moins de ressorts. Il paraît qu'à long terme c'est cette dernière ten-

dance qui l'a emporté. En voici quelques signes:

- certains organes, auparavant subordonnés aux organes centraux, se sont intègrés dans l'administration spécialisée des conseils (p.ex. les organes territoriaux de l'Inspection Commerciale de l'Etat);

- d'autres unités organisationnelles bien que sans s'y intégrer - tout en gardant une direction centrale vigoureuse - s'attachent en tant que dite "institution d'administration spécialisée' à l'organisation du conseil (p. ex. corps de sapeurs-pompiers, station de santé publique - d'épidémies, registre foncier);

- encore d'autres organes ont remis toutes leurs attributions d'autorité à l'administration spécialisée de conseil (directions des voies publiques) ou tout au moins étaient contraints de remettre certains ressorts (p.ex. police, direction des eaux, garde financière et douanière).

Malgré la tendance de développement esquissée, bon nombre d'organes subordonnés directement aux organes centraux sont restés. Une partie de ceux-ci s'adapte à la division territoriale du pays, mais l'autre partie - les organismes dits interterritoriaux - non (p. ex. régimes des eaux, inspections minières). Ces dernières années une nouvelle organisation à subordination centrale fut créée: le réseau des inspections de l'Office national de la protection de l'environnement et de la nature.

Pour comprendre cette rivalité entre l'Office de conseils du Conseil des Ministres et les ministères compétents il faut savoir ce qui suit: Chaque ministre compétent voudrait savoir toute une organisation verticale au niveau national-départemental et municipal sous sa tutelle, si possible de manière que - les unités à divers niveaux fonctionnent exclusivement dans une subordination verticale et

- qu'il puisse leur donner des instructions sans limitation.

En même temps les conseils - qui sont les dépositaires numéro un des communes du territoire donné - aspirent naturellement à ce qui le maximum d'activité spéciale possible s'intègre à l'organisation du conseil, c'est-à-dire qu'elle tombe sous

l'autorité des conseils et que l'activité administrative hors de ceux-ci se limite au minimum.

Ces deux aspirations sont difficiles à accorder. C'est que la troisième loi sur les conseils, entrée en vigueur en 1971, a supprimé la double subordination antérieure des organes d'administration spéciale des conseils, et ces organes fonctionnent actuellement subordonnés exclusivement au comité exécutif. Il est vrai que le ministre a aussi des droits de donner des directives, mais ils sont assez limités. Les limités consistent en ce qui suit:

– Ce ne sont pas des organes, mais l'activité que le ministre dirige. C'est le conseil qui décide quels organes d'administration spéciale seront créés. Ainsi il arrive que dans le cadra du système l'organisation de conseil ne se crée pas le schéma vertical qui s'adapterait à la direction du ministre, car le conseil ne crée pas d'organe d'administration spéciale pour l'activité en question, mais confie la tâche à l'unité d'organisation intérieure d'un organe d'administration spéciale existant.

– Les pouvoirs de direction du ministre se réalisent en premier lieu par la voie de règles juridiques, a compétence de direction opérative est en partie rognée par la loi elle-même, d'autre part ce qui diminue sa valeur est le fait que sa direction ne se fait pas valoir directement, mais seulement par la voie du comité exécutif.

On comprend donc en point de vue de politique sociale que le ministre considère plutôt comme sien l'organe déconcentré subordonné exclusivement à lui (autrement dit: l'organe subordonné directement à l'organe centrale) que l'organe d'administration spéciale du conseil. Les institutions d'administration spéciale qui ne font que plus ou moins partie de l'organisation du conseil sont les résultats d'un compromis; elles fonctionnent dans une double subordination spéciale, en réalité cependant leur dépendance du conseil est plutôt nominale, la branche verticale de la subordination est beaucoup plus mince.

4. Les organes centraux, aux attributions spéciales de l'administration publique sont les ministères et les organes à compétence nationale. Pendant longtemps c'était la Consti-

tution elle-même qui énumérait les ministères. A l'époque, la modification de la Constitution était nécessaire pour créer un nouveau ministère ou en réunir deux anciens. Or, après un certain temps, la politique en a eu assez de ces modifications fréguentes et depuis, une loi à part, contient l'énumération. Grâce à cela, ces changements réglementaires ne chargent plus notre corps suprême de représentation populaire, le Conseil Présidentiel fait la modification nécessaire et s'il s'occupe de l'affaire, il prend en même temps les décisions nécessaires concernant les personnes. (Cela se fait ainsi, même si la session parlementaire est toute proche.)

Les changements de structure permanents des ministères servent certainement la réalisation d'une conception de développement de l'administration à long terme et scientifiquement fondée. Or, le profane non initié — puisqu'il ne connaît pas cette conception — est prêt à supposer qu'il s'agit de temps en temps d'improvisations, et même d'improvisations non bien réfléchies (p. ex. dans le cas de la séparation en deux, puis la réunion de ceux-là en un ministère de la Culture). Le grand avantage de ces improvisations consiste en ce qu'on ne peut pas les suivre par la voie de la logique, ainsi la mesure suivante est incalculabe. Lorsque par exemple la fusion des trois porte-feuilles industriels eut lieu (les Ministères de l'Industrie Légère, de l'Industrie Lourde et de l'Industrie Mécanique ont fusionné sous le nom de Ministère de l'Industrie) certains ont conclu qu'une tendance de concentration se dégageait dans les milieux de l'administration centrale, et l'on croyait déjà savoir quelles étaient les autorités suprêmes qui seraient touchées par la prochaine fusion. Au lieu de cela, qu'est-ce qui s'est passé? La séparation en deux du Ministère des Communications et des Postes ayant fonctionné traditionnellement ensemble, d'une part en un Ministère des Communications, de l'autre, en les Postes Hongroises, dirigées par un secrétaire d'Etat, a dernier organe étant à la fois un organe administratif à compétence nationale et le centre d'une grande entreprise d'Etat à activité nationale.

C'est pourquoi dans les cadres de cette étude nous n'entrons pas dans les détals des changements de la structure des

ministères et nous ne tâchons pas de trouver une explication scientifique pour quelle raison le portefeuille X est un ministère, et l'organe Y seulement un organe à compétence nationale. Au lieu de cela, nous nous bornons à établir schématiquement quelques faits.

a/ Actuellement il y a en Hongrie 14 organes d'administration centrale ayant un statut de ministères. (Des sont: les Ministères de Commerce, de l'Intérieur, de la Santé Publique, de la Construction et d'Urbanisme, de la Défense Nationale, de la Justice, de l'Industrie, des Communications, du Commerce Extérieur, des Affaires Etrangères, de l'Agriculture et d'Alimentation, de la Culture, des Finances et l'Office National du Plan.)

b/ Les réorganisations touchant le nombre des ministères (fusions, séparations, élévation au rang de ministère d'un organe à compétence nationale ou le contraire) ne représentent que le sommet de l'iceberg. Les réorganisations qui se déroulent dans les cadres d'un ministère ou de l'autre, sont moins spectaculaires, mais non moins significatifs dans leur effet. A ce propos nous pouvons mentionner qu'un processus est en train de se dégager dans certains ministères dont l'essentiel consiste en ce qu'à l'intérieur de la structure organisationnelle du ministère des unités d'organisation plus grandes que des directions générales – et même se subdivisant en directions générales – se créent, avec une autonomie relativement grande. Telles sont par exemple: la Préfecture Nationale de Police dans le Ministère de l'Intérieur, dans le cadre du Ministère de la Justice: le Commandement National Pénitentiaire, ou le Commandement National le garde financière et de la douane, dans le cadre du Ministère des Finances.

c/ Un des changements importants des dernières décennies fut dans l'administration centrale la réintroduction du titre de secrétaire d'Etat. Cependant ceci a soulevé également certains problèmes. Tel était p. ex. que jusqu'à la dernière modification de la Constitution, la disposition d'un secrétaire d'Etat à la tête d'un organe à compétence nationale ne pouvait pas toucher les droits et devoirs des citoyens. Etant donné que la pratique soulevait des besoins de telles réglementations, cette limitation a pour ainsi dire contraint les secrétaires

d'Etat de violer la Constitution. La disposition de la Constitution toujours en vigueur, aux termes de laquelle la mesure prise par un secrétaire d'Etat ne peut pas être contraire à un arrêté ministériel, a un effet analogue. (Le président de l'Office National des Salaires et du Travail, jusqu'à l'intervention énergique du Conseil Constitutionnel, a violé en série la Constitution, lorsuq'il modifiait l'un après l'autre des arrêtés du ministre du Travail.) L'autre problème est consiste en ce que le titre de secrétaire d'Etat ne revient pas à celui qui remplira une telle fonction, mais il est conféré à une personne donnée. Il est vrai qu'une certaine habitude s'est établie concernant les postes dont les titulaires sont nommés secrétaires d'Etat, mais avec la réglementation juridique actuelle, ceci n'est qu'une tradition et non pas un droit subjectif. De toute façon il serait bien-fondé de lier institutionnellement le titre-et les pouvoirs qu'il comporte - à certaines fonctions dirigeantes.

d/ Nous pouvons grouper les organes à compétence nationale de diverses manières. Avant tout, nous pouvons distinguer s'il s'agit d'un organe à compétence nationale sous la tutelle directe du Conseil des ministres, ou bien sous celle d'un ministre. D'après le titre de la personne étant à la tête de l'organe, nous distinguons

- l'organe à compétence nationale dirigé par un membre du Conseil des Ministres (Commission Central du Contrôle Populaire) ou par
- un secrétaire d'Etat, ou par
- un président non nommé secrétaire d'Etat. Cette distinction a de la signification du point de vue des pouvoirs de réglementation.

e/ La jurisprudence et le droit positif font toujours la distinction entre organes centraux de caractère "fonctionnel" ou de "branche". Nous estimons que cette classification est depuis longtemps dépassée et nous avons essayé de la prouver dans une étude à part. C'est qu'au cours de la transformation de notre système d'administration, l'administration des activités a remplacé dans un cercle de plus en plus large celle des organisations et entre temps se sont établis des sortes d'ad-

ministration "inter-branches" ne pouvant pas être rangées dans la classification traditionnelle et dont l'importance a grandiesant. Et nous ne parlons même pas du fait que la notion de "branche" s'interprête presque d'autant de manières, que nous avons de règles juridiques. Or, l'application du droit arrive difficilement à venir à bout de tant de contenus de signification d'un seul mot.

Dans l'origine "branche" signifiait un ministre d'une branche économique, avec les entreprises d'Etat sous sa tutelle (p. ex. le ministre de l'Industrie légère et les entreprises d'industrie légère) ayant une activité relativement homogène, face aux cercles d'activité fonctionnelle – p. ex. financière, de planification ou de travail – dans le cas desquels le ministère compétent dirigeait l'activité respective de toutes les entreprises, sans égard aux relations hiérarchiques. Cependant, il s'est avéré rapidement que la notion de "branche" dans le premier sens, n'était pas exacte, étant donné que p. ex. les entreprises de construction ne fonctionnaient pas uniquement sous la tutelle du ministère de Construction et d'Urbanisme, mais aussi subordonnées aux plus divers ministères et d'organes à compétence nationale. A la suite de cette reconnaissance, le droit de branche fut étendu – sans égard à la hiérarchie – à tous les organes de gestion dont l'activité de base corresponds au profile de la branche donnée. De cette manière, la direction de branche est devenue indépendante de la hiérarchie. Finalement s'est établi aussi un troisième sens de la direction "de branche" a devenue indépendante non seulement de la hiérarchie, mais aussi du cercle d'activité de l'organe en question, et concernait la direction centrale d'une espèce d'activité déterminée. (C'est ainsi que le ministre de l'Intérieur dirige par exemple l'activité anti-includie des organes nationaux les plus divers, ou le président de l'Office National des Eaux, l'activité d'aménagement des eaux des usines.) Dès ce moment il est devenu insensé distinguer les directions de "branche" ou "fonctionnelle", étant donné que les deux directions signifiaient celles d'une activité déterminée et non pas d'une organisation.

3. Nous devons parler brièvement aussi de l'organe qui se place au sommet du système d'organisation administrative: du

Conseil des Ministres. C'est un organe à deux faces, puisqu'il est d'une part, à côté de l'Assemblée Nationale et le Conseil Présidentiel, un des trois corps gouvernementaux, d'autre part il est l'organe suprême de l'administration. Dans son activité, le premier trait de caractère est déterminant, de façon même que le gouvernement ne peut que s'occuper moins qu'il ne faut des problèmes de caractère d'ensemble de l'administration. Comme le Conseil des Ministres est aidé dans son activité par des comités gouvernementaux qui sont des corps non seulement consultatifs, mais aussi de contrôle, de coordination et même autorisés à prendre des décisions dans une sphère déterminée, la proposition formulée par un facteur politique responsable parut logique selon laquelle il serait motivé de créer un comité gouvernemental de l'administration. Bien que le système des comités gouvernementaux ait changé plusieurs fois au cours des années – ainsi à la suite de la reconnaissance de l'importance des problèmes d'environnement un Conseil de protection de l'environnement et de la nature à statut de comité gouvernemental, fut créé puis supprimé – la réalisation de la proposition mentionnée se fait encore attendre.

Contrairement au Conseil Présidentiel, la Constitution ne fixe pas le nombre des membres du Conseil des ministres, elle fait seulement l'énumération par fonctions. De cette façon l'effectif du corps peut s'adapter souplement, sans modification de la Constitution, aux exigences pratiques de l'activité gouvernementale. Avant tout, le nombre des membres du Conseil des ministres est influencé par celui des ministères. En outre, la souplesse mentionnée est assurée du fait que la Constitution ne fixe point le nombre des vice-premiers ministres, ni celui des ministres d'Etat; en plus il existe aussi la possibilité que soit le président, soit l'un ou l'autre des vice-présidents du Conseil des ministres dirigent en même temps un porte-feuille. (Actuellement p.ex. un vice-président du Conseil des ministres est à la tête de l'Office national du Plan.) L'énumération par fonctions incluse dans la Constitution a changé plusieurs fois au cours des décennies écoulées. Ainsi la fonction des premiers vice-présidents du Conseil des ministres fut énumérée, puis laissée de côté. Par contre celle du président de l'Office na-

tional du Plan est mentionné. (Ce qui est en réalité inutile, étant donné que l'Office national du Plan a le statut de ministère, son président, sans aucune mention à part, est membre du Conseil des Ministres au même titre que les ministres étant à la tête des autres porte-feuilles.) Depuis la dernière modification de la Constitution, le président de la Commission de Contrôle Central Populaire est aussi membre du Conseil des ministres. (Il fut un temps où – sans que cela se reflète dans la Constitution – un membre du gouvernement se trouvait à la tête de l'Office National du Développement Technique qui rendait même des décrets dans cette fonction.)

Le Conseil des Ministres a même trois offices dont les noms expriment déjà l'appartenance au gouvernement: le Secrétariat, l'Office des Conseils et l'Office de l'Information du Conseil des Ministres. En réalité, la premier de ceux-ci est un organe officiel du Conseil des Ministres, tandis que les deux derniers sont des organes à compétence nationale dirigés par des secrétaires d'Etat revêtus de pouvoirs et de droits d'autorité y conformes.

L'administration et le droit

Les relations entre l'administration et le droit peuvent et doivent être examinées sons plusieurs aspects. Tout d'abord il faut parler des normes d'échelon supérieur au fonctionnement de l'administration. (Nous nous passons ici de l'analyse des règles de droit concernant l'organisation, étant donné que nous venons de traiter les détails de l'organisation.) En second lieu c'est l'activité des organes administratifs dans le domaine de la création de droit qui mérite l'attention. Enfin, mais non pas en dernier lieu, il faut parler brièvement de la légitimité de l'activité des organes administratifs.

4. Les premières années après la seconde guerre mondiale – pour des raisons et d'une manière compréhensibles – n'étaient pas favorables à la codification de règles à long terme. Les changements sociaux à rythme accéléré exigeaient de la codification en premier lieu, la rapidité et non pas la durabilité. (C'en est ainsi, irrévitablement, lors de toute transformation

révolutionnaire.) Or, la consolidation après 1956 a posé comme exigence fondamentale le raffermissement de l'ordre légal aussi ou point de vue de l'administraticn publique, ce qui n'est pas possible sans une réglementation juridique relativement stable.

Nous estimons que sans parti pris, nous pouvons mentionner en premier la loi IV de 1957, relative aux règles générales de la procédure administrative. L'importance particulière de cette loi ne résidait pas seulement dans le fait qu'elle n'avait pas de précédent législatif (avant 1945, il y a bien eu trois projets de loi de caractère privé, mais la réglementation légale de caractère d'ensemble de la procédure administrative n'a pas eu lieu) mais aussi en ce que d'une part contrairement aux opinions sceptiques répandues dans un cercle large, sa codification prouvait que malgré la variété des procédures administratives il y avait bien une possibilité réelle d'en établir les régles générales, d'autre part, qu'elle l'a fait à un moment où – après les années de la culte de la personnalité – le raffermissement de la légitimité sur des bases solides aussi dans l'administration, eut une signification politique très grande. Pour des raisons d'étendue, nous ne pouvons pas entrer en détail dans l'analyse de contenu des diverses institutions juridiques prévues par la loi sur la procédure. Toutefois, nous pouvons déclarer qu'elle s'était avérée un des produits des plus réussis, des plus durables de la législation socialiste en Hongrie. Bien qu'à propos de la création d'autres règles de droit d'échelon supérieur – comme la loi sur les conseils, celles sur les tribunaux et sur les parquets etc. – elle ait été modifiée onze fois, elle restait en vigueur presque pendant un quart de siècle, sans qu'une révision de caractère d'ensemble, s'étendant à toute la conception de la réglementation ait eu lieu. Ceci fut fait – à la suite de plusieurs années de préparation scientifique méticuleuse et de travail de rédaction du texte de la loi – par la loi I de 1981 qui a conservé les dispositions de procédure ayant fait leurs preuves et bien connues par les juristes, tout en modernisant et enrichissant la loi par de nouvelles dispositions et même de nouveaux chapitres.

La matière de norme du droit administratif était caractérisée pendant longtemps et dans la plupart de cas même au-

jourd'hui par ce que les dispositions concernant les régles de fond et celles de la procédure n'étaient pas nettement séparées, mais c'était le même texte qui contenait les deux. La création de la loi sur la procédure ne changeait la situation que dans le sens que le code de procédure lui-même est "purement" de droit ordinatioire et il y a aussi quelques règles de droit de caractère semblable à l'échelon intérieur (p.ex. les textes sur la procédure administrative dans la Direction des eaux, ou sur la procédure de tutelle). Cependant la majorité de nos règles de droit sont de "caractère mixte" et très probablenent cela restera ainsi.

C'est au début des années soixante qu'est apparue la tendance, dans notre législation, à la réglementation à haut niveau de l'ensemble d'un certain domaine spécialisé de l'administration. La réglementation était en général "à deux étages" (loi ou décret loi et décret gouvernemental portant) et s'y rattachait éventuellement, comme "troisième échelon" – souvent non pas à l'ensemble de la loi, mais seulement à certains de ses chapitres – la réglementation par arrêté ministériel. Parmi les produits de la législation de cette époque il y en a plusieurs qui sont toujours en vigueur, avec des modifications plus ou moins grandes, et auxquels nous pouvons être fiers à juste titre même sous l'aspect du droit comparé. Il suffit de mentionner la loi sur les mines, le décret-loi sur les routes, la loi sur l'énergie éléctrique, les lois sur les constructions ou sur le régime des eaux. Par la suite, le niveau professionnel des règles de droit d'échelon supérieur a s'élevait en général. Parmi les raisons il est juste de souligner le rôle accru du Ministère de la Justice dans la codification, l'esprit de suite et le fondement scientifique de la législation, ainsi que la ranimation encourageante de l'activité des commissions parlementaires.

5. Nous ne pouvons point être tout aussi contents de la création de droit au niveau des porte-feuilles, surtout du niveau professionnel des règles et des directives juridiques à l'échelon plus bas que l'arrêté ministériel. Loin de nous l'intention de continuer à enrichir la littérature grossie en bibliothèque du problème de "l'excès de réglementation juridique",

mais nous devons attirer l'attention brièvement sur certains points.

a/ La codification, c'est-à-dire la rédaction des règles juridiques, des lois, est un "métier" à part, notamment le domaine partiel de l'activité de juriste qui exige la plus grande préparation, l'instruction générale et spéciale du juriste, les connaissances profondes des relations sociales et l'inclinaison aux problèmes sociaux. Auprès de la plupart des porte-feuilles il n'y a pas d'équipe de codificateurs expérimentés qui corresponde aux exigences complexes citées. La majorité des juristes des ministères connaissent plus ou moins bien le matériel de normes du portefeuille donné, mais ne connaissent pas les autres domaines de l'administration, les modes de solution juridique y employés, leur préparation théorique présente des lacunes, et ils sont peu disposés à adopter les nouveaux résultats de la recherche scientifique.

b/ Parfois on peut constater de la part des dirigeants des portefeuilles un mépris pour les lois d'évolution intérieure du droit, une tendance à la dégradation du juriste en une espèce de scribe qui n'a comme seule tâche que de mettre en formes (c'est-à-dire formuler en articles) la réglementation établie dans son contenu par d'autres, mais qui n'a et ne peut même pas avoir un rôle sur le fond dans l'établissement de ce contenu. Ce qui intervient aussi dans cette conception, c'est qu'on pourrait mentionner toute une série de porte-feuilles investis largement de tâches de codification et d'application de droit où, depuis mémoire d'homme il n'y a pas eu, même pas par hasard, aucun vice-ministre ou vice-président titulaire d'un diplôme de juriste.

c/ Quelquefois apparaît une conception de même origine, mais au signe contraire: la surestimation du droit, sa considération comme un moyen omnipotent. Cette conception se manifeste dans la manière qu'on veut réagir spontanément par des moyens juridiques à tous les problèmes qui se présentent, même dans les cas où il est évident que la réglementation juridique en elle-même serait inefficace, à sa place ou en même temps des mesures économiques, d'organisation, techniques etc. seraient nécessaires.

d/ Il faut aussi déclarer que souvent les organismes locaux appliquant le droit sont également "fautifs" dans l'enflement du nombre des directives juridiques. Le manque d'indépendance, la fuite du prise de responsabilité, le désir de s'assurer de tous côtés réclament plus d'une fois une prise de position ministérielle même dans le cas où en réalité cela est inutile, car le problème donné pourrait être résolu dans les cadres traditionnels et les méthodes de l'interprêtation de la loi.

Au cours des années écoulées par la voie de plusieurs décisions le Conseil des ministres tâchait de mettre de l'ordre dans le fouillis enchevêtré des actes normatifs ministériels et des directives juridiques. On ne peut même pas prétendre que ceux-là étaient tout à fait inefficaces: tout au moins pour un certain temps ils ont amené une certaine réduction numérique. Mais on ne pouvait espérer de ces dispositions une amélioration qualitative essentielle de la création de droit au niveau ministériel, d'autant moins que les causes esquissées plus haut ne furent pas supprimées.

Nous espérons sincèrement que le Conseil Constitutionnel de l'Assemblée nationale et son fonctionnement auront un certain effet en ce qui concerne la prévention, et la formation des conceptions, et cela sera sensible surtout dans le domaine des règles de droit émanant des ministères. Nous-mêmes, nous estimions dès le début que ce n'est pas le nombre des affaires soumises au Conseil Constitutionnel qui a de l'importance, mais c'est l'existence du Conseil qui en elle-même doit stimuler aussi bien les ministres que les codificateurs des porte-feuilles au respect de la coordination avec les normes émanant du niveau supérieur et à une plus grande exigence. Il est aussi évident que d'un jour à l'autre on ne peut pas former une équipe de juristes hautement qualifiés, experts en préparation et ne codification des règles de droit, – auprès des porte-feuilles. Mais il faut s'y mettre au plus vite. En solution transitoire, la méthode – appliquée avec succès à plusieurs ministères – pourrait avancer les choses, si lors d'assumer une tâche de codification importante, les porte-feuilles élargiraient la capacité intellectuelle à leur disposition, par la collaboration d'ex-

perts extérieurs.

6. Avec cela, nous sommes arrivés à notre sujet suivant: à la légalité du travail administratif. Nous devons en dire que les garanties organisationnelles et procédureles de la légalité socialiste s'étaient développées graduellement, et avant l'introduction de presque chaque garantie il fallait lutter contre la manière de voir conservatrice, défendant "l'honneur du drapeau" ou voulant précisément maintenir la possibilité d'action, le moins limitée par le droit administratif. La première "rupture de front" notable fut la création de l'organisation du parquet et avec cela le contrôle général de la légalité par les procureurs. Ceci fut suivi dans quelques catégories d'affaires, par l'introduction de la révision des décisions individuelles par les tribunaux, puis la codification de la loi de la procédure administrative. Dues à l'introduction de l'ordre réglementé par le droit de la procédure, ainsi qu'à la réglementation unifiée des institutions juridiques servant à connaître d'office des recours judiciaires et des violations de droits, la loi contribuait décisivement à la consolidation de la légalité du travail administraif. Une autre garantie de la légalité fut, dans l'organisation des conseils, l'établissement des attributions du contrôle intérieur des sections administratives qui ne s'étendaient premièrement qu'à l'application des règles de procédure et de maniement des actes et documents, mais plus tard aussi à l'examen du respect des normes juridiques matérielles. Dans le fond, c'est de cela que s'est développé plus tard le contrôle de légalité des secrétaires du Comité exécutif qui fut introduit par la troisième loi sur les conseils, adoptée en 1971. (L'essence de celui-ci consiste en que le secrétaire du comité exécutif contrôle la légalité de la gestion des affaires de l'autorité dans un organisme spécial de l'administration, dans les cadres d'examens réguliers.)

C'est à la fin des années soixante-dix, au début des années quatre-vingts qu'est devenue actuelle dans les pays socialistes la grande extension du contrôle des tribunaux sur les décisions des autorités administratives (bien que dans certains pays ce fût déjà réalisé auparavant.) L'idée en elle-même n'est pas neuve, elle prend racine dans les travaux théoriques d'En-

gels, alors que la formulation marquante de la conception s'attache au nom de Lénine. Or, l'évolution de l'organisation socialiste de l'Etat — mais nous pourrions aussi dire: l'état de développement de notre mécanisme politique, — n'est arrivée qu'a nos jours au point de pouvoir offrir une base réelle à la mise en oeuvre pratique de la conception léninienne. Ceci est indiqué notamment par le fait que la nouvelle Constitution de l'Union soviétique a déclaré au niveau de loi fondamentale la possibilité de la révision des décisions administratives par les tribunaux. Quant à nous: c'était la question centrale discutée au cours de la révision d'ensemble de la loi de la procédure. Il est regrettable que précisément la question la plus importante ne fût pas résolue au niveau où elle aurait du l'être. C'est peut-être la raison pour laquelle nous ne pouvions pas garder la place de choix dans l'avant-garde de l'évolution socialiste du droit que la codification de la loi de la procédure nous avait assurée en 1957.

Pour terminer, nous devons encore nous référer au Conseil Constitutionnel, comme à la nouvelle institution juridique de haute importance du contrôle ultérieur des normes. Nous ne voulons pas surestimer ni sousestimer son rôle. Nous espérons sincèrement que notre mentalité politique commune adopterait au plus tôt cette institution de droit, si ce n'est que guidée par la considération de bon sens que dans un Etat consolidé un intérêt politique fondamental s'attache à continuer d'affermir l'ordre constitutionnel de l'administration.

ЧЕТЫРЕ ДЕСЯТИЛЕТИЯ ВЕНГЕРСКОГО ГОСУДАРСТВЕННОГО УПРАВЛЕНИЯ

Г. Киленьи

В институционной системе политического механизма государственное управление, несомненно, представляет собой самую сложную, наиболее трудно обозреваемую подсистему. Этот вывод в равной мере можно отнести к организационной структуре и порядку функционирования государственного управления, а также к определяющему их правовому регулированию. Тем самым деятельность государственного управления пронизывает нашу повседневную жизнь, поэтому плохая или хорошая работа административных

органов имеет определяющее значение с точки зрения нашего гражданского самочувствия, хотя и в большинстве случаев она оказывает влияние на наши жизненные условия не прямым, а латентным образом.

Все эти предварительные замечания сделаны нами с такой целью, чтобы мы могли тут же сигнализировать: заранее была бы обречена на провал попытка дать в куцой стать обзор развития венгерского государственного управления после второй мировой войны, хоть претендуя на всеохватность, хоть только вкатце. Не только краткая статья, но даже целая книга не хватала бы для этого. Наше предприятие является более скромной оглядываемая на пройденный путь, но не с целью инвентаризации, а потому, чтобы осветить некоторые тенденции развития, считанные нами важными, чтобы вывести один-два урока или заключения и, главным образом, задуматься о стоящих перед нами задачах.

THE FOUR DECADES OF THE HUNGARIAN PUBLIC ADMINISTRATION

G. Kilényi

The paper gives a comprehensive presentation of the development history of the Hungarina public administration after the Second World War. It analizes in details the changes of the territorial division of the country and their effects on the system of local and territorial public administrative organs. After the Second World War for some years the earlier public administrative organs have operated with unchanged personnel, only at the autumn of 1950 the system of councils emerged. The construction and operation of council system were regulated by three successive laws /1950, 1954, 1971/, their content have differed significantly from each other. However, the system continuously changed during the times between the council laws too, e.g. at last in January 1, 1984 the division of the country to districts and the district-level authorities have ceased to exist. The author presents the so-called metropolitan administrative system replacing the districts and within this system the development of relations among the village, city and country councils. The paper releases important data not only about the change of number of the local and territorial organs, but in the same time elaborates those development trends and conceptual changes, which have characterized the updating of public administrative system. Furthermore the paper deals with the deconcentrated /centrally subordinated/ public administrative organs and the central managing organs for public administration. By doing this the author does not spare his critical remarks and presents some neuralgic points of the Hungarian public administration. He mentions those theoretical debates, too, which appeared in the science of public administration.

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DIE TÜCKEN DES PERSÖNLICHKEITSSCHUTZES

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Der zivilrechtliche Schutz der Persönlichkeit ist eine verhältnismässig neue Rechtsinstitution, obzwar ihre Wurzeln schon im römischen Recht aufzufinden sind.[1] Ihre Anwendung weist zahlreiche Tücken auf. Im Interesse einer klareren Sicht ist es begründet, einige charakteristische Erscheinungen klarzustellen.

Es sind Viele der Meinung, dass die Aufgabe des Zivilrechts die Regelung der Vermögensverhältnisse, seine Eigenartigkeit die Rechtliche Spiegelung der Warenverhältnisse, seine Grundlage die Vermögensautonomie wären dementsprechend ist schwierig den Persönlichkeitschutz in das System des bürgerlichen Rechts einzufügen. Es hat sich eine eigenartige Situation herausgestellt, danach ihn Gesetzgebung kennt und regelt bzw. durch die Rechtsspreçhung angewendet wird, gemäss der Theorie ist es aber doch bestritten, ob man von dem zivilrechtlichen Schutz der Persönlichkeit überhaupt reden kann. Durch zu einem wirksamen Schutz der Persönlichkeit ist die Zivilrechtliche Regelung und die Anwendung zivilrechtlicher Mittel unentbehrlich.

Die Persönlichkeit ist einheitlich und unteilbar, deshalb scheint es notwendig zu sein, dass die Persönlichkeit als Gegenstand des Rechtsschutzes erscheinen soll, die Persönlichkeit selbst, aber in sich durch die Mittel des Rechts nicht beeinflusst werden könne. Auch die Bestimmung des Regelungsbereichs des Persönlichkeitsschutzes ist widersprüchig. Die Verordnung des allgemeinen Schutzes der Persönlichkeit bewährt kaum Direktiven zur Lösung der konkreten Probleme. Der gesonderte Schutz einzelner Interessen und Werte der Persönlichkeit ist aber deswegen nicht hinreichend, weil es gänzlich unmöglich ist sämtliche Offenbarungen der Persönlichkeit in Rechtsnormen zu fassen, im Zusammenhang mit welchen eine rechtliche Regelung notwendig sein könnte.

Die Normen des Persönlichkeitsschutzes knüpfen sich eng an die Person und so scheint es widersprüchig zu sein, dass über diese Rechte die Person nur beschränkt verfügen kann. Der

[1] Wie z.B. die actio iniuriarum aestimatioris des Praetors - MARTON, G.: Kártérítés - kártérítési kötelmek jogellenes magatartásból (Schadenersatz - Schadenersatzobligationen wegen rechtswidrigen Verhaltens). Általános Nyomdai és Grafikai Intézet Rt., Budapest, 1942. p. 40.

Charakter dieser Rechte lässt den Verzicht auf diese und die Übertragung derselben nicht zu. In unserem Recht kann das Prinzip "volenti non fit iniuria" nur in solchem Fall gültig sein, wenn es das Gesellschaftsinteresse nicht verletzt oder gefährdet. In der Theorie und in der Praxis ist ferner umstritten, ob die Person an die die Interessen seiner Persönlichkeit berührende Erklärung gebunden ist, oder ob sie diese frei widerrufen kann.

Das wirksamste zivilrechtliche Schutzmittel ist der Schadenersatz, dieser kann aber im Dienste des Schutzes der Persönlichkeit nur beschränkt angewendet werden. Diese Schranken ergeben sich teils aus dem Charakter des Schadenersatzes und den Eigenheiten des Persönlichkeitsschutzes, teils sind sie wo es sich um die Wiedergutmachung einer Verletzung von Persönlichkeitsinteressen nicht Vermögenscharakters durch immateriellen Schadenersatzleistung handelt - Folgen der Engherzigkeit der rechtlicher Regelung und der Rechtsprechung.

1. Über die Möglichkeit des Persönlichkeitsschutzes durch das bürgerliche Recht

Im unseren Rechtssystem ging in den letzten Jahrzehnten eine grossangelegte Umgestaltung vor sich. Der Wirkungsbereich der rechtlichen Regelung breitete sich bedeutend aus und parallel damit erfolgte eine Neuaufteilung des Rechtsmaterials. Es haben sich nacheinander neue Rechtszweige herausgebildet und die Regelungsbereiche der herkömmlichen Rechtszweige formten sich um. Die Neuaufteilung des Rechtsmaterials berührte vor allem den Regelungsbereich des Privatrechts des bürgerlichen Rechts.[2] Auch die Abgrenzungskriterien sind nicht gleichartig und gleichbedeutend. Deshalb ist es schwer den Platz des Persönlichkeitsschutzes im Regelungssystem des bürgerlichen Rechts zu finden. Die jenige Theorien, die die Grundlage des bürgerlichen Rechts in der Regelung der Vermögensverhältnisse erblikken, oder als rechtliche Spiegelung der Warenverhältnisse auffassen,[3] möchten den Persönlichkeitsschutz vom Gebiet des bürgerlichem Rechts ausschliessen. Es gibt auch solcher Stand-

[2] TÖRŐ, K.: A polgári jog szabályozási rendszerének néhány elméleti és gyakorlati kérdése (Einige theoretische und praktische Fragen des Regelungssystems des bürgerlichen Rechts). Jogtudományi Közlöny, 11/ 1972.

[3] VILÁGHY, M.: Áruviszony és polgári jog (Warenverhältnis und bürgerliches Recht). Állam és Jogtudomány, 3/ 1970.

punkt, gemäss dessen der zivilrechtliche Charakter[4] des Persönlichkeitschutzes auch dann fraglich sei, wern das bürgerliche Recht - entsprechend der jetzt bei uns massgebenden Auffassung - aufgrund der autonomen Struktur des Rechtsverhältnisses abgegrenzt wird.[5] In unserem inländischen Recht wurde früher die freie Handlungsmöglichkeit der Parteien - ihre Autonomie - durch das Eigentum sichergestellt, unter sozialistischen Verhältnissen verlor aber das darauf basierende Zivilrecht seine Perspektive. Im sozialistischen Persönlichkeitsrecht ist daher die Grundlage der Autonomie das Institutionssystem der verfassungsmässigen Freiheit und nicht die materielle Selbstständigkeit, der verfassungsmässige und der Zivilrechtliche Persönlichkeitsschutz kann also voneinander nicht getrennt werden.[6]

Es entstand eine eigenartige Situation: unsere Rechtsgebung und Rechtsprechung kennt ihn, regelt ihn und wendet ihn an, theoretisch ist es trotzdem umstritten, ob wir von einem Zivilrechtlichen Schutz der Persönlichkeit reden können. Dieser Widerspruch hat mehrere Gründe. Einzelne messen - unbegründeterweise - den Abgrenzungsstreitigkeiten der Rechtszweige übermässig grosse Bedeutung zu. Sie lassen ausser Acht, dass die rechtszweigliche Gliederung, wie alle Systematisierungen, eine künstliche Bildung ist, im natürlichen System des Rechts gibt

[4]SAMU, M.: A szocialista jogrendszer tagozódásának az alapjai (Die Grundlagen der Gliederung des sozialistischen Rechtssystems). Közgazdasági és Jogi Könyvkiadó, Budapest, 1964. pp. 162-192. SÁRÁNDI, I.: Az áruviszony, a kollektivák és a joggal való visszaélés (Das Warenverhältnis, die Kollektiven und der Missbrauch des Rechts). Jogtudományi Közlöny, 3/ 1964. - VARGA, Cs.: A jog és rendszere (Das Recht und sein System). Jogtudományi Közlöny, 5/ 1979.

[5]Zur Theorie der autonomen Struktur cf. EÖRSI, GY.: A szocialista polgári jog alapproblémái (Die Grundprobleme des sozialistischen bürgerlichen Rechts). Akadémiai Kiadó, Budapest, 1965. pp. 7-20. für die Privatautonomie cf. noch: BRUCKHARDT, W.: Methode und System des Rechts. Poligraphische Verl. Zürich, 1936. pp. 170-173.

[6]SÓLYOM, L.: Polgárjog és polgári jog (Bürgerrecht und bürgerliches Recht), Jogtudományi Közlöny, 12/ 1984.

es keine Rechtszweige.[7] Es ist ein Fehler, wenn man die einzelnen Rechtszweige mit einem einzigen Zauberwort kennzeichnen will, so zum Beispiel auch das ausserordentlich vielfaltige und verzweigte Zivilrecht, ("Vermögensverhältnisse", "rechtliche Spiegelung der Warenverhätlnisse", "autonome Struktur"). Sie wollen die eventuell willkürlich, vor allem nach praktischen Gesichtspunkten herausgeformte, beziehungswiese sich in der Praxis, aufgrund praktischer Erfordernisse herausgebildete rechtszweigliche Gliederung ausschliesslich auf theoretische Grundlage stellen.

Der wirksame Schutz der menschlichen Persönlichkeit bedarf eines mehrfaltigen Schutzes in mehreren Richtungen, der Schutz der Persönlichkeit kann nicht ausschliessliche Sache eines einzigen Rechtszweiges sein. Man kann die verfassungsrechtliche und völkerrechtliche Grundrechte nicht entbehren.[8] Der Persönlichkeitsschutz muss auch im Verwaltungsrecht geltend gemacht werden. Eine wichtige Rolle spielen die Verwaltungsrechtregeln - gleichlaufend mit dem Zivilrecht - auch auf dem Gebiet des Umweltschutzes.[9] Eine dem Menschen würdige Umwelt ist auch eine

[7] TÖRŐ, K.: A személyiségvédelem helye és szerepe a polgári jog rendszerében (Der Platz und die Rolle des Persönlichkeitsschutzes im System des bürgerlichen Rechts). Magyar Jog, 7-8/1970. - Das Recht ist eigentlich eine Bewusstseinserscheinung, ist aber von der gesellschaftlichen Realität untrennbar. Für die Gesamtheit des gesellschaftlichen Seins ist aber geltend, dass nicht die relative Selbstständigkeit der einzelnen Teile entscheidend ist, sondern der Zusammenhang derselben. LUKÁCS, GY.: A társadalmi lét ontológiája (Die Ontologie des gesellschaftlichen Seins). Magvető Kiadó, Budapest, 1976. Kap. II. Punkt 1. pp. 179-231.

[8] Das durch Ges. Nr. I von 1972 modifizierte Gesetz Nr. XXIX von 1949, §§ 17, 18, § 54 Abs. (1), §§ 57, 60, 63, 66, über die Verfassung der Ungarischen Volksrepublik. Internationales Vereinbarungs Dokument der bürgerlichen und politischen Rechte, verkündet durch die Gesetzesverordnung Nr. 8, von 1977.

[9] Für die Aspekte in Hinsicht der Persönlichkeitsrechte siehe unter anderen: TÖRŐ, K.: Személyiségvédelem a polgári jogban (Persönlichkeitsschutz im bürgerlichen Recht). Közgazdasági és Jogi Könyvkiadó, Budapest, 1979. pp. 69, 179, 182.

unentbehrliche Bedingung der Geltendmachung der Persönlichkeitsinteressen. Aus dem Gesichtspunkt der Persönlichkeit spielen auch die Familien-, und Verwandtenbeziehungen ebenso wie die Verrichtung der Arbeit und die Assoziationen von Personen eine wichtige Rolle. Die Zielsetzungen des Persönlichkeitsschutzes müssen daher - unter anderen - auch auf dem Gebiet des Familienrechts, des Genossenschaftsrechts und des Arbeitsrechts geltend werden.

Der wichtigste Geltungsbereich des Persönlichkeitsschutzes ist der traditionelle strafrechtliche Schutz,[10] und der zivilrechtliche Schutz.

Der zivilrechtliche Persönlichkeitsschutz ist durch die Regelungsart zivilrechtlichen Charakters und die Anwendung zivilrechtlicher Mittel begrenzt. Sein primärer charakteristischer Zug ist die Wert-, und Interessenausgleichung. Die Regeln und Sanktionen des Zivilrechts sind solche, die Rechtsverhältnisse unter gleichgestellten Personen bestehende und herstellende, beziehungsweise schadenersetzende Normen, die der konkreten Rechtsverletzungen konkrete Abhilfe leisten und auch dadurch den Ausgleich der Werte und der Interessen dienen. Der wert-, bzw. interessen-ausgleichende Charakter der Rechtsverhältnisse erfordert die breitangelegte - doch nicht unbegrenzte rechtsbegründende, bzw. rechtsgestaltende Rolle, - selbständige Verfügungsmöglichkeit der an dem Rechtsverhältnis beteiligten Personen.

2. Schützt unser Zivilrecht im allgemeinen die Persönlichkeit?

Die Persönlichkeit ist einheitlich und unteilbar. Diese Tatsache erfordert, dass die Persönlichkeit selbst Gegenstand des Rechtsschutzes sei. Das Recht kann aber nur diejenige Offenbarungen von Persönlichkeiten unter Schutz ziehen, bei denen das auf diese Offenbarungen sich beziehende Verhalten durch die

[10] Den strafrechtlichen Schutz der Persönlichkeit sichert das Gesetz Nr. IV von 1978 über das Strafgesetzbuch (StGB) §§ 166-183.

Mittel des Rechts beeinflusst werden kann.[11] Gegenstände des Rechtsschutzes sind daher im allgemeinen die einzelnen in der äusseren Welt sich vollziehenden Offenbarungen der Persönlichkeit. Das Recht schützt nicht unmittelbar die Persönlichkeit, bloss einzelne Werte und Interessen der Persönlichkeit. Das bedeutet aber nicht, dass die Einheit der Persönlichkeit aufgespaltet werden könnte. Die verschiedenen Persönlichkeitswerte und Interessen können sich von der einheitlichen und unteilbaren Persönlichkeit nie trennen, sie können von diesen nie unabhängig sein. Das bezieht sich auch noch auf, solche sich objektivierte Persönlichkeitswerte, wie auf die Geistesschöpfung.

Mit Hinsicht auf all diese Umstände ist die Bestimmung des Regelungsbereiches des Persönlichkeitsschutzes widersprüchig. Es ist unmöglich im vorhinein all jene Offenbarungen der Persönlichkeit zu ermessen und in Rechtsnormen zu erfassen, die eine rechtliche Regelung beanspruchen. Dadurch wird der allgemeine Persönlichkeitsschutz begründet. Das Postulat des im allgemeinen bestimmten Persönlichkeitsschutzes kann aber nur deklarativen Charakters sein, es kann kaum richtungsweisend sein zur Lösung der konkreten Probleme.[12] Deshalb gibt es Ansichten, gemäss deren der allgemeine Persönlichkeitsschutz bloss ein Grundrehct ist, aus dem sich die einzelnen subjektiven Rechte herausgelöst haben.[13] Zum wirksamen Persönlichkeitsschutz bedarf es des speziellen Schutzes bestimmter Persönlichkeitswerte

[11]Die Persönlichkeit kann in ihrer Gesamtheit nicht in die Rechtssphäre gezogen werden. SZEMÉLYI, K.: A névjog (Das Namensrecht). Franklin Társulat, Budapest, 1915. pp. 59, 61.

[12]Es bedarf der Teilregelungen weil der theoretisch klingende allgemeine Ausdruck lebloser Buchstabe bleibt, von dem - ausser den Fachjuristen - niemand weiss, dass es einen Komplex der wertvollsten Kulturerscheinungen bedeutet. - FAZEKAS, O.: Az eszmei javak jogi oltalma a Magyar Polgári Törvénykönyv javaslatában. (Der rechtliche Schutz der ideellen Güter in der Vorlage des Ungarischen Bürgerlichen Gesetzbuches). Franklin Kiadó, Budapest, 1914, pp. 20-24.

[13]GIERKE, O.: Deutsches Privatrecht, I. Duncher u. Humbolt, Leipzig, 1935, pp. 702-703.

und Interessen, beziehungsweise deren Regelung.

Die die einzelnen Persönlichkeitswerte und Interessen schützenden speziellen Vorschriften sind aber an sich nicht genügend, weil sie den Rechtsschutz sämtlicher - rechtlich wertbaren - Offenbarungen der Persönlichkeit nicht ermöglichen. Eine entsprechende Lösung könnte nur eine solche Regelung bieten, die den allgemeinen Schutz der Persönlichkeit vorschreibt, innerhalb dessen aber für den Schutz einzelner - bedeutungsvollerer - Persönlichkeitswerte und Interessen auch eine Sonderregelung gibt.

Unser Zivilgesetzbuch schreibt den allgemeinen Schutz der Persönlichkeit nicht vor, sondern es schützt bloss einzelne in besonderer Weise bestimmte Persönlichkeitswerte.[14] Das Gesetz hat zwar allgemeine Vorschriften bezüglich des Persönlichkeitsschutzes, diese betimmen aber nur mit der Anwendung von speziellen Regeln zusammenhängende allgemeine Gesichtspunkte und Erfordernisse.[15] Diese Regeln sind aber zur Begründung des allgemeinen Schutzes der Persönlichkeit nicht angebracht.[16]

Im Absatz (1) des § 2 des Zivilgesetzbuches finden wir bloss einen Hinweis als Bestimmung des Gegenstandsbereichs der zivilrechtlichen Regelung auf den Schutz der an die Person knüpfende Rechte und gesetzlichen Interessen. Der erste Satz des § 75 Absatz (1) des Zivilgesetzbuches stellt fest, dass es jedem obliegt, "die Personlichkeitsrechte zu achten". Dieser Rechtssatz bedeutet bloss die absolute Wirkung der speziell bestimmten Rechte. Gemäss Satz 2 "stehen diese Rechte unter dem Schutz des Gesetzes". Diese Feststellung will im Grunde genommen bedeuten, dass das Recht das Recht schützt, was aber kei-

[14] Gesetz Nr. IV (BGB) §§ 76-83 über das Zivilgesetzbuch der Ungarischen Volksrepuglik, modifiziert durch das Gesetz Nr IV vom Jahre 1977.

[15] Gerichtsbeschlüsse 1981/2, Rechtsfall 57.

[16] Es existiert keine exakte Grundlage der Rechtsnorm für die Feststellung, dass "unser bürgerliches Recht für sämtliche Formen der Personalitätsverletzungen Schutz bietet, ungeachtet dessen, dass die Beeinträchtigung gegebenenfalls an eine spezielle Verfügung stösst oder nicht". VILÁGHY, M. - EÖRSI, GY.: Magyar polgári jog. Tankönyvkiadó, Budapest, Tom. I. p. 144.

nen Bedeutungsinhalt hat.

Aber der gesondert bestimmte, auf einzelne Persönlichkeitswerte und Interessen eingeschränkte Schutz ist nicht hinreichend. Es gibt Offenbarungen der Persönlichkeit, die nicht in den Regelungsbereich des Zivilgesetzbuches gezogen werden können, aber sie würden doch einen Rechtsschutz beanspruchen. Das Zivilgesetzbuch schreibt zum Beispiel nicht den Schutz des von anderen wahrgenommenen menschlichen Bildes und der menschlichen Stimme vor, der Schutz bezieht sich bloss auf die von diesen sich vergegenständlichte Aufzeichung: auf die Abbildung und die Tonaufnahme. Es fehlt besonders der rechtliche Schutz das die individuellen Charakterzüge, das individuelle Schicksal der Persönlichkeit darstellenden Gesamtbildes, des sogenannten Lebensbildes.[17]

3. Die Schranken der Persönlichkeitsschutzbestimmungen

a/ Die Regeln des zivilrechtlichen Schutzes der Persönlichkeit knüpfen sich eng and die Personen, deshalb ist die Geltendmachung dieser Rechte ausschliessliches Recht der gegebenen Person selbst und kann im allgemeinen nur persönlich geschehen.[18] Es scheint widersprüchig zu sein, dass die Person über diese Rechte doch bloss beschränkt verfügen kann. Unser inländisches Recht betrachtet die Ausübung der Persönlichkeitsrechte nicht - entsprechend der anglosächsischen Terminologie - als ausschliessliches Gebiet der Individualspäre (privacy[19]),

[17]Ausführlicher: TÖRŐ, K.: Hiányosságok és ellentmondások a személyiségvédelem körében (Mängel und Widersprüche im Bereich des Persönlichkeitsschutzes). Jogtudományi Közlöny, 11/1986.

[18]BGB § 85 (1)

[19]Über die anglo-sächsische Persönlichkeitsschutztheorie. Cf. SÓLYOM, L.: A személyiségi jogok elmélete (Die Theorie der Persönlichkeitsrechte). Közgazdasági és Jogi Könyvkiadó, Budapest, 1983. pp. 186-222.

es gestattet für die Person kein unbeschränktes Verfügungsrecht über diese Rechte.

Der grundlegende Charakterzug der Persönlichkeit ist die Zugehörigkeit zur Gesellschaft, gleichzeitig aber auch eine relative Gesondertheit von der Gesellschaft. Die Person kann nicht in der Gesellschaft völlig aufgehen, kann aber auch nicht von der Gesellschaft isoliert sein. Die Persönlichkeit ist die Einheit von Widersprüchen: sie drückt einerseits die Zugehörigkeit zur Gemeinschaft, andererseits aber die Individualität, die Abgesondertheit von jedem anderen aus. Einesteils ist sie ein Zustand: Identität, anderenteils ist sie ein Vorgang: eine ständige Änderung; sie verwirklicht im Vorgang der Änderungen die Ständigkeit.[20] Der Absonderung der Persönlichkeit, der Änderung, der Entwicklung, der Freiheit, der Schöpfung von neuen Werten dienen die jenige Normen, die der Person eine rechtsgestaltende Möglichkeit, Verfügungsrecht einräumen. Und die Zugehörigkeit zur Gesellschaft, die Notwendigkeit, die Ständigkeit, die Wahrung der Werte werden durch jene Normen gefördert, die diese freie Verfügung im Interesse der Gesellschaft einschränken. Dieser Dualismus rechtfertigt hinsichtlich der Möglichkeit der Geltendmachung der Persönlichkeitsrechte einerseits die Ausschliesslichkeit der Verfügung, andererseits die relative Beschränktheit der Verfügungsmöglichkeiten.

Es hängt mit dem Charakter der Persönlichkeitsrechte zusammen, dass man auf grundlegende Persönlichkeitsrechte (z.B. das Leben, die Freiheit) nicht verzichten kann, man kann diese nicht übertragen.[21] Die Verfügungsmöglichkeit der Person beschränkt sich auf die Geltendmachung, Ausübung der Persönlichkeitsrechte.[22] Im Zusammenhang damit kommt die ausschliessliche

[20] TÖRŐ, K.: Op. cit. (Fussnote 9). pp. 19-29.

[21] Schutz gegen den eigenen Willen. ASZTALOS, L.: A személyek polgári jogi védelme (Zivilrechtlicher Schutz der Personen). A Polgári Törvénykönyv Magyarázata (Kommentar des Bürgerlichen Gesetzbuches), Közgazdasági és Jogi Könyvkiadó, Budapest, 1981. p. 352.

[22] Ich bin mit dem Gesichtspunkt nicht einig, dass auf die Persönlichkeitsrechte nur in allgemeinen Sinn nicht verzichtet werden kann, über die einzelnen Persönlichkeitsrechte kann man jedoch frei verfügen. - ASZTALOS, L.: Op. cit. (Fussnote 21).

Verfügungsmöglichkeit der Person zum Ausdruck, das heisst, dass zu dem das Persönlichkeit angehenden Verhalten im allgemeinen die Zustimmung der Person unerlässlich ist. Es gibt Handlungen, für die die Einholung der Zustimmung der Person rechtlich vorgeschrieben ist, z.B. zur Mitteilung von Daten die ein persönliches Geheimnis bilden, zur Veröffentlichung der Abbildung oder der Tonaufnahme, zur Operation usw. Ohne Zustimmung ist ein solches Verhalten immer rechtsverletzend, der Mangel der Zustimmung kann nicht anderswie ersetzt werden, es kann zum Beispiel titels Rechtsmissbrauch nicht durch richterliche Entscheidung ersetzt werden.

Die Beschränkung des Verfügungsrechts der Person bedeutet auch, dass das Prinzip, "volenti non fit iniuria" auf dem Gebiet des Persönlichkeitsschutzes nicht unbedingt massgebend ist. Auch unter Zustimmung der Person kann ein die Persönlichkeit angehendes Verhalten rechtsverletzend sein, wenn dadurch das Interesse der Gesellschaft verletzt oder gefährdet wird.[23] Man kann darüber sprechen, was aus dem Gesichtspunkt der Anwendung dieser Beschränkung unter gesellschaftliches Interesse zu verstehen ist, ob das persönliche Interesse dem gesellschaftlichen Interessen gegenüber gestellt werden kann. Bei richtiger Rechtsauslegung ist eine derartige Gegenüberstellung unzulässig. Die Persönlichkeit ist von der Gesellschaft untrennbar, ihre Grundlage ist die gesellschaftliche Anerkennung und ihre Realisierung kann nur durch die Gesellschaft erfolgen. Die Gesellschaft wird durch die Mitglieder der Gesellschaft gebildet, das Bestehen der Persönlichkeit ist auch die Daseinsbedingung der Gesellschaft, sie bedeutet auch für die Gesellschaft einen Wert. In der Frage also, ob das Verhalten, zu wel-

p. 351. - Meiner Meinung nach kann man nur in der Frage der Geltendmachung der Persönlichkeitsrechte verfügen und auch das ist durch § 75 Abs (3) des BGB beschränkt. Wenn übrigens jemand der Veröffentlichung seiner Abbildung beistimmt, beschränkt er kein Recht, er verzichtet nicht auf sein Recht zu seiner Abbildung, sondern er macht eben Recht geltend.

[23] BGB § 75 (3) ordnet [illegible].

chem die gegebene Person ihre Zustimmung erteilt hat, gesellschaftliches Interesse verletzt oder gefährdet, ist immer entscheidend, ob und inwieweit dadurch der Persönlichkeitswert verletzt wird, dessen Bewohnung auch für die Gesellschaft wichtig ist. Diese Beschränkung wurde durch unser Recht im Interesse des erhöhten Schutzes der Persönlichkeit eingeführt, deshalb kann der Grund der Beschränkung von der Persönlichkeitsrechten kein unabhängiges sonstiges gesellschaftliches Interesse sein.

Das gesellschaftliche Interesse wird durch die Zustimmung zu dem das Leben, die Gesundheit, die körperliche Unversehrkeit verletzende Verhalten gefährdet, beziehungsweise verletzt. Das Leben, das körperliche Wohl, die Gesundheit des Individuums ist nämlich auch die Daseinsbedingung der Gesellschaft. Deshalb ist die zur Auslöschung des Lebens oder zur körperlichen Verstümmelung erteilte Zustimmung ungültig. Das bezieht sich natürlich nicht auf die Zustimmung zum heilenden insbesondere Lebensrettenden ärztlichen Eingriff (Operation). Im Bereich des guten Rufes, der Ehre, der menschlichen Würde, des Rechts zur Abbildung, zum Geheimnis wird die Zustimmung zu einer Handlung oder Mitteilung - unter anderen - als gesellschaftliches Interesse verletzend wirken, wenn die wahrheitstreue gesellschaftliche Wertung der Person wesentlich beeinträchtigt wird. Das ist der Fall z.B. wenn dadurch die Person für ihre Umgebung ehrlos und ausgeliefert wird.

b/ Unser Zivilgesetzbuch regelt die Persönlichkeitsrechte - ähnlich den Eigentumsrechten - als absolute Rechte. Die Verfügung zur Ausübung dieser Rechte kann - wenn das überhaupt möglich ist - durch einseitige Erklärung geschehen. Wenn also jemand zur Aufdeckung seiner persönlichen Geheimnisse, zur Mitteilung seiner Abbildung, oder zur Operation seine Zustimmung gibt, ist die Annahme der Erklärung zum Wirksamwerden der Zustimmung nicht nötig. In der Praxis und auch in der Theorie wird darüber diskutiert, inwieweit die Person eine solche Zustimmung gebunden ist, ob diese zurückgängig gemacht werden kann, oder nicht. Die Praxis ist in dieser Frage schwankend.[24]

[24]Gemäss Urteils Nr. Pf 25 034 des Hauptstädtischen Gerichts hat das Gericht trotz der Rücknahme der Zustimmung zur Reportage dem Fernsehen die Publikation nicht untersagt.

Die Zustimmung zu einem die Persönlichkeit betreffenden Verhalten ist ein einseitiges, ausschliessliches und im allgemeinen nur persönlich auszuübendes Recht, auf die nicht verzichtet und die nicht ausgeschlossen, und bezüglich deren keine vertragliche Verpflichtung übernommen werden kann. Ähnlich wird auch die Zurücknahme der Zustimmung beurteilt. Die Ausschliessung der Möglichkeit der Zurücknahme der Zustimmungserklärung würde eine solche Beschränkung der Persönlichkeitsrechte bedeuten, die das Gesetz nicht ermöglicht.

Deshalb besteht solange die Möglichkeit zu einer neueren - sei es positiven oder negativen - Persönlichkeitsschutzverfügung, die Zustimmungserklärung kann solange zurückgenommen werden, bis sich die effektive Wirkung der früheren Verfügung nicht realisiert hat, z.B. bis das Geheimnis nicht aufgedeckt, die Abbildung nicht veröffentlicht, die Operation nicht durchgeführt usw. wurde.

Nach Ansicht einiger ist die Zurücknahme, unter Berücksichtigung des § 75 Abs (3) des Zivilgesetzbuches nur in dem Fall gültig, wenn sie kein gesellschaftliches Interesse z.B. das Interesse der Presse verletzt oder gefährdet.[25] Diese Auffassung ist nicht richtig § 75 Abs (3) des Zivilgesetzbuches beschränkt die Zustimmung zu einem das Persönlichkeitsinteresse verletzenden Verhalten, aber nicht zu deren Zurückziehung. Es heisst darin, dass die Zustimmung zu einem das Persönlichkeitsrecht angehandeltes Verhalten nur dann gültig ist, wenn es kein gesellschaftsliches Interesse verletzt oder gefährdet. Das Gesetz will im Intersse der Persönlichkeit die Rechtsabtretung beschränken. Es stünde mit der Zielsetzung der Rechtsinstitution in Widerspruch, wenn die Zurücknahme der Rechtsverzichterklärung ausgeschlossen wäre. Dieses Verbot würde nicht die Rechtsabtretung, sondern die Rechtsgeltendmachung beschränken.

Laut einer anderen Anschauung ist die Rücknahme einer einseitigen Zustimmungserklärung nur dann möglich, wenn ein solcher Grund gegeben ist, der zur Anfechtung eines Vertrages ge-

[25] ILKEY, CS.: A személyiség jogainak védelme a tévében (Der Achutz der Rechte der Persönlichkeit im Fernsehen). Rádió- és Televizió Szemle, 2/ 1977.

eignet wäre, denn auch für die einseitige Erklärung müssen die Regeln des Vertrages entsprechend Anwendung finden.[26] Diese Auslegung nimmt nicht in Betracht, dass für die einseitige Erklärung auch diejenige Vertragsregel entsprechend anzuwenden sind, danach der Vertrag in derselben Weise aufgehoben werden kann, wie er zustande kam, das heisst also aufgrund der Verfügung jener Parteien, die den Vertrag geschlossen haben (Zivilgesetzbuch § 319, Abs. /1/). Die "entsprechende" Anwendung dieser Regel bedeutet, dass auch die Wirkung der einseitigen Erklärung aufgehoben werden kann, ebenso, wie sie zustande kam, das heisst durch eine neue - rückziehende - Erklärung derselben Partei.

Die Parteien können den Vertrag in gemeinsamen Einvernehmen im allgemeinen pro futuro aufheben (Zivilgesetzbuch § 319 Abs. /2/). Die entsprechende Anwendung dieser Regel bedeutet, dass die Wirkung der einseitigen Erklärung, im Fall einer Rücknahme nur für die Zukunft erlischt. Wenn also die Rückgängigmachung der Zustimmung nach der Publikation geschieht, bleibt die Rechtmässigkeit der bereits erfolgten Publikation unberührt. Sollte aber jemand zur Darstellung seiner Abbildung auf einen Film zugestimmt haben, kann er nach Beginn der Filmvorführung die weitere Wiedergabe, für die Zukunft verbieten. (Dass er den davon erwachsenen Schaden eventuell ersetzen muss, ist eine andere Frage.)

4. Die Fragen der wirksamen Persönlichkeitsschutzes durch den immateriellen Schadenersatz

Das wirksamste zivilrechtliche Schutzmittel ist der Schadenersatz, deshalb ist es unentbehrlich auch für einem ent-

[26] ILKEY, CS.: Személyiség, társadalom, tömegkommunikáció (Persönlichkeit, Gesellschaft, Massenkommunikation). Jogtudományi Közlöny, 12/ 1984. - Kritik von SZÉKELY, L.: A személyiségi jogok érdem szerinti elosztásáról (Über die verdienstbedingte Verteilung der Persönlichkeitsrechte). Jogtudományi Közlöny, 5/ 1985.

sprechenden Persönlichkeitsschutzes.[27] Trotzdem kann er nur in beschränktem Mass angewendet werden. Die Schranken ergeben sich teils aus dem Charakter des Schadenersatzes und den Eigenheiten des Persönlichkeitsschutzes, teils sind sie Folgen der Engherzigkeit der Bestimmungen der Rechtsnormen bzw. der Rechtspraxis.

Es ist ein allgemeines Prinzip, dass Schadenersatz nur im Fall einer durch die Mittel des Rechts beeinflussbaren Verhalten gegeben ist,[28] was auch die Beurteilung von subjektiven Gesichtspunkten (Schuld, Zurechenbarkeit, Schadenverursachung durch Quellen erhöhter Gefahr) erfordert. Die Persönlichkeit fordert aber einen vollen objektiven Schutz. Die Wiedergutmachung der die Persönlichkeit betroffenen Beeinträchtigung ist unerlässlich und zwar unabhängig von der Beurteilung des rechtsverletzenden Verhaltens, von der Absicht, Zurechenbarkeit und Betreibung einer Tätigkeit erhöhter Gefahr. Deshalb ist der Schadenersatz - infolge seiner Natur - zum Persönlichkeitsschutz nur begrenzt geeignet. Bei Fehlen der Bedingungen des Schadenersatzes kommen nur die sonstigen - objektiven - Mittel des Persönlichkeitsschutzes in Frage. Laut unserem Rechts sind das die folgenden: die gerichtliche Feststellung der erfolgten Rechtsverletzung, die Gewährung einer Genugtuung mittels öffentlicher Erklärung, die Verpflichtung zur Unterlassung, das Verbot weiterer Rechtsverletzungen die Behebung der beschwerlichen Sachlage die Wiederherstellung des Zustandes vor der Rechtsverletzung (Zivilgesetzbuch § 84 Abs /1/ Punkte a/ - d/). Diese Mittel gewähren nicht immer einen wirksamen Schutz.So z.B. bei einer Verletzung des Geheimnises. Kann die öffentliche Gewährung einer Genugtuung die Rechtsverletzung noch erhöhen da sie nur den Personen-Kreis erweitert, in welchem das Geheimnis bekannt wurde. Bei Verletzung der Ge-

[27] TÖRŐ, K.: Op. cit. (Fussnote 7) pp. 89-90.

[28] EÖRSI, GY.: Op. cit. (Fussnote 5) pp. 217-229.; idem: A jogi felelősség alapproblémái. Polgári jogi felelősség (Grundprobleme der rechtlichen Verantwortlichkeit. Bürgerlichrechtliche Verantwortlichkeit). Akadémiai Kiadó, Budapest, 1961. pp. 103-108.

sundheit oder der körperlichen Unversehrtheit besteht oft überhaupt keine oder nur in beschränktem Mass, die Möglichkeit zur Behebung der beschwerlichen Sachlage oder zur Wiederherstellung des Zustandes vor der Rechtsverletzung. All diese Umstände würden die Anwendung des Schadenersatzes im Bereich des Persönlichkeitsschutzes in einem je breiteren Kreis begründen.

Der Schadenersatz ist aber schon infolge seiner Natur, auch bei der Gegebenheit der allgemeinen Bedingungen der zivilrechtlichen Verantwortlichkeit nur in beschränktem Mass zur Realisierung der Zielsetzungen des Persönlichkeitsschutzes geeignet. Der Schadenersatz dient mit materiellen Mittel den rechtsverletzenden Sachverhalt zu beheben, die Verletzung abzuhelfen: diese zu vermindern oder sie abzuwenden. Die materiellen Mittel sind nur dann geeignet, die Verletzung der Persönlichkeit zu beheben,wenn durch die Persönlichkeitsverletzung auch ein unmittelbarer materieller Schaden entsteht, wenn z.B. die Beschädigung der Gesundheit einen Erwerbsausfall verursacht, ferner falls die in materieller Beeinträchtigung des Interesses durch materielle Mittel abgewährt oder vermindert werden kann. Aus diesem Gesichtspunkt sind die zur Herstellung der Gesundheit, der körperlichen Unversehrtheit, zur Aufhebung einer in der äusseren Erscheinung verursachten Verzerrung, zur Milderung ihrer Wirkung notwendigen Kosten zu beurteilen. Ausserhalb dieses Bereiches sind die materiellen Mittel nicht in entsprechenderweise geeignet eine Interessenverletzung nicht materiellen Charakters zu beheben. Die Verletzung der Gesundheit, der körperlichen Unversehrtheit, des guten Rufes, der Ehre kann im allgemeinen unmittelbar durch materielle Mittel nicht behoben und keinesfalls ersetzt werden. Das ideelle Gut der Persönlichkeit kann durch Vermögensmittel nicht ersetzt werden, für die verletzte Ehre für, eine verlorenes Glied, für ein funktionsunfähig gewordenes Sinnesorgan kann Geld nie ein Ersatz sein. Deshalb der als Schadenersatz im materiellen Charakters zugesprochene finanzielle Schadenersatz beseitigt nicht die erlittene Persönlichkeitsbeeinträchtigung immaterieller Natur, sondern bildet nur vermittelt und relativ ein annäharndes Gegengewicht für die erlittene Beeinträchtigung durch materielle Mittel.

Unsere rechtliche Regelung und Rechtssprechung engt die beschränkte Möglichkeit der Geltendmachung des Schadenersatzes immateriellen Charakters weiter ein. Aufgrund der zivilrechtlichen Verantwortlichkeit kann ein Schadenersatz immateriellen Charakters prinzipiell bei Verletzung ideeller Persönlichkeitsinteressen aller Art stattfinden,[29] aber bloss in Anhängigkeit von besonderen Bedingungen. Die Verursachung von Verletzungen nicht materieller Natur kann bei Realisierung der zivilrechtlichen Verantwortung nur dann zum immateriellen Schadenersetzung führen, wenn durch diese die Teilnahme an dem gesellschaftlichen Leben oder das Leben selbst - bei juristischen Personen die Teilnahme an dem Wirtschaftsverkehr - dauernd oder bedeutend erschwert wird.[30]

Der richtigen Rechtsauslegung gemäss beziehen sich diese speziellen Bedingungen nur auf die Schwere und das Mass der zum Schadenersatz Anlass gebenden ideellen Beeinträchtigung. Abweichend davon fordert die Rechtssprechung, ausser des Beweises der die zivilrechtliche Verantwortlichkeit begründenden ideellen Interessenverletzung die Bestätigung dessen, dass die Teilnahme am gesellschaftlichen Leben, beziehungsweise das Leben selbst erschwert wurde. Das will bedeuten, dass nicht die unmittelbar verursachte ideelle Beeinträchtigung,sondern bloss für die vermittelte - im Plustatbestand zum Ausdruck kommende - weitere Benachteiligung einen Ersatz ermöglicht. Wenn zum Beispiel jemand infolge eines beschädigenden Verhaltens eines anderen das Augenlicht verliert, fordert das Gericht, als Bedingung der immateriellen Entschädigung auch die Bestätigung dessen, welche weitere schädliche Folgen durch den Verlust des Schwermögens entstanden sind. Es begnügt sich nicht damit, dass der Verlust des Schwermögens oder Verschlechterung an sich eine Gesundheitsschädigung ist, die das Leben bedeutend erschwert.

[29] TÖRŐ, K.: Op. cit. (Fussnote 9) p. 141.

[30] Diese Regeln sind im § 354 des BGB enthalten. Die immer stärkere Einengung des immateriellen Schadenersatze ist eine Bestrebung feudalen Ursprungs. EÖRSI, GY.: Változatok a sérelemdíj témájára (Variationen zum Thema Verletzungsentgelt). Állam- és Jogtudomány, 4/ 1983.

Die Rechtssprechung beschränkt die Geltendmachung des immateriellen Schadenersatzes auch dadurch, dass sie anstelle der im Gesetz festgelegten alternativen Bedingungen gesamt geltende Bedingungen fordert. § 354 des Zivilgesetzbuch erfordert eine "dauernde oder schwere" Rechtsverletzung, dem gegenüber muss gemäss der Rechtsprechung die Verletzung "dauernd und schwer" sein,[31] das heisst: die beiden Bedingungen müssen gemeinsam gegeben sein. Die Grundlage dieser Rechtsauslegung ist, dass der Gesetzgeber angeblich ausdrücklich immer nur in schweren Fällen die Anwendung des immateriellen Schadenersatzes zulassen wollte, beziehungsweise dass die Teilnahme im gesellschaftlichen Leben oder im allgemeinen die Erschwerung des Lebens notwendigerweise nur ein dauernder Vorgang könnte sein. Eine weitere Beschränkung ist, dass in der Praxis gewöhnlich nicht einmal die gemeinsame Feststellung der Dauerhaftigkeit und der Schwere zur Zusprechung des immateriellen Schadenersatzes genügend ist.[32] Ein immaterieller Schadenersatz wird gewöhnlich dann zu erkannt, wenn die zum Schadenersatz Anlass gebende Sachlage endgültig ist.[33] Wenn zum Beispiel der Beschädigte erlahmt oder verzerrt ist oder wenn er sein Glied oder sein Sinnesorgen verloren hat.

[31] Punkt 2 der Richtlinie Nr 16 des Oberstes Gerichts.

[32] Es wurde seitens des Gerichts kein immaterieller Schadenersatz zuerkannt für einen 24 jährigen physischen Arbeiter, der einen Muskelschwund am rechten Fuss erlitten hatte, sein Hüftengelenk bewegungsbehindert geworden war, demzufolge sein Gang hinkend, zum dauernden Stehen und Aufrechthaltung, dauernden Gang, Hockstellung und wiederholter Beugung unfähig geworden ist. Komitatsgericht Győr-Sopron (Pf 20 398/1984/3).

[33] Es wurde die Erschwerung des Lebens nicht anerkannt, obwohl auf der Körperfläche bis zu 20 % Flecken, Schrunden, grobe Falten, schuppenartige Abblätterungen entstanden, es deformierte sich einer der Fingernägel es entstand ein Pferdefuss das Handgelenk und die Knöcheln engten sich teilweise ein, die Bewegung, das Schreiben, das Zeichnen, die Benützung der Schere wurde beschränkt. Die Begründung der Abweisung war, dass sich bei dem sechs jährigen Kläger noch kein Erdzustand sich herausgeformt hat, es ist nicht feststellbar, ob ein chirurgischer Eingriff eventuell nicht eine Besserung des Zustandes ergeben könnte. Komitatsgericht Heves (21 013/1984/5). - In einem anderen Fall wurde die Zusprechung des immateriellen Schadenersatzes seitens des Obersten Gerichts damit begründet, dass der Zu-

Die Beschränktheit der Anwendungsmöglichkeit des immateriellen Schadenersatzes hindert die Entfaltung eines wirksamen Persönlichkeitsschutzes. Der schwere und endgültige Zustand sowie die Forderung des Bestätigung des Plustatbestandes bedeutet, dass der Schadenersatz, als das wirksamste zivilrechtliche Mittel, auch weiterhin nicht zureichend geeignet ist zur Wiedergutmachung der die Persönlichkeit unmittelbar berührenden Beeinträchtigungen sondern bloss der daraus entstandenen mittelbaren Schäden.

Wenn von jemendem in der Presse unbegründet behauptet wird, er habe ein schweres Delikt - z.B. Unterschlagung von mehrere Millionen Forint oder Mord - begangen, kann er als Wiedergutmachung höchstens eine öffentliche Richtigstellung und den Verbot der Wiederholung eventuell die Beschlagnahme und Vernichtung der die Mitteilung beinhaltenden Drucksachen fordern. Als Bedingung des immateriellen Schadenersatzes müsste in solchen Fällen der Beweis erbracht werden, ob und inwiefern diese Rechtsverletzung den Geschädigten in der Teilnahme im Gesellschaftlichen Leben hinderte und wie weit diese Behinderung schwer, dauernd, beziehungsweise endgültig war. Die Möglichkeit einer solchen Beweisführung ist in den meisten Fällen aussichtslos. Wie sollte ermessen und bewiesen werden, welche Wirkung durch die Pressemitteilung im Bewusstsein der Leser sich herausgestellt hat und welche weitere schädliche Wirkungen in bezüglich der Teilnahme am gesellschaftlichen Leben längere Zeit hindurch oder endgültig entstanden sind. Man könnte höchstens beweisen dass der Geschädigte infolge der Mitteilung sein Amt verloren hat. Der daraus entstandene Schaden ist aber schon materieller Schaden.[34] Das ist der Grund

stand des Klägers als herausgeformt und endgültig zu betrachten ist. (PF V 21 435/1979/4.) Es gab Fälle, wo das Oberste Gericht die Zusprechung des immateriellen Schadenersatzes verweigerte weil es für möglich hielt, dass in der Zukunft der Kläger am gesellschaftlichen Leben teilnehmen und die Erschwerung des Lebens vermeiden kann (Pf 21 240/1979/3.)

[34]Die Ersetzung eines durch Erwerbaufall stammenden materiellen Schadens wurde gerichtlich verordnet, als im Folge eines die Persönlichkeit verletzenden Zeitungsartikels eine die Arbeitsfähigkeitsminderung verursachende Persönlichkeitsschädigung entstand. Hauptstädtische Gericht, Pf 25 962/1983.

dafür, dass bei uns der immaterielle Schadenersatz im allgemeinen nur im Bereich der Beeinträchtigung des Lebens, der Gesundheit und der körperlichen Unversehrtheit Anwendung gefunden hat, und auch in diesen Fällen meistens aufgrund von gekünstelten, unechten Plustatbeständen. Die Situation ist ähnlich der alten vor 70-80 Jahren geübten Praxis, wo bei sexueller Vergewaltigung nicht die ideelle Interessenverletzung als Grundlage zum immateriellen Schadenersatz diente, sondern "die Verminderung der Heiratsaussichten".[35]

Die Gerichtspraxis ist übrigens bei der Anwendung der Bedingungen der Rechtsvorschriften bezüglich des immateriellen Schadenersatzes auch inkonsequent. Die Teilnahme am gesellschaftlichen Leben wird oft mit dem sogenannten "Gesellschaftsleben" verwechselt, das heisst es wird unter diesem Titel die Einbüssung der Möglichkeit irgend einer speziellen "gesellschaftlichen Tätigkeit" verlangt.[36] Diese Praxis hat zur Folge, dass bei der Zusprechung des immateriellen Schadenersatzanspruches derjenige; der sowieso vor dem schädigenden Ereignis in einer ungünstigen Lage war, in eine noch nachteiligere Situation gerät.[37] Immaterieller Schadenersatz wird denjenigen

[35]PÉCSI, M.: Erkölcs helyett hozomány (Mitgift statt Moral). Jogtudományi Közlöny, 6/ 1913.

[36]Der bewegungsbehinderte invalide Kläger verlor seine Gemahlin, die für ihn und für die mit ihm lebende sorgebedürftige Mutter gesorgt hatte, die ihn und seine Mutter an das alltägliche Leben gebunden hat. Durch ihren Tod wurde die Lage dieser beiden aussichtlos. Das Gericht hat trotzdem keinen immateriellen Schadenersatz zugesprochen, weil der Kläger auch bisher kein Gesellschaftsleben führte, nicht hin und her reiste, an keiner Unterhaltung teilnahm. Komitatsgericht Somogy (Pf 20 700/1984/2).

[37]Darauf weist hin: HINTSCH, ZS.: in seinem Artikel mit dem Titel: A nem-vagyoni kár megtérítésének egyes kérdései (Einzelne Fragen der Ersetzung des immateriellen Schadens). Jogtudományi Közlöny, 7-8/ 1984. Im Gegensatz zu dieser irrtümlichen Praxis kann nach Auffassung der italienischen Corte di Cassaziona nicht die wirtschaftliche, gesellschaftliche und kulturelle Stellung des Beschädigten in Betracht genommen werden. Siehe bei EÖRSI, GY.: Op. cit. (Fussnote 30).

zugesprochen, die, infolge ihrer Vermögens- und Machtposition, ihres Bekanntenkreises, ein Gesellschaftsleben führten, gesellschaftliche Funktionen bekleideten an Unterhaltungen, Auslandsreisen teilnahmen.[38] Es wird aber kein immaterieller Schadenersatz zugesprochen für diejenigen, die infolge ihrer Umstände auch vor der Schadenerleidung dazu keine Möglichkeit hatten.[39] Man pflegt keine Erschwerung der Teilnahme am gesellschaftlichen Leben festzustellen, wenn für den Schädigten früher ausschliesslich die Arbeitsleistung und die Familienbeziehungen die Teilnahme am gesellschaftlichen Leben bedeuteten. Diese Praxis ist nicht nur unbillig, sondern verletzt auch die staatsbürgerliche Rechtsgleichheit, da sie die Geltendmachung des Anspruchs von der gesellschaftlichen und materiellen Lage des Schädigten abhängig macht. Das entspricht den Zielsetzungen weder der rechtlichen Regelung noch der Rechtsinstitution.

Besonders unbillig ist unsere Praxis gegenüber den Angehörigen der infolge des Schadenereignisses verstorbenen Person. So ein Ereignis wird nicht als Erschwerung der Teilnahme am gesellschaftlichen Leben betrachtet, deshalb wird auch kein immaterieller Schadenersatz zugesprochen, auch dann nicht, wenn der Ehegatte und die minderjährigen Kinder die wichtigste Stütze der Familie: die Mutter verlieren.[40] Da wird nur die Trauer,

[38] Die frühere öffentliche Tätigkeit, Partei- und gesellschaftliche Arbeit untersuchte das Oberste Gericht in seinem Urteil Pf 21 370/1983/3.

[39] Es gibt auch abweichende Urteile. Im Gegensatz zu der bekanntgegebenen irrtümlichen Anschauung stellte eines der städtischen Gerichte mit prinzipieller Schärfe fest, das es nicht zum Vorteil des Schädigers wehren darf, dass auch die frühere Situation des Verletzten ungünstigerer, anspruchsloser war. Stadtgericht Nagykörös (Pf 20 254/1983/31).

[40] In einem gegeben Fall verloren die minderjährigen Kinder infolge einer schadenverursachenden Handlung ihre Mutter, die die Familie zusammen hielt, die durch den Vater nicht ersetzt werden kannte und deren Verlust die Kinder scheu und zurückgezogen machte, es bildete sich das Gefühl der Verinsamung bei den Kindern heraus, ihr Fortschritt und ihr Benehmen in der Schule verschlechterte sich. Die Klage für einem immateriellen Schadenersatz wurde vom Gericht mit der Begründung abgewisen, dass der Tod der Mutter bei den Kindern keine pathologische Persönlichkeitsveränderung hervorrief. Komitatsgericht Fejér (Pf 20 154/1985/4). Bei einem anderen Fall hielt das Oberste

der seelische Schmerz anerkannt, was aber keinen Grund zum immateriellen Schadenersatz bietet und was ja mit der Zeit sich verblasst und vergeht, - sie sind also nicht endgültige Folgen. Ähnlich wird auch der immaterielle Schadenersatzanspruch der Witwe beurteilt. Aufgrund des Verlustes des Ehegatten der alleinstehenden invaliden Frau sah das Gericht gegebenenfalls keine Möglichkeit die Erschwerung weder des Lebens, noch der Teilnahme am Gesellschaftsleben festzustellen.[41]

Demgemäss steht infolge der beschränkten Möglichkeit des immateriellen Schadenersatzes der Schutz der Persönlichkeit im Bereich des Zivilrechts - im Gegensatz zum Schutz der materiellen Interessen - auch weiterhin im Hintergrund. Das entspricht nicht den in der Verfassung verankerten, das Primat der menschlichen Persönlichkeit verkündenden rechtspolitischen Prinzipien.

Gericht bei dem infolge eines Unfalls allein gebliebenen Kläger, der wegen Verlustes seiner Frau sein fünf jähriges Kind allein erziehen musste, als Bedigung des immateriellen Schadenersatzes die Untersuchung dessen für notwendig, welche konkrete personelle und sonstige Tatsachen die Teilnahme am gesellschaftlichen Leben und das Leben selbst erschweren (Pf V 21 087/79/5).

[41] Ein wegen Nervenkrankheit und sonstigen Krankheiten im 67 % von verminderter Arbeitsfähigkeit betroffene Kläger verlor infolge eines Unfalls ihren Gatten und wurde als Folge des Schadensfalles völlig ohne Stütze. Das Gericht sprach ihr den immateriellen Schadenersatz nicht zu. Die Begründung war, dass die Invalidität des Klägers mit dem Tod des Gatten in keinem kasuellen Zusammenhang steht. Hauptstädtisches Gericht (Pf 21 275/1985/2). Der Beschluss beruht auf Irrtum. Es besteht nämlich kein Zweifel, dass für die nervenkranke, bis zu 67 % invalide, alleinstehende Person - ungeachtet der Herkunft der Invalidität - der Verlust ihres, ihre einzige Stütze bildenden Ehegatten, eine Erschwerung ihres Lebens bedeutet.

ЗАКАВЫЧКИ ЗАЩИТЫ ЛИЧНОСТИ

К. Тёрё

Несмотря на то, что гражданско-правовая защита личности уходит корнями в римское право, данный правовой институт является довольно новым, в применении которого много закавычек. В интересах развертывания обоснованно обрисовать некоторые характерные симптомы.

Многие считают, что задача гражданского права состоит в регулировании имущественных отношений, что оно характеризуется правовым отражением товарных отношений и в его основе лежит имущественная автономия, поэтому защиту личности трудно вставить в систему гражданского права. Создалось такое своеобразное положение, что правотворчество и практика применения права признают, регулируют и применяют гражданско-правовую защиту личности, а по теоретикам все-таки еще под вопросом то, что можно ли говорить о ней. Однако к эффективной защите личности необходимы регулирование гражданско-правового характера и применение гражданско-правовых средств.

Личность является единой и неделимой, поэтому необходимо выдвинуть личность в качестве объекта правовой защиты, но средства права самы по себе не могут оказать воздействие на личность. Определение круга регулирования защиты личности также является противоречивым. Предписание общей защиты личности едва ли может разъяснить решение конкретных проблем. Тем самым особая защита личных интересов и ценностей не является удовлетворительным, потому что невозможно закрепление в законодательном акте все проявления личности, в связи с которыми требуется правовое регулирование.

Правила защиты личности тесно связаны с личностью и в этом плане есть такое противоречие, что личность только ограниченно располагает этими правами. Характер указанных прав не допускает отказа и передачи. В венгерской правовой системе принцип volenti non fit iniuria также может осуществиться только при условии, что он не нарушает или не угрожает интересы общества. Как в теории так и в рпактике ведутся споры о том, что личность привязанна к своему заявлению, касающему личных интересов, или же она вправе взять его обратно.

Самым эффективным средством гражданско-правовой защиты является возмещение вреда, которое, однако, только в ограниченной мере пригодно для защиты личности. Пределы вытекают, с одной стороны, из характера возмещения вреда и особенностей защиты личности, с другой стороны — в отношении возмещения неимущественного вреда, служащего исправлению нарушения неимущественных интересов личности — они являются последствиями скупности правового регулирования и практики применения права.

THE OBSTACLES OF PROTECTION OF PERSONALITY

K. Törő

The civil law protection of personality – although its roots can be found in the Roman law, too – is a relatively new legal institution, there are several obstacles concerning its application. For the sake of its improvement it is reasonable to outline some characteristic details. According to a lot of people the task of civil law is the regulation of property conditions, its characteristic feature is the legal reflection of the commodity relations, its foundation is the autonomy of property, therefore the protection of personality can be hardly inserted into the system of civil law. Such a special situation emerged that, although the legislation and legal practice know, regulate and apply it, according to the theory it is still doubtful whether we can discuss about the legal protection of personality in civil law. However, the effective protection of personality requires the civil law regulations and the application of civil law measures.

The personality is uniform and indivisible, therefore it is necessary that the personality should be the object of legal protection, although the personality itself cannot be influenced by the means of law. Even the term of the regulation sphere of personality protection is ambivalent. The prescription of the general protection of personality hardly gives any guidance to the solution of concrete problems. The special protection of each personality interest and value is not satisfactory, because it is impossible to include every phenomena of personality in a regulation, which phenomena need legal arrangement.

The rules of protection of personality are very closely connected to the person, but it seems controversial that the person himself has only a limited possibility of dealing with these rights. The character of these rights cannot permit the renouncement of these rights or their transfer to other persons. In Hungarian law the principle of "volenti non fit iniuria" prevails only if it does not harm any social interest. In the theory and practice it is debated whether the personality is obliged to keep his declarations involving personality rights or can withdraw it freely.

The most effective civil law protective measure is the tort, but it is only applicable to serve the protection of personality in a limited way. These limits are due partly to the character of tort and the characteristics of personality protection, partly – considering the remedy of non-material damages and compensation – the legal regulations and legal practice are rather restricted.

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LEGALITY AND THE PERSECUTION OF CRIMES

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The author makes an attempt to define the notion of legality in criminal justice. In the course of this he points out the differences between legality and officiality /to proceed ex officio/, and also determines the element of the principle of legality. The study deals among these with the duty of the state to investigate crimes, in details. It calls the attention to the constitutional problems being rooted in the selective prosecution of crimes, which also appear as problems concerning the distribution of power between the legislator and the agencies applying the law. The author challenges the principle of mandatory prosecution of all crimes because its enforcement cannot be granted which also raises constitutional tensions.

1. Introduction

Reform proposals urging to accelerate and simplify the administration of justice in criminal cases, arguing for rationalization and efficiency or even appealing to the interests of the defendant, have been presenting themselves more and more frequently in the literature of the law of criminal procedure. The ideas claiming for the increase of the role of the preparatory procedure and the loosening of the principle of legality /mandatory prosecution/ in order to remedy the deficiencies of the criminal procedure have an important place within the reform proposals. As it seems, they are not at all unfounded; instead, they have formulated a tendency from the recent history of criminal procedure. In fact, the absolute obligation of the authorities to prosecute crimes and to bring a charge has been moderated by more and more exceptions in the countries in which the principle of legality has been adopted as the milestone of the administration of criminal jusitce.

By waiving prosecution /non-prosecution/, the authority pro-

ceeding in the pre-trial phase pronounces a judgment on the judicial procedure declaring that the proceeding of a court is not needed in the given case.[1] In addition, the competence of the prosecutor is not limited in many cases to the declaration that a judicial proceeding is senseless. Thus, the prosecutor may be authorized, and the police in some cases as well, to fix competences or to designate the agency that will enforce the penal claim of the state. The more, the prosecutor under the rules of some legal systems is authorized even to place himself to the seat of the judge, to decide on the responsibility of the accused or to inflict a sanction on him, thus questioning the formerly immutable concept claiming an exclusive competence for the court concerning adjudication in criminal cases.

2. War of principles

The problem whether or not the prosecuting authority is entitled to settle a criminal case in its merits, precluding thus the court from pronouncing a judgment, is decided in the various legal systems depending on the preference given to the principle of legality or opportunity /expediency/.

The dispute on the advantages and disadvantages of the two principles has been lasting long since, and it is continued even in our time frequently at the level of speculations, in a manner more recalling duels in rhetoric. Thus, the disputing parties prefer to argue by expressing appreciation for the values which, in their supposition, result necessarily from the principle chosen by them. The birth of a reasonable dialogue is, of course, very difficult this way, as the partisans of

[1] Waiving prosecution is used here not in the sense as it is in paragraph 147 of the Hungarian Code of Criminal Procedure in force, saying that "The prosecutor may waive prosecution for a criminal offence which, compared to the criminal offence of greater weight made the subject of accusation is of no significance." The concept of waiving prosecution should comprise here all cases in which the prosecutor omits to take legal proceedings at a court although the conditions exist for initiating court procedure. The case mentioned above, in which aspects of economy in criminal proceedings are considered, pertains, of course, to the said group.

both camps may equally bring about convincing arguments, having this strength for themselves at least.

Thus, the supporters of the principle of opportunity declare proudly that the principe of expediency is the necessary parallel element of modern, progressive, humanitarian criminal law concepts in the law of procedure, being a means for rationalizing the administration of justice at the same time, making it possible to distribute the resources in a reasonable way, and permitting the authorities to concentrate their efforts to fight crimes that would be particularly dangerous to the society.[2]

On the contrary, the supporters of the principle of legality have no confidence in any kind of discretion. In their view, "the power of discretion involves the risk of arbitrary decisions and the violation of equality. For this reason, opportunity is a doubtful concept for the rule of law from the very beginning."[3] Beyond rejecting the recognition of the discretionary power of the prosecutor, there is a further argument claiming that the aspects serving as bases of discretion have usually an economic or political, i.e. extralegal nature. In this view, the consideration of financial considerations can be easily identified with market-minded bargaining which is evidently incompatible with the dignity of criminal justice and the moral mission criminal law and procedure have to fulfil.[4]

[2]Cf. e.g. RÖSTAD, H.: The Principle of Opportunity /of Expediency/. Considerations of Waiving of Prosecution Related to the Procedural System of Norway. Cahiers de Défense Sociale. Edition franco-anglaise 1984/85. p. 27.; HANSEN, U.: Die Tätigkeit der Anklagebehörde in Norwegen, In: JESCHEK, H.H.: – LEIBINGER, R.: /ed./ Funktion und Tätigkeit der Anklagebehörde im ausländischen Recht. Nomos Verlagsgesellschaft, Baden-Baden, 1979. p. 509.

[3]GERMANN, A.O.: Zum strafprozessrechtlichen Legalitätsprinzip, Schweizerische Zeitschrift für Strafrecht, 1/1961.

[4]Motivation to the Draft Bill of Criminal Procedure, submitted by the Minister of Justice to the House of Representatives, in the fourth session of Parliament 1892/97. Pesti Könyvnyomda RT, Budapest, 1895. p. 155.

Honouring political considerations used to be regarded as risky, for the balance of the branches of power may be thus upset; as a result, the power of the executive may be extended to the prejudice of the legislative and judicial branch, at least in legal systems in which the prosecutor's offices are subjected to the minister of justice. "The rejection to make dependent the application of substantive law on individual considerations or casual reasons of expediency is an elementary truth, to the extent that it is needless to prove it". This is from the motivation of the Hungarian Code of Criminal Procedure of 1896, with the following expoundings: "The law requires its unconditional implementation, and the realisation of its provisions must not depend on the subjective views of anybody. If the legislator demands to take into consideration extra-legal aspects, this has to be declared in the law, including the definition of the cases in question, and it cannot be entrusted to the discretion of the state or its individual agents. The strongest support of the legal order and the true content of the equality of rights appear just in that the aspects and measures of the assessment of diminal acts are constant and binding everybody. For this reason, the possibility of the non--application the criminal law from individual causes is excluded by the concept of the rule of law." The lengthy citation from the motivation of the Code of Criminal Procedure is justified here by the circumstance that the arguments expounded in our time in support of the legality principle are identical with those laid down in the text formulated almost a century ago.

3. Approachment of the two systems

The supporters of the two opposed camps are on the way, however, to judge their own system with a more reasonable approach and with less prejudice in recent time. Evidently, a change took place in the views, i.e. the disputing parties came to recognize that instead of further speculation and rhetorics it makes more sense to observe, without prejudices, the everyday operation of the two principles for which so many arguments

have been put forward in jurisprudence, in order to prove their superior values.

As a result of empirical research, several authors got convinced of the fact that the assumptions formulated by the theoreticians as necessary accessories of this or that principle are frequently not complied with in practice. The more empirical research was not even needed to question the correctness of some of these hypotheses. In fact, it was sufficient to cast a prejudice-free glance to the course of legislation and the practice of the administration of justice.

Several authors studying the principle of opportunity came thus to realize the existence of a difference between principle and the practice of the application of the law. Thus, Ulrich Hansen reported of the loss of the previous attractiveness of the principle of opportunity in the practice of the Norwegian crime control by the 1970-ies, not only in cases of adult perpetrators but of juvenile delinquents as well. The agency authorized to bring a charge is more and more inclined to submit the case to the court, provided that it detected it already and collected the means of evidence, so that the judge should be in charge of selecting the sanction.[5] And this occurs inspite of the fact that the law confers a very broad discretional power to the prosecuting agency. Thus, the prosecutor is allowed to dismiss the charge "if, having assessed the details of the case in a comprehensive way, he came to the conclusion that the overwhelming majority of the circumstances would justify to dismiss the charge".[6]

In a study investigating the changes of the administration of justice in the Netherlands, A.A.G. Peters drew also attention to the differences between principle and practice. Although the prosecutor enjoyed an almost complete liberty, under the provisions of the Code of Procedure, to bring a charge or not, practice made a rule of bringing the charge over a long period of time, and dismissal occurred only exceptionally. As long as

[5] HANSEN: op. cit. p. 530.

[6] Paragraph 85 of the Norwegian Code of Criminal Procedure of 1887, and paragraph 69 of the Act of 1981 replacing it.

the prosecutor's offices made use of this practice, i.e. proceeded, actually, in the spirit of the principle of legality, the administration of justice was functioning in the Netherlands relatively without frictions, enjoying support and sympathy from the population. Nevertheless, as soon as the prosecutor's offices started to make use of the broad-scale discretionary powers granted them by the law, so that the proportion of the dismissals of charges was increasing, this discretionary power, conferred upon the police and the prosecutor's offices, was regarded more and more as "a suspicious and problematic aspect of the administration of justice in the Netherlands". Quite paradoxically, the prosecutor's offices got exposed to the crossfire of attacks just at the time when they availed themselves definitely of the opportunity to proceed so as to meet the expectations of the legislator.[7]

Furthermore, it became also clear that the objectives of criminal policy, coupled to the principle of opportunity, could be realised not exclusively by means of a broad-scale discretion. Reference was made already in the preceding to the argument frequently expressed in favour of a broad-scale discretional power, claiming that the administration of justice can be more efficiently adopted this way to social changes, not being obliged to take measures against those infringing obsolete statutory prohibitions not having the support of the general public. Nevertheless, it was then proved by the development of codification that the administration of justice could be relieved from this uncomfortable task by legislation itself. It was required to this end to pay attention continuously to the changes in the morale attitude in society, to the validity of the norms of criminal law, and to remove the obsolete provisions of criminal law from time to time.

It was equally upon the effect of the changes that took place in the legislative process that the supporters of the discretionary power of the prosecutor came to understand the non-

[7] PETERS, A.A.G.: Authority in the Dutch Administration of Criminal Justice. Essays in Honour of Professor Shigemitsu Dando, Yuhikaku, Tokio, 1983. p. 180.

-existence of a necessary logical relation between the principle of opportunity and the relative theory of punishment. In fact, a relationship of this kind could be demonstrated only between the absolute theory of punishment and the principle of legality. The restitution of the legal order supposes the infliction of a punishment by the court, and this latter implies the bringing of a charge in all cases. This does not prove, nevertheless, the existence of a similar connection between the principle of opportunity and the relative theory of punishment, as these can be well put into harmony also with the principle of legality. Although it may be compulsory to bring a charge, the judge may be also authorized to meet the requirements of opportunity when fixing the penalty within the limits specified by law possibly by imposing penal measures /instead of a penalty/ or even by omitting to inflict a penalty, provided that this is admitted by the rules of substantive law. The difference between the two systems concerns "only" the division of competences; according to the principle of opportunity, it is the prosecutor who is authorized to assess the utility and expediency of imposing punishment and to take into consideration this when making the decision, while this authorization is conferred upon the court under the principle of legality.[8]

The concept as to which the principle of opportunity as expressing the human treatment of offenders necessarily and at any time, so that an equitable administration of justice must be incompatible with the absolute obligation of bringing a charge, proved to be inappropriate as well. Doubtless to say, humane efforts aimed at an equitable application of the law played a role in the formation of the principle of opportunity.[9]

[8] HEYDEN, F.: Begriff, Grundlagen und Verwirklichung des Legalitätsprinzips und des Opportunitätsprinzips. Hans Schellenberg Verlag, Winterthur, 1961. pp. 15-16.

[9] The fight between legality and opportunity in France is frequently mentioned as an example. According to a widespread opinion, practice favored ultimately opportunity for the rigour of the Code Pénal was thus softened. See: GERMANN: op. cit.

Nevertheless, the circumstances under which the principle of opportunity came into existence can only confirm that, due to the rigour and rigidity of substantive law, the aspects of equity could obtain a role in former times only through the intermediary of procedural law, through avoiding to bring the cases before the court. This is, however, absolutely insufficient to conclude to the immanent value and humanism of the principle of opportunity. On the contrary, the circumstances of birth referred to above give support much more to the view that the principle of opportunity may loose its sense and function with the transformation of substantive criminal law.

Besides, the myth of the necessary connection between opportunity and the equitable and mild treatment of criminals was refuted extensively by practice. As it is known, offenders are not relieved from the interference of social control in all cases by the omission of bringing a charge. In fact, in several cases non-prosecution simply means that an other organ and not the court will proceed in the case of the accused. Furthermore, it is also known, if not from other sources, than from the charges raised against the treatment ideology, that a milder and more humane treatment against the perpetrator is not at all guaranteed only by avoiding a judicial procedure.

Finally, it became equally clear that the broad discretionary power granted to the agencies prosecuting criminal cases was, by itself, insufficient to ensure the rationality of crime control policy. Also in legal systems based on the principle of opportunity, it is mostly "harder" factors, beyond the organs charged with the prosecution of crimes that in fact, will affect decisively the types of criminal behaviour to be revealed and judged by a court. Some of these factors are e.g. the visibility of the act, the possibilities of bringing evidence and first of all, those influencing the population's inclination to report. Accordingly, the scope of the acts that can be, and are actually, prosecuted is determined to a significant extent by the types of injuries which become known to the investigating organs from the injured persons and the population, respectively.[10]

[10] HANSEN: op. cit. p. 512.

At the same time, it became also clear, and again mainly from the results of empirical researches that the hypotheses coupled to the principle of legality were not always valid in pracitce, as the discretionary power of the authorities responsible for the conduction of a criminal procedure cannot be excluded even by the statutory prescription of the mandatory prosecution of criminal cases. First, one must not be a fanatical supporter of the free law school to admit that criminal law contains a number of uncertain concepts with an unclear meaning and their interpretation opens the way, evidently, for discretionary assessment.

The very theatre of discretion is, however, fact-finding and proof-taking. To bring a charge is mandatory namely only if the case is suitable for the judicial proceeding, at least according to the principle of legality in its sense used to be interpreted in our time. However, the degree to which the act in question can be regarded as confirmed by evidence, depends on the discretionary assessment of the authority prosecuting crime First, the members of these authorities will decide on the efforts to be taken in order to bring to light the various types of criminal acts and the intensity devoted to collect evidence. Second, they are vested with remarkable and hardly controllable powers in assessing the weight evidence when deciding whether or not a particular case is "mature" for a judicial treatment. Furthermore, the process of determining the intensity of clearing up and the discretionary assessment of the weight of evidence may be influenced by criminal-policy considerations of the prosecutor's office.

Research findings on the proof-taking activity of the prosecutor's office suggest, furthermore, that the separation of the competences of the branches of power is not guaranteed by the principle of legality. In fact, the prosecutor may deprive the legislator of his competence when, making use of his monopoly of prosecution, or abusing it, respectively, utilizes his authorization to direct the procedure of proof-taking frequently "to decriminalize the lower regions of criminality".[11]

[11]Cf. for Finland e.g.: JOUTSEN, M. – KALSKE, J.: Pro-

Similarly, it has been confirmed by practical experiences that the prescription of mandatory prosecution does not ensure the citizens' equal treatment before the law by itself. On the contrary, there is evidence that a fanatical insistence on the principle of legality may provoke just the opposite effect to what was the original intention. This occurred in Italy where legality was raised to a constitutional principle in 1947, and the code of procedure stipulated that the prosecutor was not allowed to discontinue procedure on his own initiative even in case of the insufficiency of evidence; his only right was to make a motion to the examining judge to terminate the proceedings.

As a result of unflexible regulation, the courts became incapable to comply with the excessive quantity of unsettled work charging them. Ultimately, the capacity of functioning of the administration of justice could be maintained by the cancellation of numerous procedures, for the limitation period having passed, and the parliament granted grace the accused almost without selection. Thus the situation of those subjected to criminal proceedings became, however, still more insecure, and the principle of the equal treatment by the law suffered a breach.[12]

It was equally Italy's example which drew attention to the risks of the formal observance of the principle of legality whereby the legislator might be compelled to introduce institutions which could be still less adopted to the existing legal system than cautious concessions to expediency considerations.

In fact, it is admitted under article 162 of the Italian Criminal Code that the accused of criminal acts of minor weight

secutorial Decision-making in Finland. National Research Institute of Legal Policy. 67. Helsinki, 1984. p. 23.; for the FRG: SESSAR, K.: Legalitätsprinzip und Selektion. Zur Ermittlungstätigkeit des Staatsanwalts. In: GÖPPINGER, H.: – KAISER, G.: /ed./ Kriminologie und Strafverfahren. 12. Ferdinand Enke Verlag, Stuttgart, 1976. pp. 155-156.

12 ZAGREBELSKY, V.: Alternatives to Criminal Proceedings and within Criminal Procedure in a System Where Prosecution is Mandatory. Effective, Rational and Humane Criminal Justice HEUNI Publications No. 3. Helsinki, 1984. p. 257.

may "compensate" themselves from the inconveniences of further proceedings by offering a sum fixed in the law. If the judge accepts the offer, he terminates the proceedings. Up to 1981, this institution made it only possible to handle criminal acts punishable by a fine in this milder way. Nevertheless, its scope of application was then extended to cases in which, beside a fine, detention was prescribed by the law as an alternative punishement.[13] Evidently, no detailed comments are needed to make it feel that this model of sentencing, recalling plea--bargaining as it is known in the American legal system, is absolutely alien to the continental concepts in the law of procedure.

As a result of the relevant recognitions, the systems of procedure based on two opposite principles came somewhat closer to each other in recent time.

The efforts aimed at restricting the extremities that were experienced in the practice of bringing charges confirmed the changed attitude in the systems accepting expediency considerations. Thus, various guiding principles, circulars, etc. were issued by the top instances of the prosecuting agency in England, Wales, Denmark, Luxemburg, and the Netherlands, destined to serve the unification of the practice of bringing a charge, in the name of equality and justice.

At time same time, self-examination can be undoubtedly observed also on the other side. In fact, it seems that the crisis of legality is deeper if the two principles are inspected. This statement is confirmed in that the loosening of the principle of legality is not only in the plans in countries where mandatory prosecution is prescribed by law but minor or major concessions to the demands of opportunity have been already made in almost all of these countries in the form of legislation.

As regards the systems in which the prosecutor has the discretionary right to decide on the expediency of bringing a

[13] AMODIO, E.: Diversion and Meditation /Italy/. Revue Internationale de Droit Pénal, 3/4/1983.

charge, on the other hand, the weak points of the principle of opportunity became, no doubt, clear so that efforts were made with a view to unify the prosecution practice, however, the values inherent in the principle of opportunity have never been questioned, however. Thus, inspite of the actual intentions to set limits to the possible abuses of the prosecuting authorities, the replacement of opportunity by the system of the mandatory prosecution has not been in prospect in any country so far.

Contrary to the afore-mentioned, the view claiming that the prosecution of all criminal acts and the mandatory presentation of an indictment covering all cases would be impracticable and, in addition to it, would imply unbearable consequences, has been expressed quite frequently by scholars in countries adopting the principle of legality. These theories made thus a virtue of what was judged earlier a deficiency. In other words, the said theories declare the fundamental idea of the principle of legality to be worthless. Other views, although not questioning the values assumed to be linked to the principle of legality, consider the principle of opportunity more appropriate for the realisation of these values, strange as this may seem. It is convenient here to quote the closing thought of K. Sessar's study mentioned in the preceding: "... it is questionable whether or not the principle of opportunity, based on the recognition of the necessarily selective character of the prosecution of crime bears in itself the risk of unequal sanctioning as it has been stated again and again. On the contrary, it can be easily thought that it is just the principle of opportunity which would make it possible for the prosecutor to judge the cases in an equality-based way concerning also their content, beyond the only formally equal consideration."[14]

4. Legality and officiality

The principle of legality appears as a command for the prosecuting authorities, prescribing for them that the criminal

[14] SESSAR: op. cit. p. 164.

law is to be applied. Accordingly, the principle of legality states an obligation, i.e. that of the enforcement of the demand of punishment.[15]

On the contrary the principle of officiality, i.e. ex officio procedure, frequently dealt with together with legality, formulates a right. In fact, it gives an authorization the state organs set up for this particular end to enforce the demand of punishment irrespective of the consentment of other persons, the more, even contrary to their will.

Just as officiality, the existence of the principle of legality can be attributed to the changes as a result of which the penal system became part of public law. Both principles can be envisaged only as recently as "the state coupled the concept of social injury to a criminal act"[16] i.e. no more considering it as a private injury.

The common condition of the birth of these principles might be the cause of the inclination, experienced with both the legislation and the jurisprudence, to see a necessary connection between the principles of legality and officiality. The more, these two principles used to be treated as if they had the very same meaning. Thus, it is laid down in paragraph 2. of the Hungarian Code on Criminal Procedure in force that "in the presence of the conditions established under this Act the authorities acting in criminal cases shall be bound to conduct criminal proceedings". Accordingly, the obligation to act is prescribed by the law, and this under the pretext of ex officio proceedings, i.e. replacing the principle of legality by that of officiality. Evidently, the legislator adopted here the theoretical concept arguing for the unity of rights and duties in the prosecution of crime. In fact, this view can be traced in the literature, its summing up reading that once the state acquired the exclusive right of the prosecution of crime, it is bound,

[15] SZABÓNÉ, N.T.: A büntető igazságszolgáltatás hatékonysága /Efficiency of the administration of criminal justice/. Közgazdasági és Jogi Könyvkiadó, Budapest. 1985. p. 35.

[16] Motivation to the Draft Bill of Criminal Procedure of 1986. p. 148.

at the same time, to take care of the enforcement of the demand of punishment. Nevertheless, this argument is inappropriate for confirming the coincidence of officiality and legality. In fact, it is only a moral demand or, better, a recommendation, just as saying in for a penny in for a pound, i.e. the obligation of the prosecution of crime would result necessarily from the right of prosecuting crimes.

It seems to be justified to give a separate treatment to the principles of officiality and legality, and this is not a consequence of an inclination of systematizing, frequently reaching an excessive extent with the practitioners of criminal law but the recognition that, instead of showing a necessary interconnection, the two principles are, in fact, just opposite to each other in some aspects. While the principle of officiality gives the basis of the power of the prosecuting mechanism of the state, the concept of legality sets limits to that power.

It is known that officiality, as a necessary element of the inquisitorial process obtained general recognition and use in the canonical procedure at the time when Pope Innocent III set as his purpose the strengthening of the power and authority of the papacy as a condition of the world-wide power of the Church.[17] To confirm officiality, the pope referred to two citations from the Bible. The first, from the Genesis, read as follows: "Then the Lord said, Because the cry of Sodom and Gomorrah is great, and because their sin is very grievous; I will go down now, and see whether they have done altogether according to the cry of it, which is come unto me; and if not, I will know." The other may be found in Luke's Gospel in the parable on the untrue steward, saying: "And he said also unto his disciples, There was a certain rich man, which had a steward; and the same was accused unto him that he had wasted his goods. And he called him, and said unto him, How is it that I hear

[17] For a comprehensive commentary to the formation of officiality and the inquisitorial procedure cf. MÓRA, M. – KOCSIS, M.: Magyar büntetõeljárási jog /Law of Hungarian criminal procedure. A university textbook./ Tankönyvkiadó, Budapest, 1961. pp. 67-68.

this of thee? give an account of thy stewardship; for thou mayest be no longer steward.[18]

It needs no more explication that, just as it is clear from the two citations from the Bible, only the right of prosecuting crime is formulated in the institution of inquisition of the Church and no mention is made of the obligation of prosecution.

The principle of officiality gained ground later also in the secular administration of justice as it proved to be appropriate for strengthening political power. By analogy with the central power within the Church, the absolutism as developed at the end of the Middle Ages saw in the principle of officiality only a means to remove an obstacle to the prosecution of crime. Unwilling to recognize any limit for itself, it expropriated the monopoly of prosecuting crime, without undertaking, however, an obligation to exercise it.[19]

The principle of officiality was prevailing in the criminal procedure already long since when, and this happened in the 19th century, the legality was also acknowledged as a fundamental principle of the administration of criminal justice by positive law. This is, evidently, a plain refutation of the view claiming the necessary identity of officiality and legality.

The circumstances of the birth of legality show a clear difference from the conditions and efforts which brought into existence the principle of officiality. Evidently, its content is completely different as well. Legality is an inherent element of the concept of the constitutional state, with a strict separation of the application of the law from legislation, setting limits for the competences of the prosecuting organs. With the declaration of legality the state promised to submit its prosecuting mechanism to the law and the legislator, respectively. In fact, it is pronounced by the concept of legality

[18] SCHULZ, W.: Die geschichtliche Entwicklung des Akteneinsichtsrechts im Strafprozess. Rechts- und Staatswissenschaftliche Fakultät der Philipps Universität zu Marburg. Marburg, 1971. p. 10.

[19] GERMANN: op. cit.

that, once the legislator commanded the punishment of an act, the organs applying the law are bound to avail themselves of their monopoly of prosecution upon the suspicion of a criminal offence, so that the legislator's intention be thus realised. With the obligation of conducting the criminal proceedings, allowing no exceptions, the prosecuting authorities are excluded from the possibility of availing or not availing themselves of their powers, made dependent on their own interests or other extra-legal factors.

The differences in the content of the two principles can be demonstrated very spectacularly with the admitted exceptions, although it has been also common to regard them as identical.[20] If the prosecuting organs are invested with power by virtue of the principle of officiality, their power will be evidently diminished by admitting exceptions to the principle. The institution of the private complaint means e.g. that the legislator cuts out a part of the competence of the prosecuting agencies for itself and the injured party. In fact, the legislator delimitates thus the interests deemed worth of excluding the demand of punishment of the state, setting thus a limit to the power of the organs applying the law. With this, the injured party is thus authorized to assess the pros and cos of the enforcement of the claim for punishment together with the right to take the final decision. Accordingly, the enforcement of the claim for punishment depends on the decision of the injured party, i.e. as long as his or her consentment is given, the prosecuting organs are not allowed to proceed.

Contrary to this, the power of the prosecuting organs will increase to the prejudice of the legislator with the breach of the principle of legality. In fact, they are exempted from obedience and are authorized to disregard the decision of the legislator in which some harmful forms of behaviour have been defined as criminal acts.

The examination of the exceptions to the two principles in

[20] SZABÓNÉ, N.T.: /ed./ Magyar Büntetőeljárási jog. Egységes jegyzet /Law of Hungarian criminal procedure. A university textbook/. Tankönyvkiadó, Budapest, 1982. pp. 92-94.

question leads to the point that officiality and legality are concepts replacing each other; nevertheless, they are by no means interconnected. It must be clear from the above said that, with a restriction to any of the two principles, the legislator will recognize aspects or interests that exclude the claim for punishment. The difference comes from the legislator's decision charging this or that party to assess the interests favouring or excluding prosecution.

In case that the legislator takes a stand leaving to take the decision, in the form of a private complaint, authorisation, etc., by those for whom the enforcement of the demand for punishment may be harmful, he may then insist on the principle of strict legality. Conversely, by insisting on the inviolability of the concept of officiality, the rigidity of the penal system may be attenuated by charging the prosecuting authority with the task of assessing the respective interests, loosening thus the rigour of legality through loosening the principle of mandatory prosecution.

With a comparison of the provisions in the legislation of the Scandinavian countries which, besides, show numerous common traits, it can be confirmed that the above expoundings are far from a merely theoretical construction. It is Finland whose law demonstrates the most consequent insistence on the principle of legality, at the "price", however, that the most criminal offences to be prosecuted upon the complaint brought by the victim may be found in the Finnish law within the criminal codes of the Northern countries. As to the number of the criminal acts for which criminal proceedings are conducted upon the complaint of the victim, Sweden is second to Finland. The axiom of legality is laid down here as the rule of the code of procedure but its rigour is attenuated by a high number of exceptions. /It is worth mentioning that, parallel with the concessions to the aspects of opportunity, the scope of the criminal offences to be prosecuted upon the victim's complaint only was restircted in Sweden./ Finally, the line is closed by Denmark and Norway. As the procedural laws of these countries are based upon the principle of opportunity, the number of private complaint

offences is here the lowest.[21]

5. Obligation of detection

As a consequence of the principle of legality, the authorities are bound to prosecute criminal acts. It must be evident from the introduction that this obligation is composed of elements that can be separated from each other. In its broadest, and strictest, sense the precept of legality contains, in fact, the commands that

- the investigating organs should detect all crimes and identify all perpetrators;
- the prosecutor should present an indictment in all cases if the factual and legal conditions of a judicial procedure exist, should demand the decision of the court in all cases and should make full use of appealing;[22]
- the court should impose a penalty on all perpetrators.

The said partial obligations are interrelated but their addressees are different persons or organs, and their contents are not identical either. Accordingly, the distinct elements of the obligation of prosecuting crime can be also examined separately.

The first command resulting from the principle of legality prescribes that no criminal act should remain undetected and without being punished. The authorities are thus expected to trace any injury and to detect all perpetrators of criminal acts.

The irrealistic content of this requirement is already well known. Thus, when the principle of legality is mentioned as a "norm of a programme", the recognition of the existence of the law and the actual possibilities of their fulfilment is, in fact, in the background.

[21] JOUTSEN, M.: Comparative Approaches to Crime Victim Policy in Europe. /Mimeographed material prepared for the annual meeting of the American Association of Criminology San Diego, California, November 13 to 17, 1985./ p. 5.

[22] For the prosecutor's obligation see: LUKÁCS, A.: A bünvádi per előkészitő része /Preparatory part of criminal procedure/. Lepage L., Kolozsvár, 1904. p. 82.

The present degree of knowledge of the mass of hidden criminality and of the proportion of actual perpetrators who cannot be identified and succeed thus in escaping from being punished has considerably contributed, beyond any doubt, to the devaluation of the principle of legality. With the actual tension between the command and the hopelessness of its fulfilment, all further elements of legality are weakened. In plain words, if it is known that a considerable number of criminal acts will never become known to the authorities and an important number of the perpetrators escapes punishment, then the command inviting the prosecutor to present an indictment and the judge to impose a penalty will definitely loose from its convincing and compulsory force.

It may be surprising, at the first glance, that the literature of criminal procedure took, and has been taking, hardly note of the afore-mentioned aspect of the obligation of prosecuting crime. Actually, the obligation of presenting an indictment has been treated traditionally under the pretext of the principle of legality. In fact, it is highly probable that both the degree and the structure of hidden criminality have not been independent from the activity /or inactivity/, of the prosecuting mechanism. Hence, part of the criminal acts remain undetected for the authorities have been deliberately unwilling to take notice of them.[23]

Nevertheless, the absence of scholars of procedural law from this field is understandable. First, for them the term criminal procedure was identical with the court procedure for a long time. In fact, this latter could include, apart from the court trial and the appellate procedure, the examination /Untersuchung/ at most out of the phases of the preparatory procedure, for only this was led by an inpartial judge so that it was indeed contradictory with a litigating character. The investigation /Ermittlung/ represented already an other category. In any case, the subject-matter of the procedure used to be already more or less fixed when the examination is ordered, also the

[23]KIRÁLY, T.: A legalitás a büntetőeljárásban /Legality in criminal procedure/. Manuscript, Budapest, p. 10.

person of the supposed perpetrator is known, consequently a detecting, researching, and revealing activity was here already out of consideration.

Notwithstanding, it is hardly justified to make reproaches to those studying procedural law for their choice, as they examined just what was offered them for research by the positive law. Accordingly, no reproaches are justified, essentially, to the jurisprudence of procedural law of the before 1945 for having missed to deal with the problems of investigation intensively, in view of the fact that the examination has been treated in six chapters with 153 paragraphs in the Code of Criminal Procedure of 1896, and the legislator found 18 paragraphs sufficient for the problem of investigation.[24]

With the subsequent withdrawal of the examination and the recognition of the significance of the investigation no changes occurred, however, i.e. the jurisprudence continued to be disinterested in the point whether or not there was a relationship between legality and the detecting and revealing activity of the authorities, the undetected field and the way the prosecuting organs are proceeding.

The cause of indifference is, however, clear also in this case. True, the investigation is closer to the detecting activity aimed at the delimitation of injuries than the examination, both in time and in its methods. Nevertheless, the subject-matter of the criminal procedure is constituted by the "demand of the state, originating from the perpetration of a punishable act and aimed at the punishment of the perpetrator of the act concerned."[25] Hence, the perpetration of a criminal act, i.e. the existence of the demand for penalty of the state or, more precisely, the supposition of its existence, constitutes a condition of the procedure. Accordingly, the norms of criminal procedure become effective only with the birth of a suspicion that a criminal act was committed. For the law of procedure, suspicion is of interest only as the "final product", i.e. its course

[24] LUKÁCS: op.cit. p. 174.

[25] FINKEY, F.: Büntetőeljárás k. ny. e.n. /Criminal procedure/. pp. 5-6.

of formation is uninteresting, consequently it is not covered by its scope of regulation. Similarly, it is outside the interest of the law of procedure under what circumstances the police obtained the informations that founded the suspicion.[26]

In fact, the rules of the law of criminal procedure do not cover the so-called proactive activity, of a revealing and researching nature, destined to detect injuries that are still unknown. For this reason, the science of the law of procedure cannot be blamed for having omitted to analyze the relationship that may be supposed between the dark field and the authorities' way of functioning.

As a matter of fact, science is at liberty to disregard the frames laid down by positive law. Nevertheless, almost unsurmountable obstacle appears in this case. In fact, this is a field making orientation impossible, in the almost complete absence of published rules which would give the science the required orientation. In view of this complicated and delicate conditions, the interests of prevention, public order and, the more, the success of the prosecution of crime may easily come into conflict with the command of legality. It is, furthermore,

[26]The high attention paid to the starting date of functioning of the law of procedure is spectacularly demonstrared by the Hungarian Code of Procedure now in force. Thus, the well-founded suspicion of a criminal act is declared as condition of the institution of proceedings among the fundamental provisions of the Code. At the same time, criminal proceedings may be instituted on report, on notice, or on the observation of the investigating authority, as it is laid down in paragraph 121 of the Code. There is not a complete harmony between the two provisions, as a report is not always sufficient for forming a well-founded suspicion, consequently for instituting criminal proceedings. Doubtless to say, priority is due to the rule of fundamental importance of the Code, laying down the factual condition of instituting proceedings, when the conflict between the two afore-mentioned provisions is regarded. This possible conflict is released, however, by the very text of the Code, allowing to complete a report. In this process various acts of proceedings may be then carried out, to confirm or dispel the suspicion. Taking into consideration, nevertheless, that the actual criminal proceedings were not instituted by that time as yet, the completion of the report cannot form part of the investigation either. For this reason, special provisions are to be considered for the procedural acts in question instead of the general rules of the procedure /see item 51. of the instructions No. 4/1980 BM of the Minister of Interior /.

a paradox situation that, the stricter conditions are laid down by the law for invoking criminal proceedings, with a view to reduce this way the possibility of the unjustified and unnecessary molestation of the citizens, the broader will be the extent of the deregulated field within the activity of the authorities, withheld from recognition and control.

The lack of interest in the selective activity of the authorities may be surely attributed to the circumstance that a systematic research work in latent criminality has been started only recently. True, the fact that part of the criminal acts and their perpetrators remained undetected was known also previously. In the absence of authoritative research findings, the "law of constant conditions" claiming that total criminality was represented by the known cases, could hold its stand firmly.[27] If the registered and the undetected criminality have, in fact, the same structure, and the detected and the unknown offenders have the same characteristics, then legality retains its validity, as a "norm of programme" at least. The dark field can be explained by imperfect prosecution so it is only a flaw that can be removed. Thus the full realisation of the command of legality requires not more than the increase of the quality of prosecution; even the increase of the staff may be sufficient. In terms of the "law of constant conditions" the delicts that become known get to the surface from the mass of the criminal acts by a selection at random. The actual structure of criminality is not distorted by the selective interference of the authorities; as a result, science can remain with the analysis of the data registered by criminal statistics. It has thus no sense to confront the thesis of legality with the authorities way of proceding as no regularities will be revealed.

[27]Cf. KORINEK, L.: A látens bünözés vizsgálatának módszertani kérdései. Dolgozatok a közgazdaságtudományok köréből /Methodological problems of the investigation of latent criminality/. Pécs, 1985. p. 3.; SACK, F.: Dunkefeld. In: Kaiser - - Kerner - Sack - Schellhos /ed./: Kleines Kriminologisches Wörterbuch. C.F. Müller, Heidelberg, 1985. p. 81.; SCHIMA, K.: Entwicklungstendenzen in der Kriminologie. In: Strafrechtliche Probleme der Gegenwart. 4. Bundesministerium für Justiz, Wien, 1976. p. 91.

Nevertheless, research findings questioning the "law of constant conditions" came to light in an increasing number from the 1960-ies onward. Recent investigations studying latent criminality which referred no more to "estimates based upon everyday professional experiences" but, instead, made use of the methods of empirical sociology[28] indicated an actual difference between the structures of the dark field and registered criminality. They refuted also the thesis which claimed the identity of the characteristics of registered offenders and those who remained undetected. In particular, the common conception was questioned which stated a close relationship between social status and criminality.[29]

The difference between latent criminality and that registered in criminal statistics led the suspicion, understandably, to the crime control agencies. The assumption that the difference in the structure of registered and complete criminality is due to the selective way of proceeding of the prosecuting organs, seemed to be reasonable. This suspicion was confirmed by investigations carried out with the method of sociological observation. They indicated, indeed, that, in the absence of appropriate checking, the prosecuting organs selected the reports of the population that led to the institution of criminal proceedings not exclusively on the basis of legal criteria. Thus they have had the liberty to take decisions at their discretion, without being checked, whether or not a conduct in a given situation is qualified as infringement of a penal norm. They have been, furthermore, in a position, by selecting the targets of their proactive activity to pre-determine to scope of criminal acts and the group of the offenders that will be then figur-

[28]For the two fundamental methods of research in latent criminality see: SACK: op. cit. p. 80.

[29]Cf. SACK: op. cit. p. 83.; PFEIFFER, D.K. – SCHEERER, S.: Kriminalsoziologie. Kohlhammer, Stuttgart, 1979. p. 23.; CHRISTIE, N.: Scandinavian Criminology Facing the 1970's. Scandinavian Studies in Criminology. Oslo - Borgen - Tromsø, 1971. Vol. 3. p. 126.

ing in criminal statistics.[30]

Depending on the personal approach of those applying the law, the idea of selection resulted either in that they took offence at it,refused or they felt remorse. Those, however, who suffered from a bad conscience found support in their naive optimism. As they argued, the recognition of the fact of a distorting selection meant already the first step toward its elimination. With this in view, it was only the question of good intentions and honour that those administering justice apply the statutory rules not in a selective but in a "compensating" way, thus eliminating discrimination doing injustice to the lower social groups concerned.[31]

The reply given to the research findings on latent criminality by sociologists was, however, not so naive. Being objective and unimpassioned, they declared that selection and the disproportionately high representation of the handicapped social groups within the registered offenders was a necessary implication of the administration of justice in hierarchically structured societies. This view was summed up most strikingly by H. Popitz in his work "The preventive effect of non-knowledge".[32]

According to the initial thesis of Popitz, a society in which all violations of law are detected is not only unbearable but it destroys even its own norms. In fact, the criminal law, the administration of justice, and penalties may namely fulfil their useful functions, i.e. the increase of solidarity within the group, the maintenance of the intensity of collective feelings, etc. only as long as the infringement of norms appears as an exceptional phenomenon, without becoming known all over the society.

[30] See: SCHIMA: op. cit. p. 94.; FEEST, J.: Die Situation des Verdachts. In: Feest, J. - Lautmann, R.: Die Polizei. Soziologische Studien und Forschungsberichte. Westdeutscher Verlag, Opladen, 1971. pp. 71-92.

[31] For this view cf.: SCHÜNEMANN, H.W.: Selektion durch Strafverfahren? Die Bedeutung des labeling approach für unser Strafverfahren, Deutsche Richterzeitung, September 1974.

[32] POPITZ, H.: Über die Präventivwirkung des Nichtwissens, Recht und Staat, J.C.B. Mohr, Tübingen, 1968. p. 350.

Latent criminality, i.e. non-knowledge is thus in the theory of Popitz not only a necessary phenomenon; on the contrary, it is to be welcome. The tension between the necessary rigidity of the norms and the flexibility expected from the administration of justice is then released by non-knowledge; overlooking the breaches of the norms that became obsolete, their life can be prorogated. Thus, there will be no obligation to revoke the dying rules, reducing the way the respect of the entire norm system. Non-knowledge will also help to the formation of a favourable image on the validity of the norms in the society. On the contrary, the frequent ventilation of the breaches of norms, i.e. drawing public attention to these affairs would reveal that the rules are much more sensitive to injuries than it is desirable.

In the view of Popitz, sanctioning is evidently a matter of social status. Indeed, the respect of the norms is not at all independent from the prestige of those who breached the norms and were put on the pillory. With the punishment of offenders in a high social stand the reputation of the penal system may be improved but the respect of the violated norm will suffer from it without doubt.

Summing up the preceding, it is clear that, as soon as the frequency of the application of sanctions passes a given limit, it becomes incapable to comply with its useful functions. The social efficiency of sanctions can be preserved only as long as they appear to be exceptional, i.e. as long as the majority does not get what it would deserve. Thus, the preventive power of sanctions subsists only as long as the preventive effect of non-knowledge is upheld.

6. Lessons

Empirical research on hidden criminality was started in Hungary only recently[33], an the selection by the authorities

[33]Cf. also for the history of investigations in latent criminality: KORINEK, L.: Rejtett bünözés /Hidden criminality/. Közgazdasági és Jogi Könyvkiadó. Budapest, 1988.

was qualified a taboo for a long time. True, it happened almost 15 years ago that L. Viski formulated his integrated theory of criminality and, within this context, the analysis of the selection by the authorities and the procedure of definiton in the process of becoming a criminal.[34] His concepts had a productive effect upon the theory of criminology; nevertheless, Hungarian criminology hardly started to analyze the problems of legal policy and constitutional law as well as the consequences for criminal policy originating from the selection. The following remarks are limited to consider the dilemma affecting the relationship between legislation and the application of the law.

It was mentioned in the preceding that the principle of legality pronounces the rule of law and the primacy of the legislator. Accordingly, the organs applying the law are subjected to the legislative organs, they are bound to comply with the volition of the legislator, and are not entitled to consider at discretion the enforcement of the law. It was also dealt with that, as compared to the said principle, the idea of opportunity constitutes a release for those applying the law from their strict submission. Nevertheless, the legislator retains his predominant role even if he makes concessions to considerations of opportunity. Anyway, he reserves the right for himself to delimitate the frames of discretion even if this is made frequently using diffuse concepts, such as references to the circumstances of the given case, etc.

On the other hand, it is a self-containment of the legislator if, although the command of legality is prescribed, but it is clear that the organs applying the law are unable to comply with it. By declaring legality, the legislator disclaims to delimitate the actually existing and, the more, unavoidable, discretion. Under these circumstances the prosecuting organs are compelled to define, on their own, the kinds of criminal conduct that should be prosecuted, and the offences to which they can turn a blind eye. It would be unjust to blame them for this,

[34] VISKI, L.: Integrált bünözéselmélet és közlekedési kriminológia /Integrated theory of criminality and the criminology of traffic offences/. Jogtudományi Közlöny, 9/1973.

as the legislator charged then here with an impracticable task diverting, at the same time, his responsibility for specifying the relevant priorities.

All this should not say, however, by no means as if the conditions outlined above were desirable or even acceptable. First, professional reservations would disfavour to allow the prosecuting authorities to decide on their own, without being checked, to concentrate their resources to the prosecution of this or that kind of criminal conduct. True, their professional competence cannot be doubted, i.e. they must have the widest knowledge of the entirety of criminality. Nevertheless, organizational interests, performance-mindedness, the promise of a quick and easy success or the expectations of the public may frequently induce them to become incapable to assess, in an objective way, the forms of behaviour that are particularly dangerous to the society,[35] and it may be hardly possible to correct and erroneous decision subsequently. In fact, once the prosecuting authoriy took the decision to proceed to action, it will furnish the evidence confirming the correctness of its decision by itself, and the rule of the "self-fulfilling prophecy" will work, i.e. with the increase of the intensity of detection, the proportion of the criminal acts selected for prosecution will grow within registered criminality, confirming thus, apparently, the correctness of the selection.

Beyond professional reservations, a further argument against the uncontrollable selection of the prosecuting organs reads that the achievements attained in the field of the increase of the professional level of legislation and the administration of justice and their democratization will have thus only a relative value. Large-scale professional and social discussions preceding codification will be of no use it he selection of the norms, actually being enforced, will be withdrawn from the checking of those entitled to legislation and of the general public.

[35] See: FEEST: op. cit. p. 71.

The consequences of the foregoing expoundings make it imperative to face openly the limits of legality, to make public and thus controllable the process of decision in the course of which the "piths of prosecution" are formed, and to lay down the results in a public norm.

Evidently, this is a very delicate and difficult task as fixed reflections have a paralysing effect. Anyway, we think that the norms of criminal law have a concrete effect by their very existence, even without making them actually operated and we are afraid that, by an open declaration of the selective prosecution of criminal behaviour the supposed general preventive effect of the norms would be reduced.

Nevertheless, a solution has to be found. Continuing to delude ourselves and refusing to face the fact openly that the demand of legality is impracticable, we would agree with the views of Popitz unavoidably, i.e. accepting his thesis that the order of society can be maintained only by deception and misleading the general public. Also, we would accept thus the idea of a certain complicity of those engaged in legislation and the application of the law: the legislator would declare, indeed, the demand of legality knowing, at the same time, the impossibility of prosecuting all injuries to the law, as well as its undesirability. On the other hand, the prosecuting organs would take care for the continued "fragmental" application of criminal law, so that the breach of a norm remain an exceptional case and the majority should not get what it would deserve.

ЛЕГАЛЬНОСТЬ И УГОЛОВНОЕ ПРЕДСЛЕДОВАНИЕ

К. Бард

Автор попытается выяснить понятие легальности. В ходе этого он указывает на различия между легальностью и производством экс оффицио и разделяет тезис легальности на элементы. Из этих последних подробно изучаются проблемы, связанные с обязанностью раскрыть преступление. Автор обращает внимание на конституционно-правовые дилеммы, вытекающие из селективного уголовного преследования, а также на проблему разделения властей между законодателем и правоприменителем. В связи с этим ставится вопрос об обоснованности жесткого придерживания тези-

са безусловного уголовного розыска при условии, что это ставит перед органами уголовного розыска неразрешимую задачу.

LEGALITAT UND STRAFVERFOLGUNG

K. Bárd

Der Author versucht die Klärung des Begriffes der Legalität, und beweist im Laufe deren die Abweichung von Legalität und Offizialität /Verfahren amtswegen/, schliesslich erörtert die einzelnen Elemente der Legalität. Darunter erörtert die Studie am eingehendsten die Probleme, die Aufklärungspflicht der Straftaten betrifft. Es wird aud die verfassungsrechtlichen Dilemmas hingewiesen, die sich auf der selektiven Strafverfolgung ergeben, sowie auf das Problem, welches sich daraus ergibt, dass eine gewisse Verschiebung der Macht zwischen der Gesetzgebung und der Rechtsanwendung feststellbar ist. In Zusammenhang damit wird die Frage gestellt: ist begründet auf die These der bedingungslosen Strafverfolgung bestehen, wenn die Erfüllung dieser These für die strafverfolgenden Behörden eine unlösbare Aufgabe bedeutet.

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INFORMATIONES

BEMERKUNGEN ZU DEM NEUEN UNGARISCHEN GESELLSCHAFTSGESETZ

1. Am 1. Januar 1989 ist in Ungarn das Gesetz No. VI. von 1988 über die Wirtschaftsgesellschafter (Gesellschaftsgesetz) in Kraft getreten. Zur gleichen Zeit wurden unter anderen die alten Vorschriften über die Aktiengesellschaften von dem Jahre 1875 und über die Gesellschaften mit beschränkter Haftung von dem Jahre 1930, sowohl die Regelung über die wirtschaftlichen Assoziationen von dem Jahre 1978 ausser Kraft gesetzt. Im nachfolgenden soll es versucht werden die wichtigsten Merkmale und Grundprinzipien des neuen, 339 Artikel umfassenden Gesetzes kurz zusammenzufassen.

2. Das Gesellschaftsgesetz regelt sechs Gesellschaftsformen, und zwar:

- die offene Handelsgesellschaft,
- die Kommanditgesellschaft,
- die Vereinigung,
- das gemeinsame Unternehmen,
- die Gesellschaft mit beschränkter Haftung,
- die Aktiengesellschaft.

3. Das Gesetz geht von dem Grundprinzip der "numerus clausus" der Gesellschaftsformen aus, nur in der, von dem Gesetz gekannten Form,und nur auf der von dem Gesetz geregelten Weise kann eine Gesellschaft gegründet werden. Da aber die Regelung mit Ausnahme der AG grundlegend dispositiv ist, können die Parteien von dem Gesetz abweichen, es sei denn, das das Gesetz die Abweichung ausdrücklich verbietet. Im Falle der AG ist die Lage verkehrt, die Abweichung ist nur dann möglich, wenn dies von dem Gesetz ausdrücklich erlaubt ist.

Die einzelnen Gesellschaftsformen, mit Ausnahme der Vereinigung und des gemeinsamen Unternehmens sind die in den westeuropäischen Rechten gut gekannten "klassischen" Formen. Inhaltlich versuchte man eine Regelung auszuarbeiten, die einerseits die Lösungen des früheren ungarischen Rechts, wo es möglich war, bewahrte und anwendete, auf der anderen Seite aber von den neuesten, internationalen Entwicklungstendenzen des Gesellschaftsrechts Gebrauch machte. Im Falle der Vereinigung und des gemeinsamen Unternehmens war die Lage anders, diese Formen stammen von der Regelung von 1978, und ihre Übernahme (mit einer Überbearbeitung der Teilregeln) hatten vor allem wirtschaftspolitische Gründe. Die Vereinigung, die auch im Ausland gekannt ist, ist für Verwirklichung von Kooperations- und Integrationsziele, bzw. für Erfüllung von Aufgaben der fachlichen Interessenvertretung geeignet. Bei dem gemeinsamen Unternehmen geht es um eine Form, die sehr wahrscheinlich in der Zukunft schrittweise seine Bedeutung zu Gunster der GmbH verlieren wird. Bei einem gemeinsamen Unternehmen haften nämlich die Mitglieder als Bürgen unbeschränkt für die Schulden ihres Unternehmens. Doch schien es nötig den heute existieren-

den gemeinsamen Urternehmen die Möglichkeit der unveränderten und ungestörten Funktionierung zu sichern, wobei einer Umwandlung nichts im Wege steht.

4. Dem Gesetz gemäss verfügen alle, die hier geregelten Gesellschaftsformen über die juristische Persönlichkeit, mit Ausnahme der OHG und KG. Alle Formen haben aber eine Firma, demzufolge müssen sie in das öffentliche Firmenregister eingetragen werden. Im Vergleich mit dem früheren ungarischen und dem geltenden deutschen, österreichischen, und schweizerischen Recht gibt es bei den offenen Handelsgesellschaften und Kommanditgesellschaften zwei wesentliche inhaltliche Aenderung. Das Vermögen der Gesellschaft steht in dem Eigentum der Gesellschaft (die Doktrin des Gesamthandsvermögens wurde aufgegeben) und obwohl die Hafturg der Mitglieder für die Gesellschaftsschulden unbeschränkt und solidarisch geblieben ist, aber nicht mehr unmittelbar, d.h. die Gläubiger müssen und können zuerst nur gegen das Gesellschaftsvermögen auftreten.

5. Von dem aktienrechtlichen Teil ist hervorzuheben, dass der Entwurf, zum ersten Male konzernrechtliche Regeln erhält, die die Erwerbung der Beteiligung in einer anderen AG regelt. Der Entwurf kennt in dieser Hinsicht drei Begriffe, bzw. regelt drei Tatbestände: Erwerbung von bedeutender Beteiligung, Erwerbung von Mehrheitsbeteiligung, und das Zustandekommen gegenseitiger Beteiligung. Grundelemente des Konzernrechtes sind: Veröffentlichung der Erwerbung von Beteiligung, bzw. Mitteilurg an die andere Gesellschaft, in den Fällen von 75%-ige Mehrheitsbeteiligung sogar Haftungsdurchgriff.

Der Aufbau und die Organisation der Aktiengesellschaften folgen das Aufsichtsratsystem, ein Vorschlag, für das, in dem englischen und schweizerischen Recht angewendeten Boardsystem wurde während der Ausarbeitung des Gesetzes von der Mehrheit in der Kodifikationskommission abgewiesen.

6. Das Gesetz kennt die Institution der Einmanngesellschaft, sowohl bei den Gesellschaften mit beschränkter Haftung, wie bei den Aktiengesellschaften. Ziel dieser Regelung ist, dass die staatlichen Unternehmen, die bisher für die Schulden ihrer Tochterunternehmen als Bürgen unbeschränkt hafteten, Einmann-GmbH gründen können. Das Recht der Gründung einer Einmann-AG ist dem Staat vorbehalten, diese Möglichkeit gewinnt voraussichtlich Bedeutung, wenn der Staat als einzelner Eigentümer eine Gruppe von Unternehmen zusammenfassen will. Das Gesetzt schliesst aber nicht aus, dass ausser dem erwähnten Kreis andere Personen Einmann-GmbH gründen. Für die Einmanngesellschaften sind die allgemeinen Regeln der GmbH bzw. der AG mit den besonderen, einen erhöhten Gläubigerschutz dienenden Vorschriften anzuwenden.

7. Das Gesetz sichert eine einheitliche Regelung, in einer Gesellschaft können ohne Beschränkungen ungarische und ausländische Personen, juristische und Privatpersonen, (so z.B. staatliche Unternehmen, Genossenschaften, u.s.W.) teilnehmen. Gesellschaften mit 100%-er privaten Beteiligung sind auch möglich, so können z.B. ungarische Staatsbürger in der Zukunft Aktiengesellschaften gründen. Bei der ausländischen Beteiligung gibt es nur eine Schranke, aus Gründen der Verkehrssicherheit und das Gläubigschutzes verlangt das Gesetz dass der Ausländer, der in Ungarn in einer Gesellschaft teilnimmt, über eine Firma verfügen soll. Die Existenz einer Einzelfirma genügt. Diese

Regel bezieht sich aber nicht auf die Erwerbung von Aktien, hier können auch ausländische Privatpersonen auftreten. Ausländer können aber nur Namensaktien erwerben. Eine andere Vorschrift sichert die Möglichkeit, dass ein Gesetz oder eine Regierungsverordnung gewisse Tätigkeitsbereiche dem Staat und/oder den staatlichen Organen, bzw. den staatlichen Wirtschaftsorganisationen vorbehalten kann, in diesem Fall können diese Art von Tätigkeiten von einer Gesellschaft nur dann ausgeübt werden, wenn die Gesellschaft wenigstens ein, dazu berechtigtes Mitglied hat.

8. Das Gesetz garantiert die Freiheit der Assoziation, die oben aufgezählten Personen und Organisationen können unter einander, und auch gemischt Gesellschaften gründen. In einer Gesellschaft können auch andere Gesellschaften teilnehmen.

9. Die Regeln der ausländischen Teilnahme in den Gesellschaften mit Sitz in Ungarn sind völlig neugestaltet worden. Als Grundprinzip sichert das Gesellschaftsgesetz in seinem Allgemeinen Teil den vollen Schutz der ausländischen Investitionen in Ungarn. Daneben deklariert das Gesellschaftsgesetz, dass die Erwerbung von ausländischen Beteiligungen die das 50 % nicht übertreten, keine behördliche Genehmigung braucht. Daneben ist der Gewinnanteil des ausländischen Gesellschafters frei und ohne devisenbehördliche Genehmigung nach Ausland transferierbar. Im Falle von Mehrheitsbeteiligung, wobei auch ausländische Beteiligung von 100 % zu verstehen ist, braucht man nur eine einzelne Genehmigung, die gemeinsam von den Ministern für Handel und Finanzen ausgegeben werden. Diese Genehmigung, die man zu der Erwerbung der das 50 % übertretende Beteiligung braucht, bedeutet zugleich die devisenbehördliche Genehmigung, zu dem freien Devisentransfer.

10. Die Fragen der Umwandlung werden in einem separaten Gesetz geregelt werden. Hier unterscheidet man drei verschiedene Fälle, die Umwandlung einer Gesellschaft in eine andere Gesellschaftsform, die Umwandlung eines staatlichen Unternehmens in eine Gesellschaft und die Umwandlung einer Genossenschaft in eine Gesellschaft. Vor allem um den letzten Fall wurde heftig diskutiert, und die Meinungen gingen stark auseinander. In dem ungarischen Recht betrachtet man die überwiegende Mehrheit die Genossenschaften, die übrigens in dem Wirtschaftsleben des Landes eine sehr bedeutende Rolle spielen, nicht als eine Gesellschaft. Darum regelt das Gesetz die Genossenschaften, selbst als Gesellschaftsform nicht. Auf der anderen Seite können die Genossenschaften eben so, wie alle andere Wirtschaftsorganisationen, in der Gründung einer Gesellschaft teilnehmen, oder in eine Gesellschaft eintreten. Der Entwurf eines Umwandlungsgesetzes, der voraussichtlich im Laufe von 1989 vor das Parlament kommen wird, wird natürlich die Umwandlung im Rahmen des Gesellschaftsgesetzes regeln. Die Grundprinzipien des Gesetzes bleiben unberührt, auch diejenige, die eindeutig deklarieren, dass die Mittel, die dem Staat zur Verfügung stehen, um eine eventuelle Reprivatisierung vermeiden zu können, betont nicht von behördlichen, sondern von gesellschaftsrechtlichen Natur sind. So kann der Staat unter anderen die Aktien eines staatlichen Unternehmens, das sich in die Form einer AG umwandelt,aufkaufen, um fremdes Eigentum an der Gesellschaft verhindern zu können. In einem begrenzten Fall kennt das Gesetz die Mehrstimmrechtsaktien, die eine entsprechende Mehrheit des Staates sichern sollen.

11. Die Rolle des Firmengerichts wurde bedeutend erhöht. Das Firmengericht trifft die Entscheidung über die Eintragung der Gesellschaft in das Firmenregister, und übt als einziges Organ die Gesetzlichkeitsaufsicht über die Tätigkeit der Gesellschaften aus. Auch aus diesem Gesichtspunkt hat die öffentlichkeit eine grosse Bedeutung. Unabhängig davon, dass das Firmenregister öffentlich ist, werden alle, in dem Gesetz aufgezählten Angaben der Gesellschaften (bei der Gründung, während ihrer Tätigkeit, bei der Umwandlung und Liquidation) in einem offiziellen Anzeiger veröffentlicht.

12. Das Gesetz regelt die Befugnisse der Gewerkschaften nicht, diese Fragen wurden in anderen Rechtsvorschriften gelöst, die unverändert bleiben. Auf der anderen Seite aber regelt das Gesetz die Mitbestimmungsrechte der Arbeitsnehmer. Bei solchen Gesellschaften die mehr als 200 Arbeitsnehmer haben, und bei denen die Wahl eines Aufsichtsrates möglich, oder zwingend vorgeschrieben ist (gemeinsames Unternehmen, GmbH, AG), werden 1/3 der Mitglieder des Aufsichtsrates unmittelbar von den Arbeitsnehmern gewählt.

13. Das Gesellschaftsgesetz knüpft sich eng an das Zivilgesetzbuch an. Die Definitionen der einzelnen Gesellschaftsformen wurden in das ZGB mit einer Modifizierung eingebaut, für die Formen ohne juristische Persöhnlichkeit sichern die Regeln der (einfachen) zivilrechtlichen Gesellschaft, und dadurch des Allgemeinen Teils des Schuldrechts den Hintergrund. Für die anderen Formen sind in dieser Hinsicht die allgemeinen Vorschriften über die juristischen Personen und die Grundsätze des ZGB's relevant.

14. Zusammen mit dem Gesellschaftsgesetz ist am 1. Januar d.J. das Gesetz No. XXIV. über die ausländischen Investitionen in Ungarn in Kraft getreten. Dieses Gesetz fasst die wichtigsten Regeln zusammen, die für die ausländischen Investoren wichtig sind, so wiederholt unter anderen diejenigen Grundprinzipien des Gesellschaftsgesetzes, die sich auf die Gründung der Gesellschaften mit ausländischen Beteiligung beziehen. Auch dieses Gesetz garantiert den Schutz der ausländischen Investitionen, und deklariert, dass die Gesellschaften mit ausländischer Beteiligung mit den in dem Gesetz aufgezählten Ausnahmen als ungarische Wirtschaftsorganisation zu betrachten sind. Das Gesetz bestimmt die Bedingungen und das Mass der Steuerbegünstigungen, die diese Gesellschaften erhalten können, daneben enthält spezifische Regeln wie z.B. die über die Gesellschaften auf Zollfreigebiet.

T. Sándor

LA LEGISLATION FINANCIÈRE

1. En analysant le droit financier des temps récents, une règle de droit relativement ancienne (le décret-loi No 12 de l'an 1984) mérite d'être évoqués bien qu'au fond elle a connue un échec. Le règle de droit sur la contribution à l'aménagement du territoire fait appel aux idées de la Déclaration des droits de l'homme et du citoyen, notamment à l'idée selon laquelle les contribuables ont le droit de contrôler directement l'utilisation faite de leurs contribution. (Il faut souligner à l'intention de ceux qui éventuellement ne l'ont pas remarqué que le modèle initial ou bureaucratique du socialisme bien qu'il ait reconnu et même propagé que c'est le travailleur qui produit la plus-value, n'a pas rattaché des droits politiques à la production de la plus-value.) La règle de droit mentionnée a introduit l'idée des libertés et des droits civiques dans les affaires financières de l'Etat, premièrement en accordant aux contribuables potentiels le droit à décider par vote à quelles fins ils offrent leur contribution (école, piscine, établissement social, etc.) et deuxièmement en les autorisant à controler directement l'utilisation de leur contribution fiscale versée à cette fin. Bien que l'expérience – comme déjà dit – ait échosé, elle fut une véritable révélation; les causes de son échec sont fort simple: les frais de cette procédure se sont avérés très hauts, les citoyens mis en minorité lors du vote pour choisir les objectifs ne pouvaient pas s'identifier avec les objectifs des autres; les citoyens mis en minorité ont estimé qu'ils ont un fondement moral pour ne pas payer la contribution, mais sans les contributions de la minorité il ne vaut pas la peine de commencer la réalisation; on aurait pu opérer le recouvrement des contributions des citoyens à l'instar de celui des impôts, mais cette méthode surait violé le caractère volontaire (latent) de l'action; le budget a refusé de compenser par des subventions les sommes manquantes, ce qui a impliqué des deficits dans le budget des recettes du conseil. Pour les motifs déjà mentionnés une large polémique s'est engagée dans la presse sur la démocratie locale et nationale, sur les rapports entre les finances de l'Etat et les droits politiques, sur les relations entre les organes représentatifs, la bureaucratie et les citoyens, etc.

2. C'était à prévoir qu'en connexion avec l'impôt sur les revenus des particuliers (loi No IV de l'an 1987) proposé par le gouvernement les idées et les passions jusqu'ici refoulées concernant la détermination du contenu des droits politiques vont ressurgir avec une vigueur encore plus forte qu'à l'occasion de l'introduction de la contribution à l'aménagement du territoire. Les thèmes du débat se sont élargis étant donné qu'il ne s'agissait plus d'un impôt de caractère local, mais d'un impôt national. Ainsi, la capacité de l'économie, le système des subventions accordées par l'Etat, le régime des salaires, les allocations sociales, le syndicat, le parti et d'autres questions sont passées au premier plan. D'une façon compréhensible les experts ont invoqueé pour se justifier qu'on ne peut pas s'attendre à ce que le système futur de l'impôt sur les revenus des particuliers offre des solutions à tous les

problèmes de la société. C'est sans doute vrai.

Examinons donc si le système de l'impôt sur les revenus des particuliers a réussi à donner des réponses aux questions qui rentrent dans sa compétence. Le système de l'impôt sur les revenus des particuliers doit satisfaire à l'exigence selon laquelle les revenus égaux doivent être grevés d'impôts égaux. Ce principe n'aurait pu se réaliser qu'au cas où ceux qui gagnent plus payent dès le départ plus d'impôt; mais cela aurait eu pour conséquence que chacun aurait dû renoncer à une partie de son revenu, et ceux qui gagnent plus, auraient dû renoncer à une partie plus grande. Conscient de l'impopularité d'une telle mesure et du fait que l'opposition aurait pu rendre impossible que le projet de la nouvelle loi relative à l'impôt soit présenté au parlement, les organes politiques ont décidé que les salaires touchés d'après l'emploi principal doivent être augmentés d'une somme équivalent à l'impôt à payer sur les salaires à partir de 1988. Même cette mesure ne supprime pas tous les conflits, car elle frappe évidemment la minorité dont le revenu provient de plusieurs relations de travail. Outre l'égalité devant l'impôt, les dispositions de la loi relative aux revenus des particuliers doivent assurer que les dépenses liées à l'acquisition du revenu puissent être déduites du revenu imposable. A cet égard la loi a prescrit un forfait fixe (1000 forint par mois) dans le cas des employés et des ouvrier, forfait qui, comme toute somme forfétaire est insensible; en tant qu'exemple il suffit de mentionner que cette mesure n'a pas exempté de cette prescription ceux qui travaillent dans l'équipe de nuit.

Pour expliquer cette rigidité, nous rappelons qu'en connexion avec les titres donnant droit à un abattement une pression énorme a pesé sur le gouvernement, presque tous les groupes d'intérêt, toutes les branches de profession pouvaient avancer des arguments en faveur d'une réduction. Le gouvernement ne pouvait pas se mettre autrement à l'abri des reproches qu'en réagissant comme il l'a fait: c'est-à-dire assigner des limites extrêmement étroites aux faveurs fiscales. Sans doute, l'inobservation du nombre des personnes à charge a suscité la plus grande tempête en matière du bénéfice des faveurs fiscales, mais puisqu'il a été décidé déjà plus tôt que la famille, comme unité, ne sera pas imposable, on n'a pas pu s'attendre à ce que les auteurs du projet manifestent une grande sensibilité à l'égard de la politique sociale.

En outre même la conception des auteurs du texte n'a pas été impeccable, puisque la "parcimonie" déjà mentionnée s'accompagnait de temps en temps d'un laconisme qui (surtout en connexion avec les revenus d'origine étrangère) a rendu indispensable que le Ministère des Finances publie une collection d'interprétations comprenant plus de cent points. Cette nécessité d'interprétation postérieure est une certaine maladie infantile de la législation socialiste qui se manifeste également au cours de la réglementation d'autres sujets; et qui tire son origine du fait que la législation n'a pas le courage de créer des lois détaillées et volumineuses. L'analyse des raisons nous mènerait trop loin; en revanche nous préférions attirer l'attention sur quelques traits positifs. Reconnaisaant que le penchant à l'épargne est très faible en Hongrie, la loi récompense d'une part les dépôts à long terme par des avantages fiscaux et

d'autre part grâce aux connaissances tirées des résultats de recherches, elle rémunère plus fortement les revenus qui proiennent des oeuvres intelecctuelles (oeuvres qui tombent sous la protection du droit d'auteur, inventions, innovations). Un autre trait positif n'ayant pas un caractère de droit matériel, mais plutôt de droit procédural, consiste dans le fait que la loi offre la possibilité de contester devant le tribunal les décisions prises par les autorités fiscales non seulement en ce qui concerne le titre de l'imposition, mais également en ce qui concerne le montant de l'impôt. Cette disposition est une de celles qui cherchent à créer l'égalité entre le travailleur et l'apparail de l'Etat. Il faut mentionner que la révision judiciaire des décisions de l'administration publique revêt dans le droit administratif socialiste plutôt un caractère exceptionnel que général, le décret 63/1981./XII.5.M.T. en est la preuve.

Le paragraphe qui permet qu'on oblige les citoyens à faire une déclaration sur leurs biens est également important. L'objectif de cette disposition est extrêmement simple: par l'accroissement de la fortune le payement de l'impôt sur le revenu est contrôlable. Mais du point de vue juridique la conception de la loi est bien contestable: si le citoyen n'a pas fait jusqu'au 31 mars 1988 une déclaration sur ses biens, c'est lui qui doit justifier concernant chaque objet de propriété qu'il l'a acquis avant cette date limite. En effet, cette présomption légale déplace le fardeau de la preuve au citoyen, bien que nous sachions: selon le principe de base du droit pénal c'est le ministère public qui doit fournir les preuves de l'accusation, et les preuves ne peuvent pas être remplacées par une présomption légale.

Malgré cette critique, malgré le fait que les prises de position du Ministère des Finances n'ont pas la valeur de sources de droit (ce qui signifie simplement que selon la loi No XI de l'an 1987 relative à la législation ces prises de position ne sont aucunement obligatoires au juges au cours des procès qui auront lieu en 1989), la loi relative à l'impôt sur les revenus des particuliers revêt une très grande importance du point de vue politique: l'opinion selon laquelle les recettes provenant des biens propres à l'Etat couvrent les frais de son entretien est devenue insoutenable, par conséquent les paiements croissants des citoyens effectués à l'intention du budget jettent les bases d'un contrôle des finances de l'Etat plus concret et plus poussé et par cette voie de l'ensemble de la bureaucratie. (C'est pas un hasard que la conception de la nouvelle constitution contient déjà le plan de la création d'une Cour des Comptes indépendante du gouvernement et soumise à l'Assemblée nationale.)

3. Un débat beaucoup moins important a précédé la loi relative à la taxe sur la valeur ajoutée (loi No V de l'an 1987) dont les effets directs exercés sur la vie économique sont selon toutes prévisions beaucoup plus grands que ceux de l'impôt sur les revenus des particuliers. Les compensations prescrites n'étaient pas réalisées d'une façon globale, bien que les experts aient attiré l'attention sur le danger qu'au moment du changement l'actif des biens englobera l'impôt brut cumulatif sur le chiffre d'affaires, par conséquent l'exonération parti-

elle ou totale des stocks anciens est nécessaire, en outre la réforme de l'impôt se répercutera également sur les obligations contractuelles (c'est-à-dire le prix déterminé par contrat reste en vigueur, le fait qu'on a établi le prix sur la base de l'impôt antérieur, de l'impôt cumulatif sur le chiffre d'affaires) ne produit pas de changement à cet égard, par contre dans l'avenir – à partir du premier janvier 1988 – c'est la taxe sur la valeur ajoutée qui est en vigueur.

Les désavantages liés à l'introduction de la taxe sur la valeur ajouté – soulignons-le – prévisibles, ont été contrebalancés par les avantages attachés par les préparateurs en tant qu'espérence à l'entrée en vigueur de la loi. Parmi ceux il faut mentionner tout d'abord que la fluctuation du montant des recettes (croissement ou diminution) provenant de la taxe sur la valeur ajouté va rapidement (et pas lentement comme antérieurement) informer le gouvernement dans quels secteurs les chiffres d'affaires ont connus un croissement ou contrairement une régression, ce qui permet que des mesures stimulant la conjoncture soient prises immédiatement.

La valeur principale de la loi relative à la taxe sur la valeur ajoutée consiste dans le fait qu'elle a introduit dans la pensée publique la notion de l'activité de l'entrepreneur et par cela elle a rendu uniforme toute activité qui apporte de revenu. La loi permet à constater qu'il n'y a pas de différence entre entreprise et entreprise, les entreprises fondées par l'Etat doivent être soumises à la même réglementation que celles fondées par des membres de coopératives ou par des personnes privées. On ne saurait nier que la définition de la notion "facture" présente un grand pas en avant; en effet, en faisant un tour d'horizon des vingt années du système de la direction et gestion économique indirecte, prenant naissance en 1968, même ce système n'a pas pu "tenir en bride" des acteurs de l'économie en ce qui concerne de la compatibilité. Enfin la loi relative à la TVA a mis fin à la situation humiliante qui s'est manifestée dans le fait que tandis que les Hongrois avaient la possibilité d'exiger le remboursement de la TVA de la part des pays de l'Ouest, cette possibilité ne pouvait pas être offerte aux citoyens des pays de l'Ouest sur la base de réciprocité.

Après de longs débats la direction politique et économique hongroise a accepté la thèse bien documentée des chercheurs selon laquelle – du point de vue de l'imposition (loi No VII de l'an 1988) – l'activité de toutes les entreprises doit avoir droit à un traitement identique, indépendamment du secteur économique, de la dimension de l'unité économique, de la forme juridique dans lesquelles cette activité est réalisée (entreprise d'Etat, société anonyme, société à responsabilité limitée, coopérative, etc.). Aujourd'hui du point de vue de la sociologie des finances, l'égalité des entreprises est encore bien loin d'être réalisée, mais le premier pas a été fait en vue de la suppression des privilèges légalisées. Certaines organismes déterminés par la loi, comme la Banque Nationale de Hongrie, l'Office des Etablissements financiers, l'Institut national du Développement ne sont pas assujettis à la loi (leurs comptes sont réglés selon les règles arrêtées par le Ministre des Finances), mais les autres entreprises coopératives ne bénéficient d'aucune préférence au titre d'être "ce qu'elles sont". Le

taux de l'impôt, (c'est-à-dire l'impôt sur le bénéfice des entreprises) monte à 50%, mais si la participation étrangère dans le capital de fondation atteint 20% ou les 5 millions de forints, l'entreprise bénéficie d'une réduction d'impôt de 20%. Les sociétés économiques bénéficient également d'une faveur fiscale si plus de la moitié des recettes proviennent de la production des articles ou de l'exploitation d'un hôtel construit par elles-mêmes et la participation étrangère dans le capital de fondation au-dessus de 25 millions de forints est au moins de 30%; dans ce cas elles bénéficient d'une réduction d'impôt de 60% pendant 5 ans à partir du commencement de la vente des produits ou du service, et à partir du sixième année d'une réduction de 40%. L'Etat fait bénéficier la production et les services électroniques, la fabrication des machines et installations agricoles, d'industrie alimentaire, des machnines forestières, la production de certains éléments nécessaires pour la fabrication de machines, la technique d'emballage, la biotechnique, etc. d'une forte détaxe (100%). Non seulement les prescripotions du droit substentiel, mais aussi les règles procédurales on été unifiées. L'auto-détermination de l'assiette de l'impôt est générale et la procédure est gouvernée par la loi relative aux règles générales de la procédure administrative (loi No I de l'an 1981): si l'autorité fiscale constate que le contribuable ne s'est pas acquitté intégralement de ses obligations fiscales elle peut frapper le contribuable d'une amende allant jusqu'à 200% du manque; une amende qui dépasse 100% ne peut pas être infligée qu'au cas ou le manque dépasse les 10% de la somme qui figure dans la déclaration des impôts ou si le manque se répète, ou si les règles de la compatibilité, de la tenue des livres, de l'ordre de l'administration des documents sont gravement violées. La règle selon laquelle la décisions exécutoire déterminant l'impôt prise en deuxième instance est susceptible de révision judiciaire et le titre ainsi que le montant de l'impôt peuvent être modifiés fournit des garanties au contribuable.

4. En conclusion nous pouvons dire que le droit connexe au finances est devenu beaucopu plus exact, mais les finances d'Etat, les affaires bancaires et d'assurances exigent une réforme, c'est-à-dire les experts exigent de ceux qui forment la volonté politique une mise au point plus détaillée de ce domaine. On pourrait composer une longue liste des thèmes qui devraient être réglementés d'une façon plus compréhensible et plus cohérente (droit des devises, assurance sociale, activité boursière, pour ne mentionner que quelques-uns), mais les règles financières connexes au droit commercial et au droit des sociétés se sont améliorées. Les règles financières concernant la mise en marche de l'activité (la fondation) d'une entreprise ont été établies concernant presque toutes les formes juridiques, il est pourtant vrai que les règles concernant le fonctionnement et la cessation exigent une réforme (par exemple il existe déjà une loi sur les sociétés – loi No VI de l'an 1988 –, mais il n'y a pas de loi concernant la transformation). Pour finir: le droit a fait de progrès en ce qui concerne les affaires financières des entreprises, mais cette progression fait fortement défaut dans le domaine des aspects financiers

des affaires d'Etat (loi No II de l'an 1979) et de la vie politique (loi No II de l'an 1989 sur le droit d'association). Les travaux ont commencé, sur les conceptions et débats les lecteurs seront informés à une autre occasion.

E. Ferenczy

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RECENSIONES

TAKÁTS, P.: A SZABVÁNYSZERZŐDÉSEK
/Standard contracts/

Akadémiai Kiadó, Budapest, 1987. 178 p.

1. Two opposite tendencies may be distinguished in the modern practice of contracting. In connection with the dominance of mass production and trade forms falling into line therewith /.e.g. warehouses/, such contracting methods become typical, in case of which the contracting parties refrain from the individul elaboration of the conditions of their relation, but operate with printed forms, with standardized contract formules instead, facilitating and simplifying thereby the mechanism of the conclusion of contracts. On the other hand, there are certain services, which – due to their complexity – require the individual elaboration, the deliberate formulation of the novel, complex contents of the relations /e.g. in case of research contracts or partnership contracts/. It is hardly contestable, that the first variant is the quantitatively predominant, as according to estimations 70 to 90 per cent of the contractuel transactions are standard contracts, not requiring special deliberations, considerations. Both phemomena are in the need of a theoretical analysis and it is perhaps not a mere chance that both of them have found "enterpreneurs" in Hungarian civil law – close to each other even in time. It was Zoltán Novotni to have chosen, as the subject matter of his dissertation, one of the outstanding fields of the second group of phenomena, the so-called economy organizing contracts, whereas the author of the reviewed work has completed an evaluative analysis on standard contracts.

The large scale, spreading use of standard contracts is prima facie a phenomenon of Janus' face. The acceleration and simplification of the making of a contract implies hardly contestable advantages, on the other hand, however, it is also obvious that the partner – generally the "more powerful" one – elaborating the conditions of the contract has often "an eye to his own interest". Therefore, legislation and judicial practice have thoroughly to compare the advantages and disadvantages, laying especially stress upon the protection of consumers' interests. It must not be left out of consideration, either, that the practice of standard contracts considerably undermines the validity of certain dogmatic traditions. Therefore, the undertaking of the author can indeed be approved – both from the sociological and the dogmatical points of view – the opportuneness of the subject is not to be questioned.

2. In the relatively comprehensive exposition, under the title "Introduction", the author stresses the importance of the above-mentioned two factors. He elucidates briefly the common and the different features of the bourgeois and socialist legal systems. He underlines namely that in the capitalist legal system it is typically the enterprises, the economic units to de-

velop the standard contracts, and the general conditions /though from time to time administrative efforts are also to be found/, whereas the traditional socialist solution reflects the quasi-source-of-law character of these conditions /e.g. the "basic" conditions of delivery/. The "objective" function of the standardization to facilitate and to simplify the technique of the drafting of mass contracts manifests itself in both systems. It is a similarly common feature, that the inequality of the bargaining power of the parties is expressed in these conditions of contract. However, while in the capitalist economy the balanced market conditions are rather suitable to diminuate the risks of defencelessness of weaker parties, in the socialist economy of "deficiency" the chances of prejudice to consumers' interests are remarkably greater. The aspect of the author can thus be absolutely agreed with. The reasons of the potential risk of harm should be found "... not in the by itself 'neutral' process of standardization: the reason of the one-sided enforcement of interests rests on the deficiencies of the market mechanism, on the distortions of the economic structure, on the inequal contractuel positions..." /p.24./

The opinion of the author is also well-established, when he states that the phenomenon of the standardization of contracts has to be appreciated not as the distortion of the "classic" contract model, as some kind of "wilding", but as a new stage of development of the contract model, as a characteristic model of the modern economy. It is, however, an other question that the demands appearing in the phenomenon should be adequately "transcribed" into law /p.33/. The author mentions two fields where this "transcription" manifests itself with great emphasis: one of them is the further development of the rules of the conclusion of contract, including the questions of voidableness and interpretation, too; the other is the automatical consideration of the inequality of contractual positions with the development of the new model.

Further on, the author treats the problems of the chosen subject in two larger, parts, being not always devoid of "overlapping". Part I applies a rather historical approach, Part II a rather dogmatic one.

3. The part, entitled "The development of the legal approach to standard contracts" is divided into three chapters, according to the introduction and the analysis of the bourgeois, the foreign socialist and the Hungarian development of law.

In the analysis of the bourgeois legal systems the author refers to the first legal reactions in the 19th century which became necessary mostly with the conditions of transport and insurance contracts. At the turn of the century the increasing number of conflicts and attempts to their solution engaged already the attention of the theory, and the conceptions, tending towards partly teh enlargement of the traditional notion of contract and partly towards the stressing of the "normative" character of the general conditions, already appeared. These qualification polemics reflect well that the problematics of general conditions of contract can be hardly adapted to the traditional contract law. The adaptation of law to the new problems appears primarily in the judicial practice. The technique of the indirect, "covert" judicial control manifests it-

self, as a matter of course, in different fields and with different approaches – also reflecting the particularities of the various legal systems. Especially the common law and the German practice have developed principles applicable also today, such as in the field of the interpretation of the general conditions and of the contents of contracts founded thereon /the doctrine "of reasonable notice", the utilization of the institution of "consideration", the elaboration of the principle "in dubio contro proferentem", etc./ and tried to offer redress generally by the declaration of the consequences of voidableness based on the general clauses. These "covert" techniques offer – in addition to their practical results – only restricted possibilities, on the one hand, and reduce the security in law, "they transgress their competence" from time to time on the other hand. Not independently of the neuralgic points crystallized in the judicial practice, theoretical attempts may be also observed in the bourgeois civil law. The theories emphasizing the "justness" of the contract, urging on the "social" model of the obligation, pointing to the change of function of the ius dispositivum/permissive law/ etc., rendered obvious that the legislator had also "to take a step" here. The author gives a survey of the alternatives to codification – accelerated especially in the sixties and seventies and appearing especi ly in the Common-Law and Scandinavian countries. The outlines of the separation of this legal field take also shape, but not agreed with by the author /p.66/.

In the socialist legal systems these problems appear late – not independently of the introduction of economic reforms – and show considerable divergences. The judicial "techniques" and legislative endeavours, respectively, having been experienced in bourgeois law can primarily be observed in the Yugoslav law. On the other hand, one may consider typical the normative approach of administrative character to the solution of problems, the importance of the mandatory /sometimes "limpingly" mandatory/ regulations, the administrative control of the general conditions. Nevertheless, the practice in these countries displays the tendencies observed in the bourgeois practice and codification results are also to be found. The theoretical interest in the subject matter is rather moderate /perhaps except for the Polish legal literature/.

The author analyzes in a relatively comprehensive chapter /pp. 83 to 103/ the development of the Hungarian law, referring to the fact that until the reform of the system of economic management, more precisely, until the 1977 amendment of the Civil Code both practice and theoretical interest were rather poor. He analyzes in details the codification conceptions relating to Article 209 of the Civil Code as amended /e.g. in connection with the role of the preventive and corrective control/. the solution in force and the – similarly nor too abundant – practice based thereon. In the course of this analysis he touches upon the evaluation formulated in the motivations of the Civil Code to the effect of the "immunity" against judicial control effected by the administrative approval of the general conditions /I fully agree with his conclusion and criticism/, upon the connection of Article 209 of Civil Code and Article 16 of Act No. IV of 1984 on Unfair Economic Activities

/here I deem contestable his – unfortunately very laconically expounded – view/, upon the "narrow" approach of the legislator, etc. He elucidates briefly his de lege ferenda ideas, too /the detailed notions are formulated in Part II/. He points out that "... even in the legal theses of technical character the protection of the "weaker party" has to appear to a certain degree, at the same time, either in the construction of the "defensive" rules the criteria of the economically reasonable development legal relations cannot be fully neglected..." /p. 99/. He points to the primariness of the civil-law approach, to the requirement of the internal differentiatedness of the uniform legal construction, to the need for the enforcement of the obligation to co-operation beyond the average in each phase of the contract.

4. Part II of the work treats the most important theoretival questions of the investigated subject matter, in the fields of the conclusion of contract, the judicial revision of its contents and the general control of general conditions, all these under the title "Standard contracts - legal institutions".

From among the abundant analyses relating to the conclusion and interpretation of standard contracts the brief mentioning of only some valuable conclusions is possible here. The author points to the fact that the application of the volition theory requiring the complete consensus would lead to unrealistic consequences, the conclusion of standard contracts cannot be rendered dependent on the fiction that the parties have known all conditions of the contract, on the other hand, protection should be lent against the unilateral stipulations to become part of the contents of contract. For this latter purpose serve those legal provisions and these requirements formulated by judicial decisions /e.g. also by the Guideline No. 37 of the Economic Board of the Supreme Court of Hungary/, respectively, which consider general conditions to be parts of the contract only if they are definitely referred to and the positive possibility to get to know them is ensured for the other party. In addition, the so-called rule of unusualness is also essential: previously unknown, uncommon conditions may be parts of the contract on the condition, that the attention of the partner must be explicitly drawn to their existence /p.117/. Based on all these, the author formulates the requirement of the "objectivization" of the notion of consensus and in case of such a "normative" consensus also the exceptional relevance of failures in volition /e.g. error/. The author approves of the enforcement of the principle "in dubio contra proferentem".

The chapter, dealing with the revision of the contents of standard contracts – based partly on the previous analyses – emphasizes that here, from among the reasons of voidableness, the failures in volition are overshadowed and the main points of voidableness are transferred to the contents elements of the legal realtion. The starting point to the analyses relating to the revision of contract is the key cathegory of Article 209 of Civil Code, the unjustified unilateral advantage. The analysis, however, refers often to the solutions of foreign legal systems, and to the conceptual-theoretical standpoints connected therewith, respectively. The author defines convincingly the notion of the unjustified unilateral advantage, exist-

ing in case when "... as compared to the nature of the legal relation, the balance of the mutual rights and obligations of the parties shows an essential and, considering the possibilities, not compensated shift to the injury of the contracting party, in consequence of which the contract will not be able any more to fulfil suitably its interest-distributin function.." /p. 141/. One should similarly agree with the opinion of the author, when criticizing solutions of some legal systems, namely the taxation of the conditions prohibited the law, further on, with his reproach addressed to the Hungarian Civil Code relating to partial voidableness, the "modestly" narrow range of its application.

The last chapter of the book treats the questions of the outer control – being independent of an effective injury of interests – of the general conditions of the contract. The author introduces the solutions of various legal systems, the variants and the efficience of the preventive and corrective control techniques, the experience of the Hungarian practice included. Based thereon, he formulates his ideas and proposals relating to the introduction of a preventive control system, and to the further development of the present corrective control. As for the former one, he considers the more active conduct of the corporate organizations /Chamber of Economy, National Council of Consumers/ the precondition which – also by means of the state catalyzer – may suit the preliminary "filtering" of the general conditions.

5. The reviewed work is the first one treating this expressly up-to-date subject in the Hungarian literature, moreover, in the socialist legal literature with such a comprehensive approach. Relying on an abundant comparative and legal literary material, as well, as on the profound knowledge of the Hungarian judicial practice, the author offers analyzing evaluation and well-founded proposals. The solid legal dogmatic foundation, being, of course, not a "sterile" instrument but reckoning considerably with the potentialities of the economic environment, with the conceptions of the reform of economic management, renders possible for the author to draw conclusions pointing beyond his specific field of investigation, touching upon the general questions of the contract theory. The work of essentially theoretical approach is, at the same time, practice-oriented, its conclusions and proposals can hardly be neglected either in the field of the application of the law or in the legislation. The Hungarian civil law has been enriched by a significant work.

E. Lontai

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VARIA

COMPARATIVE CONFERENCE ON THE UNIFORM REGULATION OF INTERNATIONAL SALES

I.

The Institute of Legal and Administrative Sciences of the Hungarian Academy of Sciences organized an international conference on October 18 and 19, 1988 for the comparative analysis of the rules of the 1980 Vienna Convention on the international sales of goods /CISG/ and of CMEA General Conditions of Delivery, with the participation of Hungarian, Soviet, Polish and GDR specialists. The conference was endowed with special interest by the 1988 modification of the General Conditions of Delivery, on the one hand, and by the fact, on the other hand, that CISG became an effective Hungarian legal rule on January 1, 1988 due to its enactment in Hungary and it could be applied either directly or as a background law for the international contracts of sale. Consequently, the main questions of the conference were interesting not only from the theoretical aspect.

The round-table conference discussed, of course, also theoretical problems. Thus, first of all it was the comparability of the regulations of CISG, cut out for autonomous participants of the world market, and those of the General Conditions of Delivery regulating the pseudo-plan-contracts of CMEA, that was treated, as well, as the purpose and the reason of the comparison,, moreover, in this connection the views were at variance on the directions of the further development of the CMEA General Conditions of Delivery, too /the development of sales law in the light of the CISG, or the elaboration of a uniform general part of contract law for the CMEA/. In addition to the general questions, on the basis of the Hungarian opening lectures, views were discussed on the rules of the conclusion of contract, the performance of contract and breach of contract, as regulated in CISG and in General Conditions of Delivery. The more important theses which came up in the discussion will be summarized below.

II.

On the first day of the conference M.Bardina /Moscow/ and A. Harmathy /Budapest/ were in the chair. The subject matter of the session was practically the "general part" of the comparative analysis.

E. Lontai /Budapest/ called the attention to the fact that it is not desirable for the particularities of the regional trade to lead to a regulation, being contradictory to the universal relations. Therefore, it would be expedient to regard the CISG /which is a universal regulation/ as a model for the furth-

er development of the General Conditions of Delivery especially because, according to the Hungarian opinion, CISG is applicable as the background law for the CMEA General Conditions of Delivery. The conditions for the elaboration of a CMEA-level general part of the law of contract are not yet given. This is not contradicted by the fact, either, that whereas the rules of the CISG deliberately effect a narrow scope for the convention, the practice is inclined to interprete the CMEA General Conditions of Delivery extensively and to apply them – as a stipulated law – often beyond the scope of sales /e.g. to contracts for work and materials, commission/. The Hungarian legal literature criticized this extending tendency repeatedly. The lecturer referred to the fact, that the differences between the two regulations could be traced back to a considerable extent to the divergent models of the turnover of products: as a result thereof the role of freedom of contract is different in the two sets of norm and conceptional divergences can be experienced in the solutions to some institutions of contract law. Finally, the lecturer emphasized: the approach and the harmonization of the two systems of norms, relating to similar economic relations, would be desirable. Since, however, the solutions of CISG are more versatile, more up-to-date in many respects and they correspond better to the market relations, in the course of the modernization of the General Conditions of Delivery several solutions of CISG could be utilized successfully.

In the discussion, following the lecture, the contributions touched upon several questions.

The participants from the GDR – F. Enderlein and D. Maskow – engaged in discussion with the opening lecture primarily in the question, whether the modernization of the CMEA General Conditions of Delivery was opportune. In their opinion, in the socialist integration it was not the improvement of the well-proved rules of the General Conditions of Delivery, on the basis of rules of the CISG, hardly applied in the practice, that would be necessary, but the elaboration of a uniform general part of the law of contracts. In this way one could avoid the present situation that the unified legal material of CMEA consists of general conditions, elaborated in different times with different attitudes, not always co-ordinated to each other and regulating only some types of contracts. The idea of a uniform general part of the law of contracts was favoured also by M. Bardina who regarded the comparison between CISG and General Conditions of Delivery, as impractical due to the considerable divergences between the binding force of their rules and to the differences of their approach. In conformity therewith, E. Kabatova referred to the fact that deviations from the long-applied and well-known rules of the General Conditions of Delivery, the acceptance of rules, relying on other bases, might be impeded not only by legal considerations, but also by psychological reasons. As against those, said above, A. Harmathy called the attention to the fact, that the present stage of the development and the intensity of the economic co-operation between socialist countries would justify at most the mutual knowledge and the theoretical comparison of the general rules of contract law, but not the elaboration of a not fully utilizable

uniform general part of the law of contracts. The future legislative task in CMEA may be the modernization of the present general conditions, on the one hand, and the elaboration of new general conditions relating to some other types of contract, on the other hand, required really by the co-operation /e.g. contracts for the performance of activities/.

A discussion developed also in that respect, whether the rules of CISG would mean an applicable background law, according to Article 110 of CMEA General Conditions of Delivery in CMEA member-countries, adhered to CISG. As against the opening lecture, Bardina was of the opinion, that this question should be answered negatively, even if this solution could be deducted from the law, at a formal side. Starting from the deviations between CISG and General Conditions of Delivery, Bardina arrived at the conclusion, that CISG was a special civil-law system of norms, therefore it could not be drawn into the scope of the general civil-law rules mentioned by Article 110, para /2/ of the General Conditions of Delivery. On the other hand, the views of E. Lontai were supported by some Hungarian participants of the conference /J.Juhász, L. Vékás, V. Mascsenko/, and also by Enderlein and Maskow, though the latter speakers called the attention to the complications, coming up in this way in the application of law: it would be not enough to show a gap in the General Conditions of Delivery, but it should be decided, too,which rules of CISG might be suitable for filling this gap.

It is worth mentioning that several participants considered necessary the "protection" of the General Conditions of Delivery against the indirect criticism appearing in the comparison – in this respect it was emphasized that the rules of the General Conditions of Delivery proved well in the practice /Maskow, Bardina/, on the one hand, and it was stressed that the General Conditions of Delivery were mentioned among the explicitly positive examples of the international unification of law at the framing of CISG /Enderlein/, on the other hand.

III.

On the second day of the conference – under the chairmanship of P. Wasilkowski and F. Enderlein – the subject was the comparison of the various legal institutions /the conclusion and the modification of a contract, the performance, as well, as the breach of contract and the sanctions/.

The questions of the conclusion of contract were treated by the report of A. Harmathy from the side of the existing differences, as the possibility of the approach of the rules was obviously different with the ones based on diverse theoretical bases, and with those, where the dissimilarity of the regulations of CISG and the General Conditions of Delivery was exclusively of technical character, respectively. He also mentioned that some of the differences in this sphere – e.g. definitions of the notions of offer and acceptance – were already eliminated – approvably – by the 1968/1988 wording of the General Conditions of Delivery. In his opinion, however, it would be expe-

dient to mitigate the strict requirement of writing with the further modernization of the General Conditions of Delivery, at least inasmuch, as performance would effect the avoidance of voidability here, it would be further worth to consider the introduction of waiver on the basis of the expiration of the interests of the plaintiff in the performance in kind in General Conditions of Delivery and it would be similarly reasonable to recognize the contract-originating effect of the statement of acceptance departing from the offer in not essential question, corresponding to the general principles, also expressed by Article 19 para /2/ of CISG.

In the discussion there shaped rather marked divergences of opinions between the opposers of the introduction of the solutions of CISG on the strength of the particularities of the system of CMEA /Maskow, Enderlein/and the attitude, which would prefer in the range of the conclusion of contracts a highly versatile regulation, supporting and helping the contract coming into existence, with regard to the requirements of the trade /P. Takáts/.

On the subject of performance P. Takáts delivered an opening report. The speaker surveyed the relative rules of CISG and the General Conditions of Delivery, stating, that despite their exhaustiveness, General Conditions of Delivery were in need of the general theses summarizing the main obligations of the seller and the buyer. On the strength of the comparison, he proposed the comprehensive regulation of the warranty of title and the creditor's breach of contract in the CMEA General Conditions of Delivery, further, he sharply criticized the system of the terms of payment, preferring unilaterally the interests of the seller, in the General Conditions of Delivery. He touched also upon the anomaly, existing between the economic model of CMEA, built upon performances in kind, oriented to the principle of "real" performance and the practical encumbrances of the enforcement of the performance in kind.

In respect of the evaluation of the conditions of payment it were Enderlein and Maskow, in respect of the problems of creditor's breach of contract it was Maskow to debate the theses of the speaker: in the opinion of Maskow, the obligation of the creditor to co-operate for the promotion of the performance of the contract could be deducted even from the present rules of the General Conditions of Delivery.

From among the speakers, T. Sándor continued the series of lectures, on breach of contract. As for the set of facts of breach of contract, he emphasized that the General Conditions of Delivery – as against CISG – did not contain a general definition for breach of contract, on the one hand, and, in spite of the many partial rules, General Conditions of Delivery were lacking a general rule of the estimation of the goods to be in conformity with the contract. In respect of the sanctions, the speaker proposed the general establishment of the possibility to waive the contract in the General Conditions of Delivery, then, coming to the compensation for damages, he considered justified to redress the damages beyond the sum of the penalty, on the one hand, and the restriction of the measure of compensation by the criterion of foreseeability, on the other hand.

Some of the participants of the discussion reinforced the

opinion of the speaker on the superior position of the seller /Harmathy/, on the present subordinate role of the compensation of damages /Wasilkowski/, as well, as on the fact that in the General Conditions of Delivery, the system of penalties, excluding the claim for damages practically stimulated non-performance /Enderlein/. Though Maskow agreed with the report in the questions of the necessity of waivers and in the introduction of damages over the penalties, he also raised in issue, that – as against the proposed general regulation of the state of facts of breach of contract – the detailed enumeration of the individual cases of breach of contract in the General Conditions of Delivery would be more comprehensible for the practice and would be orientating better. In addition, he advanced arguments for that penalty could be precluded in the contract and proposed the cancellation of some types of penalties in the General Conditions of Delivery.

The conference was closed by the final speach of E. Lontai. Contributions in writing were presented to all subjects of the meeting by F. Enderlein, to the general questions of the comparison and the application by M. Bardina, to the subject of the conclusion of contract and of the performance by E. Kabatova, in respect of the warranty of quality by M.P. Shestakova.

IV.

The two-day meeting, in which the Institutes for Legal and Administrative Sciences of only four CMEA member-countries were represented, could hardly reflect in full the views on the relations of CISG and the General Conditions of Delivery on the tendencies of the further modernization of the General Conditions of Delivery, and on the role of CISG therein, respectively. It was perceptible at any rate, that the further development of CMEA, the possibility of the propagation of the market solutions, the importance of the various legal institutions are not equally appreciated by the theories and practices of the member-countries. Behind the arguments, advanced in favour of the present rules of the General Conditions of Delivery – including also the 1968/1988 General Conditions of Delivery, the most recent result – one may finally observe the demand on the maintenance of the "planned" trade, with more or less modernization, organized on an inter-state level and by inter-state means, whereas the proposals relating to the introduction of the "commercial" solutions of CISG suppose evidently the shifting of the centre of gravity of the co-operation of the member-states into the sphere of the inter-enterprise relations, the elimination of the rests of the direct centralized planned economy in the range of the foreign economic relations. The realization of the latter alternative – seeming to be the single possible way out – is hardly timely today in spite of the reform rhetoric. At any rate, this could be gathered from the attitudes of the foreign participants of the round-table conference in October 1988 in Budapest, in which only a precious little chance was given to the proposal of one of the Hungarian

speakers, relating to the liberalization of CMEA contingents and of the bureaucratic foreign-trade system of authorizations, to the short-run establishment of effective trading.

P. Takáts

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INTERNATIONALIA

THOMAS MATHIESEN: LAW, SOCIETY AND POLITICAL ACTION, Academic Press, London-New York 1980. 323 p.

The main focus of these studies is law. However, law cannot be considered independently of the contemporary society and state and the state cannot be considered independently of society. Historical and empirical analysis are included in the series as well as purely theoretical surveys. All the papers adopt a radical and critical approach to their subject.

The radical political tracts are often ill-considered and lacking any realistic analysis of their social context. On the other hand, sociology with its greater need for "respectability", often tends to take a more even, almost neutral stand. The radical political sociology is a rare combination in the Western literature and this volume is a rather successful one of these books.

This book is divided to three main interrelated parts. Originally, it is a work on the sociology of law, i.e. that part of sociology which deals with the relationship between law and society. By "law" Mathiesen means the total system of formally adopted rules in a society, and the institutions which in the last instance have responsibility for the exercise of rules and supervision with adherence to these rules. To what extent and what way the societal relations influence the creation of laws and legal decisions. These are general problems of the sociology of law which are discussed in the first part of this volume.

After the discussion of law this book moves on to a close scrutiny of the more general terms on ideas and material structures of the society. However, the sociology of law cannot be discussed thoroughly without looking at the systems of ideas in relation to political action in society. Therefore, the volume goes in details about ideas as a part of foundation of political action and practice.

In the third part of the book the author identifies reform or revolution as a "false dichotomy", which must be transcended. These parts are aimed at vitalizing a slow-moving radical political movement through coherent discussion of political strategy and organization. In this part of the book the author develops further the notion of "unfinished political movement". By quoting Herbert Marcuse the volume goes a bit far to the political adventurism and pessimism, when alleging that "at present the initiative and the power are with the counter-revolution, which may well culminate in a ... barbarian civilization". The volume tries to persuade the reader that the co-operative state is a highly absorbent state: its opponents have great difficulty in successfully urging others to struggle against co-operation. According to Mathiesen this absorbent state

develops especially rapidly under the recently prevailing critical economic conditions.

The volume has some relevance to a broad field of social and political scientists and researchers. It has particular importance for the sociologists, criminologists, law experts and students. It goes in details on the political philosophy of Marx, Max Weber, Habermas and Mao. The author asserts that inter alia there is a relationship between sociology and radical political practice. In several countries a large number of sociologists are politically speaking to be found on the left, although they do not participate in the political practice on this left wing. To a great extent they are theoretically radical without strong roots in concrete political activity. Emphasizing the "feedback effect" of law on the structures, which created it, the book points out that there is a natural relationship between the material world and the legal sphere, although often the legal superstructure is somewhat antiquated and outmoded due to the rapid pace of societal development.

M. Udvaros

WALDHEIM, K.: IM GLASPALAST DER WELTPOLITIK,
Econ Verlag, Düsseldorf-Wien, 1985. 403 p.

The mosaic-like memories of the author on his activities as Secretary General of UNO offer a uniform picture of ten years world politics. The work consists of 19 chapters and each of them comprehends a special subject. We want to deal with those parts of the book which have legal bearings, too.

1. First of all, the characterization of the position of Secretary General of UNO may reckon on interest. The author states his view that the leader of an international organization has not even the powers and rights of the prime minister of a small state (p. 299). The nations have in mind nothing more jealously, than their sovereignty. They are willing to surrender a fraction of their supreme power to an international organization or to assent to the execution of compulsory measures only very slowly and not readily.

The Secretary General of UNO has a bit more of rights, than the secretary general of the League of Nations, as he can call the attention of the Security Council to all matters, serving, in his opinion, the maintenance of the international peace and safety. He is, however, reduced to the permanent dilemma that he has no sovereign authorities and material sources in sufficient quantities at his disposal. He has, however, to do everything within the framework of his possibilities (p. 300).

The author offers proposals for the strengthening of the position of the Secretary General (pp. 310-311), since he has only restricted possibilities with the decisions in essential questions, such as the maintenance of peace if he has not an unambiguous authorization from the Security Council (p. 167). Thus, he has not the possibility to do more in the negotiations

between opponents unliable to compromise than to enforce the voice of intellectual faculty and the power of conviction, - writes the author e.g. when speaking about his efforts in connection with the hostilities in Cyprus (p. 148). He raises the question how much personal risk the Secretary General has to and can take for preventing human tragedies and for attempting the solution of international crises. His voyage to Teheran in the interest of the liberation of hostages proved the limits and unpleasantly paralysing circumstances possibly belonging to the performance of the duties of the Secretary General (pp. 24-27).

2. About 14.000 employees from 159 member countries work under the direction of the Secretary General of UNO, coming from different cultures, from countries of different societies and economies, turning the UNO into a perfect Babel as to the languages at every organizational level (p. 78). In the autumn session of the General Assembly about 1500 representatives of governments present the avalanche of declarations, motions, draft resolutions in six official languages. The Secretariat of UNO is equipped with specialists of university qualification in each special field (p. 79).

The budget of UNO amounted to 210 million dollars in 1972, completed by 15 to 20 million dollars for the definite extra-budget funds. In 1981, the General Assembly passed a budget of 750 million dollars, completed with 80 million dollars for the extra-budget funds (pp. 79-80). This fact represents by itself the augmentation of the tasks.

The apparatus of the politically independent, international officials of the Secretariat followed originally the League of Nations and observed mainly the British model of civil servants, as the ideal of the high-level work and personal integrity. Later on, the independence of the Secretariat came more and more under serious pressure. The governments and the state groups presented their own candidates for taking up of appointments. Inevitably, a competition took place for the various positions, threatening the impartiality and the organic unity of the Secretariat (p. 80).

75 per cent of the officials of UNO are employed in the first years for an indefinite time. Consequently, the countries joined earlier the UNO, such as the western countries, India, Egypt, the Philippines, etc. are represented with a larger number in the staff (p. 81). In the course of time, however, the portion of the permanent staff employed for an indefinite time has considerably increased. The Soviet Union and her allies have delegated the UNO officials for indefinite time from the very beginning. From the point of view of the Secretariat the employment for a definite time means undoubtedly an advantage, rendering possible namely the precise appreciation of the performance before deciding on the prolongation of the contract. The officials employed permanently can be discharged generally only with difficulty without any political complication if they do not come up to the requirements (p. 81).

3. The increase in numbers of states of the third world within UNO raises several new problems. From among them, one of the main questions is - writes the author - that the developing countries have different ideas of the human rights

than the western countries and they thrust into prominence the collective rights of whole people in economic and social fields instead of the individual rights due to single persons. In their opinion, the individual rights must not be spoken of as long as several people are exposed to the risk of the death from starvation. In UNO opposite views prevail in respect of the fundamental problems of liberty and property, too, to be attributable among others to the different philosophical and political preconditions (p. 151).

The parliamentary structure of UNO, where in the time of the foundation the western democracies predominated, has completely changed (p. 174). The new majority is though extremely heterogeneous as for its origin, constitutional form and political alignment, in its intention, however, it is surprisingly uniform, having forced the West back in minority. The aim of the new members of UNO is first of all to equilibrate the marked contrasts prevailing between the poor and rich countries, between the industrially well developed countries and the underdeveloped countries. Although the resolutions of the General Assembly are only of recommendation and not of obligatory character, they cannot be permanently left out of consideration (p. 175).

The states of the third world require justness and fairness. Three quarters of the population of the world possess only one fifth of the total income of the world (p. 175). The justness requires that the western industrialized countries return an essential portion of their goods and chattels to the poor countries since in the opinion of the latters, the former colonial powers acquired their welfare through the exploitation of the labour forces and sources of raw materials of the previous colonies (p. 176). The northern countries where one quarter of the population of world is living, realize more than 9/10 of the production and more than 4/5 of the income of the world. In the South more than 1.2 thousand million people are living in countries where the national income is less than USD 250 per capita and per year (p. 177).

Consequently, the front of the countries financing the decisive part of the budget of UNO developed against the attitude of the third world (p. 304). The ten greatest financiers of the budget of UNO meet 75 per cent of the total expenses whereas other states contribute to the expenses only by 0.1 per cent per country. 89 states, however, bear jointly only 1 per cent of the expenses (p. 304).

The contribution pro rata is settled by the General Assembly. This occurs according to a complex system, depending on the national income, on the number of inhabitants and other factors. The USA, the greatest sponsor bears 25 per cent of the total costs of the budget (p.306). If a member state has been in debt for the contribution more than two years, she risked the forfeiture of her voting right. This punishment was not yet applied in the practice (p. 307).

The author emphasizes that measures should be taken to international level for rendering more assistance to the developing countries to the application of new technologies in the building out of their infra-structure. If the South stands in need of assistance fighting against poverty, the North

needs the market and purchasing power of the South - says the author. International safety can be hardly spoken about as long as in the ocean of poverty the islands of wealth are to be found (p. 202).

4. The character-paintings of the author on some political personalities may reckon also in interest. In his opinion the fate of the world is influenced rather by some remarkable persons than by other factors. Consequently, during his office he tried to build out personal relations with as much statesmen as possible and his journeys to different countries rendered him possible not only to meet these persons but also to get acquainted with the social, political and economic media in which they are working (p. 191). In this connection he remembers Tito whose Yugoslavia was the only European member of the group of countries outside a block. Though Tito often criticized UNO since in his opinion it did not joined sometimes in the solution of international crises with the adequate firmness (p. 192).

Looking back, from among the four American presidents who performed their duties during his office, Nixon was, in his opinion, the best suited for the solution of diplomatic tasks. Especially the opening towards the people's China was spectacular, moreover, his relaxation policy towards the Soviet Union was remarkable. In the opinion of the author, the fact must not be left out of consideration that this political line was promoted by the cautious preparatory work of Kissinger (p. 182).He describes the efforts of Chrushtchev for the conclusion of the Austrian political treaty, who was in his opinion one of the most originally minded statesmen of the post-war period (p. 58). He regards Aldo Moro as the most remarkable personality of Italy with whom he tried to come to an understanding in the question of Southern Tirol in Janury 1968 still as the Austrian Minister of Foreign Affairs (pp. 65-66). In his estimation, Indira Gandhi was a personality of the third world whose murder was a sad tragedy for everybody deeply concerned about the international understanding (p. 190). He characterizes Sadat as a courageous but sly personality. His murder by the Arabian fundamentalists stopped at least for a while the approach of Egypt and Israel (p. 127). He rated highly Carter because his manifestations in the private life did not differ from his official manifestations and actions. He was the American president who regarded the human rights policy as his most important task (p. 218). The passionate faith of Kohl in the possibility of political and economical union of the European continent shows that he is a statesman of true European mentality - writes the author (p. 349).

These few individual remarks on well-known political personalities want to serve rather as a completion of the interpretation of the events.

5. The author deals in detail with the question of refugees, with the various categories of refugees, regarded by him as the shipwrecked persons of the life (p. 221). In connection with the international terrorism, he points out that as long as there is no objective differentiation between terrorists and freedom-fighters, the aggressive actions will be internationally of common occurrence (p. 196).

The author admits that the working method of UNO is often wearisome, sometimes fully hopeless (p. 74), this depends, however, frequently on the behaviour of the member-states which do not render possible for UNO to perform its duties laid down in the United Nations Charter (p.173). He is convinced that the political problems cannot be solved by politological theories but by dialogues sparing no effort in pursuit of the possibility for the reconciliation of conflicting interests (p. 76).

From the epilogue of the work (p. 337) it is apparent that sooner or later the states will have to give up some portions of their national sovereignty in the interest of a larger overall community. No more than hitherto can be namely expected from the world organization in a world where the national sovereignity of states stands in prominence. UNO is no world government, has no executive power. None of the UNO-members can be forced against its will to give effect to the UNO-resolutions (p. 316). UNO will achieve success only if the member-states will voluntarily be ready to step forward in the field of the co-operation in the interest of superior aims.

The book is easily readable, interlarded with humorous remarks with the description of an episode, of a personal experience. In spite of the gathering clouds, the author is imbued with the hope of the survival of mankind, having confidence in the healthy instinct for life of people so much the more as the United Nations Charter appeals deliberately to the "people" and not to the "governments". If the statesmen will not be able to draw the necessary political conclusion, thus must be done by the people. Where the politicians prove a failure, only the reason, the solidarity and the wish for survival of people can lead to a political and intellectual renewal (p. 375) - says the author in the last chapter. The leaders of organizations active in the service of the peace cannot have any other testament.

L. Trócsányi

DIE BÜRGERLICHE VERFASSUNG DER GEGENWART - THEORIE UND PRAXIS, Konferenzmaterialen - Protokolle - Informationen des Instituts für Theorie des Staates und des Rechts der Akademie der Wissenschaften der DDR, Berlin, 1986.149 p.

This volume is the result of the long-range programme of co-operation between the academies of socialist countries, containing explications, analyses, criticisme on bourgeois democracies and theories of the bourgeois democracy. The scientists of various socialist countries investigated the fundamental laws, the constitutional developmemt and the constitutional theories of the bourgeois states from different aspects. The first paper, written by Tumanov (Moscow), analyzes the differences between the earlier, traditional constitutions and the constructions of fundamental laws characteristic for the

20 th century. The author points to the fact that the traditional fundamental laws were enacted under quite different economic and political conditions than the present ones, therefore there is a great gap between their liberal system of postulates, their world conception and the reality of the present capitalist countries. The paper by Lazar (Bratislava) analyzes the crisis of the social function of the private ownership. He deals with the ownership theories appearing during the development of the constitutions which show considerable divergences in the various historical epochs and from country to country.

The essay by Bogdanovskaya (Moscow) treats the constitutional characteristics of the Common-Law countries, their differentia specifica. She analyzes the effectiveness of the British legal system, the prospect of reforms and deals with the conditions of the establishment of the "test-case jurisdiction".

The contribution of Rykowski (Warsaw) investigates the constitutional practice of the Fifth French Republic, with special respect to the presidence of François Mitterand. After taking up his duties, Mitterand urged the immediate reform of the elections and emphasized the role of the "voting blocks" of the parliament. Rykowski deals with the political events and the legislative results of the period passed since then in France.

The paper of J. Dötsch (Berlin) deals with the clash between the protection of the state and the enforcement of fundamental democratic rights in the various phases of the West-German development of state and law. The state (and the capitalist forces standing behind it) regarded the really highly liberal West German fundamental law, enacted in 1949, as too liberal, virtually from the moment of its enactment. The essay analyzes the particularities of the present West German state pointing to the fact that in 1983 the authorities have kept data records of political character about more than 18.5 million West German citizens. In the provinces led by the CDU-CSU coalition, being at present in power, this state security control to the prejudice of the citizens - and thereby the curtailment of their fundamental rights - is still more obvious.

The paper by Sokolowicz (Warsaw) discusses the problems of the emptying of the constitutional rights as they appear in America in the eighties. He points out that the contemporary Supreme Court (chief justices Burger and Rehnquist) means a step backward, as compared to the Supreme Court led by Warren. The conservative tendencies are especially apparent in the treatment of minorities, of the strata being "traditionally" disadvantaged. A considerable change may be observed in respect of the constitutional judgement of the "cruel and unusual" capital punishment and in respect of the official attitude concerning the induced abortion. The attacks against the liberty of opinion referring to reasons of national security multiplied. The conservative forces attack with special strength the manifestations exaggerated in their opinion of the liberty of press.

Last, but not least, the paper of Skala may be mentioned, treating the bourgeois conception of the legitimation of the state pressure, the divergent views of the bourgeois political philosophy, the questions of the political socialization.

Today, in the epoch of political, social and ideological reforms the papers of the book may be read with interest.

M. Udvaros

RADZINOWICZ, L. - HOOD, R.
A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750, VOLUME 5: THE EMERGENCE OF PENAL POLICY
Stevens, London, 1986. 1100 p.

The fifth volume of the comprehensive series on the history of English criminal law and its administration since 1750, was published in 1986 in London, on 1100 pages.

The title and the special subject of the volume to be reviewed is The Emergence of Penal Policy. The authors are Sir Leon Radzinowicz, member to the British Academy and Roger Hood, Ph.D., both of them university professors, criminalists.

By way of introduction and in order to kindle interest, it seems to be reasonable to enumerate the titles of the first four volumes of the series:

1. Reform movements (1948)
2. Conflicts between private initiatives and public interest in the enforcement of law (1956)
3. Counter-tendencies in the movement for the reform of penal policy (1956)
4. The struggle for control (1968)

All four volumes were elaborated by L. Radzinowicz.

The period, surveyed by the present volume on the emergence of penal policy, goes back to the thirties of the 19th century and lasts until the outbreak of the First World War, until the end of the Victorian and Edward era.

It is the birth of criminology and the emergence of penal policy, that fall on this period. The authors aimed at the introduction of the efforts, tending to disclose the roots of crime and to establish a system of measures which is suitable for the control of crime. In the book also the interrelations and the common undertakings are presented, which indicate the co-operation between the countries of the continental Europe, the United States and Great Britain in the range of the above-mentioned efforts. The authors consider their research the history of recurring dilemmas, from among which several ones have to be faced by the states even today.

The two British authors intend their book to be a contribution to the historical investigations which have become lively since their last volume, published in 1968, concerning the questions of crime, penal policy and the penal system.

The volume, dealing with the emergence of penal policy, is the result attracting attention and generating an all-out appreciation for the research work by two men, in the accomplishment of which several British, American, French and German libraries, institutions and, first of all, the British Home Office, and co-workers, enumerated by name of all these institutions, respectively, have participated.

The material, elaborated in the book, is divided into 9 parts, and within them, into 23 chapters and the subjects of these parts comprise all essential points of the history of the emergence of penal policy.

The analysis starts with the research of the roots of delinquency,with its most different interpretations (Part 1), then, it follows by the introduction of the evolution of the crime itself and of the problems connected with its measurement (Part 2), the elucidation of the questions of its treatment and sanctioning (Part 3), thereafter, within the serious problem of the prevention of crime, it touches upon the range of questions concerning habitual criminals, the criminal record, the alcoholic and mentally defective tortfeasors, as well, as upon the introduction of the special questions and attempts in connection with habitual crime (Part 4). In addition, it deals with the special problems of political crimes and of their subjects (Part 5). The next part of the volume investigates the history of the practice of the administration of punishment, of the views and theories relating thereto (Part 6) paying special attention to the problems arising in the course of the after-care, i.e. after serving the sentence (Part 7). Next, the practical, theoretical and legislative points of view of the treatment of prisoners are analyzed (Part 8), finally, the vast subject is closed by the theme of penology, the principles of codification and justice, then, by the outline of the auspices of the future (Part 9).

Owing to the tirelessness and thoroughness of the authors, in the comprehensive history of evolution there is not a single philosopher, a single conception, being significant in the evolution, a single theoretical or practical attempt to remain unnoticed. The method of the analysis is highly illuminative, by which Radzinowicz and Hood render perceptible the unstoppable objective process, in which the fruitful and fertile idea is able to make repeated efforts in order to release the continually varying social problems, constant in their variability, i.e. by making the individual approaches clash, showing the attempts surmount the drawbacks again and again.

The authors' highly objective and well analyzing work is founded on the results of empirical investigations of a century, it emphasizes the standing parts, and the authors construct a mosaic picture on practical and scientific criminology, having been introduced from the foreign and British forerunners up to the recent past.

Radzinowicz and Hood complete the comprehensive description of the history of conceptions with highly valuable further data. The main material of about 780 pages is completed by 260 pages of bibliography, by the list of judicial cases mentioned in the work, by a register of legal norms and finally, by indices of names and subjects. These latter make out 55 pages, containing names in decisive proportions. Therefrom a conclusion may be drawn to the extremely great number of research workers and scientists deemed worthy to immortality by the British history of sciences and by the two authors of the volume.

A. Horváth-Harmathy

БОГУСЛАВСКИЙ, М.М. МЕЖДУНАРОДНОЕ ЭКОНОМИЧЕСКОЕ ПРАВО

/Boguslavsky, M.M. International economic law/
Москва, 1986, 303 p.

Boguslavsky in his recent book has undertaken the task of producing a complete guide to the law of international economic relations. It is a short-format book which contains ten chapters dealing mainly with theoretical aspects of the law of international economic transactions. Several chapters of the book reproduce the author's lectures delivered by him in the Diplomatic Academy attached to the Ministry of Foreign Affairs. One cannot say that this book is the best one among his numerous studies, mainly for two reasons. First, all of the views and materials examined in it are confined to the period before 1986, and the ideas of perestroika and glasnost' are not yet reflected in them. Second, though it is a very readable review of the related problems, all of the chapters are purely descriptive ones, contain little critical commentary. In fact, it is a guide for university students, and the author looks to a general rather than a specialized readership.

In the first three chapters the author gives a short overview of such questions as the notion, subject-matter, sources and place within the public international law system of the international economic law. He argues that international economic law is a separate branch of public international law which regulates international economic relations between the subjects of public international law (34-35 p.). As he points out international economic transactions are complex in their nature and one have to distinguish the civil law (transfrontier economic relations of non-sovereign subjects) and public international law (transfortier economic relations of sovereign entities) aspects of these transactions. The nature, scope, forms and peculiarities of interstate economic relations according to Boguslavsky should be considered as the basis of international economic law.

In chapter three devoted to the sources of international economic law, alongside with the well-known Soviet views on the sources of international law in general, one can find some comments on matters which so far have received little attention in Soviet studies, namely: on the role of soft law (pp. 58-59)and codes of conduct (pp.59-64). The author does not rule out the possibility of transforming soft law into hard law, and points out to the positive role of codes of conduct in the law-making process.

Chapter four examines the role of the USSR in the development of international economic law, and it contains an abundance of such familiar notions as peaceful co-existence, state monopoly of foreign trade, friendly support of developing countries, fraternal relations of socialist countries etc.

Chapter five discusses the principles of international economic law. Its main idea is to show the correlation between general principles of modern public international law and specific principles of international economic law. Among the latter ones the author pays special attention to such principles as non-discrimination, freedom of the State in choosing its fo-

reign economic management system, sovereignty of the State over its natural resources, most-favoured nation clause, national regime.

In chapter five the author summerizes the Soviet views on the legal position of the State in international economic transactions. He asserts that the State should be considered as a special subject in these transactions, and condems the practice of dividing State actions into de jure imperii and de jure gestionis (p. 121), considers the theory of functional immunity as a faulty one because "it neglects the peculiarities of socialist legal systems in which the State, due to its nature, is the bearer of both the economic and the political power". According to him, the contract of a State agency and a private party falls outside the domain of public international law.

Chapter seven deals with the function, role and forms of international economic organizations. Here one can find a short review of activities of some arbitrarily selected organizations acting on universal (U.N. system) and regional (socialist and western countries) levels. It is followed by a chapter in which the author presents the institutional forms of economic cooperation between socialist countries, socialist and developing countries, socialist and western countries. The treatment of many questions in this chapter is somewhat scanty. The materials examined in it would have much more greater value had the author developed his insights into more detailed analysis of the existing deficiencies in the system of socialist economic integration, the new trends and perspectives of establishing treaty relations between the CMEA and EEC, and between the EEC and individual socialist countries.

Finally, chapter nine expounds the disputed questions of international law-making related to the activities of transnational corporations, and chapter ten specifies the nature and forms of economic coercive measures in international relations such as embargo, boycott, blocade, reprisal, retorsion.

The book is provided with a rather detailed bibliography but has no index.

V. Mavi

АНУФРИЕВА, Л.П.: СОТРУДНИЧЕСТВО В ОБЛАСТИ НАУКИ И ТЕХНИКИ МЕЖДУ СОЦИАЛИСТИЧЕСКИМИ И РАЗВИВАЮЩИМИСЯ СТРАНАМИ

(ANUFRIYEVA, L.P.)
(Co-operation between socialist and developing countries in the field of sciences and technics), Nauka, Moscow, 1987. 174 p.

The socialist countries consider their traditional task to assist developing countries. In the course thereof they also give aids - as far as needed and possible - but their policy is,however,essentially directed by the principle that "instead of the fish it is more valuable to instruct in fishing". Thus, they urge the establishment of relations, which render possible the evolution of the economy of the developing

countries, wherein the scientific-technical co-operation has a distinguished role. The author has undertaken to survey the conceptual-theoretical questions of the legal means falling to this field of the co-operation, introducing and evaluating at the same time the methods, the forms of co-operation and the various agreements developed by the practice. The author emphasizes here both the inter-state relations and the relations between economic organizations.

The monography treats this problems set of in three parts and in eight chapters. The first part deals with the general questions, the second one tackles with the solutions falling to the sphere of international law, whereas the third part treats civil-law means.

Chapter 1 discusses the notions of technical assistance and scientific-technical co-operation and the problems of their interrelations. It refers to the fact that in 1973 the Soviet Union co-operated with 45 developing countries on the strength of inter-state agreements in the field of sciences and technics (20 Asiatic countries, 22 African countries and 3 Latin-American countries). The author surveys the characteristic partial fields of co-operation and touches upon the discussions on typifying in the literature. She points to the interaction between the technical and economic characters of the co-operation. In this connection she mentions the debate in the legal literature in connection with the subject matter of the legal relations under international law, namely on the qualification of "goods and chatttels" and "properties" (pp. 23 et seq.) with special respect to the problems of valuation of intellectual properties. The author points to the complexity of relations,namely to the fact, that technical assistance necessarily contains conditions connected with the scientific co-operation, too.

Chapter 2 surveys the general principles of international law on the relations between socialist and developing contries, underlining their special features in the field of the scientific-technical co-operation. Thus, it treats the principles of socialist internationalism, the approach of the levels of economy, the respect for sovereignty, the freedom from discrimination, the confidential treatment of transferred informations. The author points out that the individual principles do not manifest themselves isolatedly, thus e.g. the principle of comradely help must not be qualified as the restriction of the principle of the enforcement of mutual advantages (p. 37), and, that though no particular, individual principles have been crystallized for the field in question, their contours are already perceptible (p. 51). In her analyses, the author relies to a considerable extent upon the declarations accepted on the level of UNO, primarily upon the documents aiming at the development of a new economic world order.

Chapters 3 to 5 analyze the aspects and the regulation of scientific-technical relations in international law. Chapter 3 gives a survey of the various forms of the international law regulation, of its general problems. The author underlines the importance of international contract, a fundamental instrument of politics and law, the particularities of the types of international contracts (agreements, protocols of proceedings, etc.). In this connection the comments of the author are in-

teresting - with reference to the relation of the plan and the contract - on the legal nature of the plans of developing countries (pp. 56-58), on the questions of drawing the conceptual range of the international contract, e.g. on the pactum de contrahendo character of the so-called programmes (pp. 61-62), on the hierarchy of international agreements (pp. 68 et se .). Chapters 4 to 5 analyze the variants and the special contents of contracts relating to technical assistance and scientific-technical co-operation, respectively, based on individually treated contracts. The comments of the author on the internal "propagation" of the undertaken obligations may reckon with special interest.

The third part (Chapters 6 to 8) treats the civil-law aspects of the topic (the inter-enterprise relations) in a similar structure as Part II. Chapter 6 deals with the general questions, Chapters 7 and 8 expound the specifica relating to technical assistance and scientific-technical co-operation. Reference will be made here only to some problems of special interest. Such are the relations between the inter-state and the inter-enterprise agreements, the relative autonomy of civil-law contracts, problems arising from the complicated, complex character of civil-law contracts, the questions of typifying contracts (e.g. the sui generis character of research contracts), the problems of the so-called diagonal contracts, etc.

The monography relies upon an ample factual material - primarily upon agreements entered into by the Soviet Union but also by other socialist countries, as well, as upon the documents of international organizations - and the utilized literature is also impressive. Standing on the ground of the practice, the author selects with a good sensitivity the problems of theoretically interesting questions, and supports her aspects with convincing argumentations. The literature of Soviet international law is enriched with a high-level monography, containing useful information and aspects stimulating the foreign specialists for further thinking.

E. Lontai

ZIMMERMANN, R.: DAS RÖMISCH-HOLLÄNDISCHE RECHT IN SÜDAFRIKA.
Einführung in die Grundlagen und usus hodiernus.
(The Roman-Dutch law in South Africa. Introduction into the bases and present practice).
In: Einführung in das fremdländische Recht,
Wissenschaftliche Suchgesellschaft, Darmstadt,
1983. XIII + 222 p.

It is hardly necessary to emphasize, how important it would be to make a precise survey of the survival of Roman law — by the notion of which, first of all, Roman civil law (ius privatum) is meant. After the enactment of the Greek Civil Code (1946), in Europa it remained only Scotland where Roman law survived directly in the form of Civil law. Outside our continent ius Romanum is a living law even today only in

some states of South Africa. The basis of the judicature of these states is decisively Justinian's Roman law. The monograph of professor Zimmermann studies the survival of the Roman law in this region.

In the introduction of the work, the author emphasizes, that in this region some kind of "symbiosis" may be observed of two different legal systems - the English and the Roman laws. This particular fact is highly significant even by itself from the point of view of the comparison of law. In the introduction of the work, Zimmermann refers to the fact that Roman law is valid not only in the Republic of South Africa, but also in Zimbabwe, Swaziland, Lesotho and Botswana. Further on, ius Romanum is effective in a considerable part of the Antarctic, too.

In the survival of Roman law a decisive role has had by the Raad von Justitie in Capetown functioning continuously since 1656, the judicial practice of which is of crucial importance in the continuous enforcement of the theses of Roman law. Zimmermann briefly surveys the questions of the reception of Roman law in the Netherlands. He points out that reception had been perfect in the Frisian land. It was, however, less advanced in the territories of rather agricultural character, where industry was of minor importance. In Holland, Zeeland and Utrecht the reception was of more comprehensive, though it cannot be called total. The Roman law arrives to South Africa through the intervention of the territory of Holland. The university of Leiden has a remarkable role therein. It is worth mentioning that in the Cape Colony the reception comprises not only the Roman-Dutch Law but includes also the laws effective in the territory of Holland. Thus - to mention only one example - the Politieke Ordonnansie (1580) is also the subject of reception. A doubtless particularity of the South-African reception is that it also comprises the legal material, originating in the age of the Spanish Empire. A special document thereof is the placaat dated from May 10, 1529 regulating the questions of the transfer of real property. This placaat is the basis even today of the South-African Deeds Registration Act. In this respect, reference can be made to the so-called Eternal Edict of Charles V (date of enactment is 1540) being partly valid today. This Edict relates to the marriage of minors.

It is a historical speciality of the reception of Roman law in South Africa, that it is, as a matter of fact, owing to the British. The reason thereof is, that after the French Bourgeois Revolution this territory became a British colony. Therefore - as against the Netherlands - the French Code Civil has not been introduced. Consequently, no codification occurred being the instrument of the supersession of the Roman law.

Zimmermann deals thoroughly with the sometimes very intricate domain of questions of the coexistence between English law (case law) and Roman law. The animus iniurandi, a good example of the supersession of the constructions of English law, is of paradigmatic importance. The tendency of the supersession of English elements has manifested itself to an even increasing degree in the recent decades. It is not a mere chance that the author writes directly about "Säuberung" as

being an adequate expression in this context.

Zimmermann emphasizes that ius Romanum survives in its Justinian's form (Corpus Iuris Civilis) (" ... as corrupted by the Byzantins"). A circumstance worth mentioning is that the legal literature has an important role as an effective source of law (formally it is not). The legal literature has namely a so-called presuasive authority.

Further on, the author studies the question of codification of South-African law. He refers to the fact that the case of the codification had previously - some years ago - been on the agenda. The codification would have particularly been destined to prevent the "advance" of the English law. In the recent years, however, the codification has not figured any more among the actual tasks. The reason thereof is primarily that the autonomous character of the South-African law could be preserved by other means. This applies especially to the domain of the law of persons and the family law where the influence of English law is almost not at all perceptible. In this respect the regulation of the responsibility of minors is of paradigmatic significance. In this range a rescriptum of Antoninus Pius (D. 26.8.1.pr.-Ulpianus) is decisive, according to which the minor is responsible "in quantum locupletior factus est". The basis of the responsibility is the law and not the contract. Taking this fact into consideration, the minor is responsible only to the extent of the remaining enrichment in the property.

The situation is different in the contract law, where the influence of English law is much more perceptible. In this field, the deduction of some formulae from the Roman law is forced, or as formulated by the author, "stands on clay feet" ("auf tönernen Füssen steht"). The South-African law knows also the contract to the benefit of a third person. This means that it breaks with the thesis of Roman law "alteri stipulari nemo potest". The particularity of the regulation of this construction consists, however, in that the third person does not directly acquire rights. To the acquisition of the right to demand (Forderungsrecht) a declaration of acceptance is necessary, showing a deviation e.g. from the regulation of the German BGB. Moreover, South-African law knows the institution of the representation (business agency). The basis thereof is that Dutch law has broken with the attitude of Roman law, ignoring the construction of representation already in the 17th - 18 th centuries. In this field the influence of the English law is rather strong. A sign of this influence is e.g. that bases of the power of agency may be not only the law and the contract. A further base of "Vertretungsmacht" may be the "estoppel". If namely the dominus negotii is negligent in that the third person might assume that the person, entering into contract with him, acting on behalf of the dominus negotii has the power of agency, the dominus negotii will be obliged on the strength of the concluded contract ("agency by estoppel"). This construction reminds considerably to the Anscheinvollmacht formation of the German law. In South-African law the construction of "undisclosed principal" has had a role since 1869. According to this construction the dominus negotii is liable for the contracts of the representative concluded with

third persons even if he did not disclose his representative capacity to the third person, i.e. he acted in his own name. Reference should be made, however, to the fact that the undisclosed agency gets across in a restricted degree in the South-African law and it is regarded as some kind of "foreign body" by the literature. On the other hand, it is, however, a matter of fact that this construction has taken roots in the South-African case law to such an extent, that its removal would not be possible any more. The construction of the so-called unwiderrufliche Vollmacht does not rest on Roman law bases. This special form of procuration has been naturalized in the eighties of the last century in the South-African law and legal practice. In the acceptance of this construction Story, a respected personality of the American law at that time, had a significant part. At the same time it is still undecided, to what an extent this doctrine is rational. The irrevocable procuration has namely two conjunctive conditions: that the procuration has to be from the very first of such character, such nature, on the one hand, and that the exclusion of the withdrawal of the procuration should be in the interest of the procurator or should serve as guarantee, on the other hand. The question arises, of course, what is to be understood under the interest of the procurator in this case. Remaining still in the field of contract law, Zimmermann analyzes in detail the particularities of the contract of sale. The influence of the Roman law is shown undoubtedly by the fact that in the range of movable property the handing over of the sold thing is not enough for the acquisition of property but the payment of the purchase price is also a condition. In this connection the regulation of the Justiniani Institutiones is the standard (" ... venditae vero et traditae non aliter emptori adquiruntur (i.e. the property, G.H.), quam si is venditori pretium solverit vel alio modo si satisfecerit..." - 2.1.4.).

In the range of delicts the author treats in detail the question of the actio iniuriarum. This legal action serves for basis of the compensation for non-pecuniary damages. Beginning in the sixties, the animus iniurandi has come more and more into prominence. Referring to the construction of "amende honorable" Zimmermann mentions that this has been gradually ousted from the South-African law. The actio iniuriarum, as legal action of general nature is, however, suitable for covering a very wide range of fact of petty offences.

In the part dealing with the law of succession the author underlines the falling into the background of the distinction between the codicil and the testament. The reception of trust is full. This reception is indicated - among others - by that the "Treuhand ad pias causas" as a special type of trust ("for charitable purposes") is fully accepted by South-African law.

The book of Zimmermann offers and excellent survey of the essential particularities of the South-African civil law. The work elaborating an abundant secondary literature may reckon with reason on the interest of the scientists of Roman law, in broader sense, those of the civil law and of the history of law.

G. Hamza

Acta Juridica Academiae Scientiarum Hungaricae, 31/1-2/,
pp. 221-287 /1989/

BIBLIOGRAPHIA

HUNGARIAN LEGAL BIBLIOGRAPHY
1988 1st PART

Edited by Katalin B. Veredy.

This bibliography contains legal works of Hungarian authors issued as monographs in Hungary between the 1st of January and the 30th of June 1988, material of periodicals (articles) and studies published in collective works.

The material for the period 1945-1980 is resumed in the following publication: Bibliography of Hungarian legal literature. 1945-1980. Budapest, Akadémiai Kiadó, 1988. 429 p.

The material published from the 1st of January, 1981 is currently processed half-yearly in the Acta Juridica, beginning with the Tomus 23, 1981. Nos 3-4.

Abbreviations of Periodicals:

ÁI	- Állam és Igazgatás [State and Administration]
ÁJ	- Állam- és Jogtudomány [Legal and Administrative Sciences]
AJurid.	- Acta Juridica Academiae Scientiarum Hungaricae]
HLR	- Hungarian Law Review
JK	- Jogtudományi Közlöny [Law Journal]
MJ	- Magyar Jog [Hungarian Law]
MTud.	- Magyar Tudomány [Hungarian Science]
OVPr	- Обзор Венгерского Права [Hungarian Law Review]
RDH	- Revue de Droit Hongrois [Hungarian Law Review]
Társadkut.	- Társadalomkutatás [Social Research]
TSZ	- Társadalmi Szemle [Social Review]

Other abbreviations:

átdolg.	- átdolgozott, átdolgozta [revised]
bev.	- bevezette, bevezető [introduction]

bibliogr. - bibliográfia [bibliography]
bőv. - bővitett [enlarged]
Bp. - Budapest
compil. - compiled by
доп. - дополненный [enlarged]
Dt. Zusammenfassung - Deutsche Zusammenfassung [German summary]
ed. - edition, edited by
enl. - enlarged
Eng. summary - English summary
fasc. - fasciculus
fel.szerk. - felelős szerkesztő [managing editor]
ford. - forditás, forditotta [translation, trnslated by]
függ. - függelék [appendix]
füz. - füzet [issue]
г. - год [year]
gyüjt. - gyüjtemény [Collection]
Hrsg. - Herausgeber [editor]
изд. - издание [edition]
Издат. - Издательство [Publishing House]
jav. - javitott [corrected]
jegyz. - jegyzet [note]
kiad. - kiadás, kiadja [publication, published by]
kieg. - kiegészités, kiegészitette [completion, completed by]
köt. - kötet [volume]
lev. - levél [leaf]
mell. - melléklet [supplement]
mimeogr. - mimeographed
n. - nélkül [without]
ny. - nyomda [Printing Office]
отв.ред. - ответственный редактор [managing editor]
összeáll. - összeállitotta [compiled by]

P.	- pagina
пер.	- перевод [translation]
перераб.	- переработанный [revised]
Print.	- Printing Office
publ.	- publication, published by, Publishing House]
r.	- rész [part]
red.	- redactor, redigit
Rés.franc.	- Résumé francais [French summary]
rev.	- revised
Русск.содерж.	- Русское содержание [Russian summary]
ser.	- series
suppl.	- supplement
сер.	- серии [series]
szerk.	- szerkesztő, szerkesztette [editor, edited by]
szerk.biz.	- szerkesztőbizottság [board of editors]
сост.	- составил [compiled by]
t.	- tábla [table]
térk.	- térkép [map]
transl.	- translation, translated by
Übers.	- Übersetzung [translation]
в.	- век [century]
Verl.	- Verlag [Publisher, Publishing House]
ВНР	- Венгерская Народная Республика [hungarian People's Republic]
vol.	- volume
ж.	- журнал [journal]

Periodicals processed in this bibliography:

ÁI 1-6/1988.; ÁJ 1-4/1986. [1988.]; AJurid. 3-4/1986. [1988.]; HLR 1-2/1986. [1988.]; JK 11-12/1987. [1988.], 1-5/1988.; MJ 1-6/1988.; MTud. 1-6/1988.; OVPr 1-2/1986. [1988.]; RDH 1-2/1986. [1988.]; Társadkut. 4/1987. [1988.], 1/1988.; TSZ 1-5/1988.

Collective works processed in this bibliography and their abbreviations:

Annales Bp. Tomus 20.1987. = Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae. Sectio iuridica. Tomus 28.1986. Red. Comissio scientiae. Bp. Állami ny. 1987. [1988.] 339, [4] p.

Both-emlékkönyv. 1987. = Both Ödön emlékezete. 1924-1985. Szerk. Homoki Nagy Mária. [In memoriam Ödön Both. 1924-1985.] Szeged, Szegedi ny. 1987. [4], 333-360, [4] p. /Acta Universitatis Szegediensis de Attila József nominatae. Acta juridica et politica. Tomus 37. fasc.23./

ELTE Acta 28.köt.1986. = A budapesti Eötvös Loránd Tudományegyetem Állam- és jogtudományi karának actái. 28.köt. 1986. Főszerk. Vékás Lajos. fel.szerk. Hamza Gábor. [Acta of the Faculty of the Legal and Administrative Sciences of the Loránd Eötvös University of Budapest. Vol.28.1986.] Bp. [mimeogr.] 1986.[1987.] 224 p.

Jogász szöv.ért.1987.3.köt. = Jogász szövetségi értekezések. 1987. 3. [köt.] Főszerk. Nagy László. [Közzéteszi a] Magyar Jogász Szövetség. [Essays of the Lawyer's Association. 1987. vol.3.] Bp. [mimeogr.] 1987. [1988.] 142 p.

Krim.tanulm.25.köt.1988. = Kriminológiai és kriminalisztikai tanulmányok. 25. [köt.] Szerk. Gödöny József. Közzéteszi az Országos Kriminológiai és Kriminalisztikai Intézet. [Essays in criminology and criminalistics. Vol.25.] Bp. Közgazdasági és Jogi Kiadó, 1988. 344 p.

Szilbereky-emlékkönyv.1987. = Emlékkönyv Szilbereky Jenő egyetemi tanár oktatói müködésének 30. és születésének 70. évfordulójára. Szerk. Tóth Károly. [Memorial volume for the 70th anniversary of birth and the 30 years of teaching activity of professor Jenő Szilbereky.] Szeged, Szegedi ny. 1987. 327 p. /Acta Universitatis Szegediensis de Attila József nominatae. Acta juridica et politica. Tomus 37. Fasc.1-22./

Viski-emlékkötet. 1987. = Viski László emlékkötet. [Tudományos ülés anyaga. Budapest, 1987. szept. 30.] Szerk. Szabó

András. [Közzéteszi az] MTA Magyar Kriminológiai Társaság. [Memorial volume for László Viski. Papers of a scientific meeting, held at Budapest, September 30, 1987.] Bp. [mimeogr.] 1987. 111 p. /Kriminológiai Közlemények 17./

ВЕНГЕРСКАЯ ЮРИДИЧЕСКАЯ БИБЛИОГРАФИЯ 1988, 1-я ЧАСТЬ

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Сокращения журналов:

ÁI	- Állam és Igazgatás [Государство и управление]
ÁJ	- Állam- és Jogtudomány [Наука государства и права]
AJurid.	- Acta Juridica Academiae Scientiarum Hungaricae
HLR	- Hungarian Law Review [Обзор венгерского права]
JK	- Jogtudományi Közlöny [Вестник юридических наук]
MJ	- Magyar Jog [Венгерское право]
MTud.	- Magyar Tudomány [Венгерская наука]
OVPr	- Обзор венгерского права
RDH	- Revue de Droit Hongrois [Обзор венгерского права]
Társadkut.	- Társadalomkutatás [Обществоведение]

TSZ - Társadalmi Szemle [Общественный обзор]

Другие сокращения:

átdolg. - átdolgozott, átdolgozta [пересмотренный]
bev. - bevezette, bevezető [введение]
bibliogr. - bibliográfia [библиография]
bőv. - bővitett [дополненный]
Bp. - Budapest [Будапшт]
compil. - compiled by [составил]
доп. - дополненный
Dt. Zusammenfassung - Deutsche Zusammenfassung [немецкое содержание]
ed. - edition, edited by [издание]
enl. - enlarged [дополненный]
Eng. summary - English summary [английское содержание]
fasc. - fasciculus
fel.szerk. - felelős szerkesztő [ответственный редактор]
ford. - fordítás, forditotta [перевод]
függ. - függelék [приложение]
füz. - füzet [выпуск]
г. - год
gyüjt. - gyüjtemény [сборник]
Hrsg. - Herausgeber [издатель]
изд. - издание
Издат. - Издательство
jav. - javitott [исправленный]
jegyz. - jegyzet [примечание]
kiad. - kiadás, kiadja [издание, издатель]
kieg. - kiegészités, kiegészitette [дополнение]
köt. - kötet [том]
lev. - levél [лист]
mell. - melléklet [приложение]
mimeogr. - mimeographed [размножение]
n. - nélkül [без]

ny. - nyomda [типография]
отв.ред. - ответственный редактор
összeáll. - összeállitotta [составил]
p. - pagina
пер. - перевод
перераб. - переработанный
Print. - Printing Office [Типография]
publ. - publication, published by, Publishing House [издание, издательство]
r. - rész [часть]
red. - redactor, redigit [редактор]
Rés.franc. - Résumé francais [французское содержание]
rev. - revised [пересмотренный]
Русск.содерж. - Русское содержание
ser. - series [серия]
suppl. - supplement [приложение]
сер. - серия
szerk. - szerkesztő, szerkesztette [редактор]
szerk.biz. - szerkesztőbizottság [редакторская коллегия]
сост. - составил
t. - tábla [таблица]
térk. - térkép [карта]
transl. - translation, translated by [перевод]
Übers. - Übersetzung [перевод]
в. - век
Verl. - Verlag [Издательство]
ВНР - Венгерская Народная Республика
vol. - volume [том]
ж. - журнал

Разработанные журналы:

ÁI 1-6/1988.; ÁJ 1-4/1986. [1988.]; AJurid. 3-4/1986. [1988.]; HLR 1-2/1986. [1988.]; JK 11-12/1987. [1988.], 1-5/1988.; MJ 1-6/1988.; MTud. 1-6/1988.; OVPr 1-2/1986. [1988.]; RDH 1-2/1986. [1988.]; Társadkut. 4/1987. [1988.], 1/1988.; TSZ 1-5/1988.

Разработанные сборники и их сокращения:

Annales Bp. Tomus 28.1987. = Annales Universitatis Budapestinensis de Rolando Eötvös nominatae. Sectio iuridica. Tomus 28.1986. Red. Comissio scientiae. Bp. Állami ny. 1987. [1988.] 339, [4] p.

Both-emlékkönyv.1987. = Both Ödön emlékezete. 1924-1985. Szerk. Homoki Nagy Mária. [Памяти Эдэн Бот. 1924-1985.] Szeged, Szegedi ny. 1987. [4], 333-360, [4] p. /Acta Universitatis Szegediensis de Attila József nominatae. Acta juridica et politica. Tomus 37. Fasc.23./

ELTE Acta.28.köt.1986. = A budapesti Eötvös Loránd Tudományegyetem Állam- és jogtudományi karának actái. 28. köt. 1986. Főszerk. Vékás Lajos. Fel.szerk. Hamza Gábor. [Издание факультета Государственно-правовых наук Университета им. Лоранда Этвеша. Том 28. 1986 г.] Bp. [mimeogr.] 1986. [1987.] 224 p.

Jogász szöv.ért.1987.3.köt. = Jogász szövetségi értekezések. 1987. 3.[köt.] Főszerk. Nagy László [Közzéteszi a] Magyar Jogász Szövetség. [Научные труды Ассоциации юристов. 1987 г. Том 3.] bp. [mimeogr.] 1987. [1988.] 142 p.

Krim.tanulm.25.köt.1987. = Kriminológiai és kriminalisztikai tanulmányok. 25.[köt.] Szerk. Gödöny József. Közzéteszi az Országos Kriminológiai és Kriminalisztikai Intézet. [Сборник статей по криминалогии и криминалистике. Том 25.] Bp. Közgazdasági és Jogi Kiadó, 1988. 344 p.

Szilbereky-emlékkönyv.1987. = Emlékkönyv Szilbereky Jenő egyetemi tanár oktatói müködésének 30. és születésének 70. évfordulójára. Szerk. Tóth Károly. [Юбилейное издание, посвященное 30-летию преподавательской деятельности и 70-летию со дня рождения Йэнэ Силбереки.] Szeged, Szegedi ny. 1987. 327 p. /Acta Universitatis Szegediensis de Attila József nominatae. Acta juridica et politica. Tomus 37. Fasc. 1-22./

Viski-emlékkötet.1987. = Viski László emlékkötet. [Tudományos ülés anyaga. Budapest, 1987. szept. 30.] Szerk. Szabó András. [Közzéteszi az] MTA Magyar Kriminológiai Társaság.

[Юбилейное издание, посвященное памяти Ласло Вишки.] Bp. [mimeogr.] 1987. 111 p. /Kriminológiai közlemények 17./

BOOKS OF REFERENCE - СПРАВОЧНЫЕ ИЗДАНИЯ

Practice of courts - Судебная практика

Büntetőjogi döntvénytár. Birósági határozatok. 1985. jan. - 1986. dec. Összeáll. Bagi Dénes - Jacsó János - Kiss Zsigmond - Vágó Tibor. Szerk. Czili Gyula. [Criminal law casebook. Judicial decisions. January, 1983 to December, 1986. Свод решений по уголовному праву. Судебные решения. (Январь 1983 г. - декабрь 1986 г.).]
Bp. Közgazdasági és Jogi Kiadó, 1988. 527 p.

Munkaügyi elvi határozatok. A Magyar Népköztársaság Legfelsőbb Biróságának a munkaügyi, a társadalombiztositási és a szövetkezeti tagsági jogvitákkal kapcsolatos elvi állásfoglalásai. Összeáll. Maka László - Ripp Miklós. Szerk. Nagy Zoltán. Közzéteszi a Magyar Népköztársaság Legfelsőbb Birósága. Lezárva: 1987. jun. 30. [Resolutions of principle on labour relations. Standpoints of principle of the Supreme Court of the Hungarian People's Republic on labour disputes and contested social security and cooperative membership issues. Closed: June 30, 1987. Руководящие решения и постановления по трудовым вопросам. Руководящие решения Верховного Суда ВНР по вопросам трудовых отношений, социального обеспечения и членства в кооперативах. Материалы Включены до 30 июня 1987 г.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 175 p.

Scientific Records - Сборники статей

Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae. Sectio iuridica. Tomus 28. 1986. Red. Comis-

sio scientiae. Bp. Állami ny. 1987. [1988.] 339, [4] p. Bibliogr. passim. -- Eng.summary; Rés.franc.; Dt. Zusammenfassung; Русск.содерж.

Both Ödön emlékezete. 1924-1985. Szerk. Homoki Nagy Mária. [In memoriam Ödön Both. 1924-1985. Памяти Эден Бот (1924-1985).] Szeged, Szegedi ny. 1987. [4], 333-360, [4] p.
/Acta Universitatis Szegediensis de Attila József nominatae. Acta juridica et politica. Tomus 37. Fasc. 23./ Bibliogr. passim.

A budapesti Eötvös Loránd Tudományegyetem Állam- és jogtudományi karának actái. 28. köt. 1986. Főszerk. Vékás Lajos. Fel. szerk. Hamza Gábor. [Acta of the Faculty of the Legal and Administrative Sciences of the Lorád Eötvös University of Budapest. Vol. 28. 1986. Издание факультета Государственно-правовых наук Университета им. Лоранда Этвеша. Том. 28. 1986 г.] Bp. [mimeogr.] 1986. [1987.] 224 p. Bibliogr. passim. -- Rés. franc.

Emlékkönyv Szilbereky Jenő egyetemi tanár oktatói müködésének 30. és születésének 70. évfordulójára. Szerk. Tóth Károly. [Memorial volume for the 70th anniversary of birth and the 30 years of teaching activity of professor Jenő Szilbereky. Юбилейное издание, посвящённое 30-летию преподавательской деятельности и 70-летию со дня рождения Иэнэ Силбереки.] Szeged, Szegedi ny. 1987. 327 p.
/Acta Universitatis Szegediensis de Attila József nominatae. Acta juridica et politica. Tomus 37. Fasc. 1-22./ Bibliogr. passim. -- Dt. Zusammenfassung; Eng.summary; Rés.franc.

Jogász szövetségi értekezése. 1987. 3.[köt.] Főszerk. Nagy László. [Közzéteszi a] Magyar Jogász Szövetség. [Essays of the Lawyers' Association. 1987. Vol. 3. Научные труды Ассоциации юристов. Том 3. 1987.]
Bp. [mimeogr.] 1987. [1988.] 142 p. -- Bibliogr. passim.

Viski László emlékkötet. [Tudományos ülés anyaga. Budapest, 1987. szept. 30.] Szerk. Szabó András. [Közzéteszi az] MTA Magyar Kriminológiai Társaság. [Memorial volume for László Viski. Papers of a scientific meeting, held at Budapest, September 30, 1987. Юбилейное издание, посвященное памяти Ласло Вишки.]
Bp. [mimeogr.] 1987. 111 p. /Kriminológiai közlemények 17./
Bibliogr. passim.

Bibliographies - Библиографии

Book - Книга

A magyar állam- és jogtudományi irodalom bibliográfiája. 1987. 2. [füz.] Összeáll. Balázsné Veredy Katalin - Orosz Ágnes. [Közzéteszi az] Országgyülési Könyvtár. [Lezárva:] 1987. dec. 30. [Bibliography of the Hungarian literature on state and law. 1987. 2nd part. Closed: December 30. 1987. Библиография по вопросам государства и права. (1987 г. № 1.)]
Bp. OK [mimeogr.] 1988. XVIII, 203 p.

Articles - Статьи

Hungarian legal bibliography. 1985. 2nd part. Венгерская юридическая библиография. 1985 г. Часть 2. Ed. Nagy Lajos - Veredy Katalin, B.
AJurid. 3-4/86:381-400.

Publications des ensignents de la Faculté du 1er janvier 1984 au 31 décembre 1984. - Публикации преподавателей Юридического факультета с 1 января по 31 декабрь 1984 г. [Publications of the teaching staff of the Faculty in 1984.]
= Annales Bp. Tomus 28. 1987. 307-339.

I. THEORY OF STATE AND LAW - I. ТЕОРИЯ ГОСУДАРСТВА И ПРАВА

Books - Книги

A jogalkotás és a jogalkalmazás egyes kérdései Magyarországon. 19-20. század. [Szerk. Kovács Kálmán. Közzéteszi] az ELTE Magyar jogtörténeti tanszék. [Problems of law-making and the application of the law in Hungary. 19-20th centuries. Некоторые вопросы правотворчества и правоприменения в Венгрии в 19-20. вв.] Bp. [mimeogr.] 1986. [1987.] 281 p. /Jogtörténeti értekezések 15./ Bibliogr. passim. -- Dt. Zusammenfassung; Rés.franc.

PESCHKA Vilmos: A jog sajátossága. [The special character of law. Специфика права.]
Bp. Akadémiai Kiadó, 1988. 159 p. Bibliogr. passim.

Válság és reform. [A] Magyar Politikatudományi Társaság évkönyve. Szerk. Szoboszlai György. [Crisis and reform. Yearbook of the Hungarian Association of Politilogy. Кризис и реформа. Ежегодник Венгерской ассоциации политических наук.]
Bp. [mimeogr.] 1987. 287 p. Bibliogr. passim.

VISEGRÁDY Antal: A birói gyakorlat jogfejlesztő szerepe. Lezárva: 1987. máj. [The role of judical practice in the development of the law. Closed: May, 1987. Роль судебной пратики в развитии права. Практика исследована до мая месяца 1987 г.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 199 p. Bibliogr. 179-194.

Articles - Статьи

ANTALFFY György: Machiavel et les sciences politiques. [Machiavelli and political sciences. Макиавелли и плитические науки.] = Szilbereky-emlékkönyv. 1987. 7-19.

FICZERE Lajos: Szocializmus és jogállamiság. [Socialism and "Rechtstaat". Социализм и правовая государственность.]

JK 3/88:105-111.

FÖLDESI Tamás: Les dilemmas de la justice. [Dilemmas of justice. Дилемма правосудия.]
= Annales Bp. Tomus 28. 1987. 47-64.

FÖLDESI Tamás: Miért ne legyen közömbös a modern jog az igazságosság iránt? [Arguments against the indifference of modern law in relation to righteousness. Почему современное право не должно быть равнодушным к справедливости?]
ÁJ 2/88:280-292.

HORVÁTH Pál: Internationale wissenschaftliche Konferenz über die Entstehung und Entwicklung des sozialistischen Staates und Rechtes. [20-23. Mai 1985, Prag. International scientific conference on the origin and development of the socialist state and law, held in Prague on May 20-23, 1985. Международная научная конференция о создании и развитии социалистического государства и права (Прага, 20-23 мая 1985 г.)
= Annales Bp. Tomus 28. 1987. 279-282.

KULCSÁR Kálmán: A populista modernizáció problémája. A magyar népi mozgalom a harmincas-negyvenes években. [The problem of populist modernization. The Hungarian populist movement in the 30s and 40s. Проблемы популистской модернизации. Популистские движения в Венгрии в 20-х и 40-х годах.]
Társadkut. 1/88:5-17.

PACZOLAY Péter - VISEGRÁDY Antal: Osztrák-mygyar jogfilozófiai tanácskozás a jogi érvényességről. [An Austro-Hungarian consultation of philosophers of law on legal validity. Совещание австрийских и венгерских юристов-философов о вопросах действенности права.]
ÁJ 2/88:338-346

PAPP Ignác: Jogpolitika, jogalkotás, jogalkalmazás. [Legal po-

licy, law-making, application of the law. Правовая политика, правотворчество и праоприменение.]
= Szilbereky-emlékkönyv. 1987. 249-255.

PESCHKA Vilmos: A jog mint a hermeneutika modellje. [The law as a model of hermeneutics. Право как модель герменевтики.]
AJ 3/88:371-392.

SAJÓ András: A jogi szocializáció vizsgálata. Oktatási jelentés. [Examination of legal sozialization. A research report. Изучение юридической социализации.]
ÁJ 2/88:292-338.

SAMU Mihály: Die sozialistische Demokratie und die Rechtssetzung. [Socialist democracy and law-making. Социалистическая демократия и правотворчество.]
= Annales Bp. Tomus 28. 1987. 205-213.

SAMU Mihály: Forradalom és reform a szocialista állam- és jogfejlődésben. [Revolution and reform in the development of the socialist state and law. Революция и реформа в развитии социалистического государства и права.]
MJ 4/88:296-304.

SÁRI János: A hatalomgyakorlás felfogásának alakulása. 1957-1987. 1.r. [The development of the notion of exercise of power. 1957-1987. 1st part. Развитие понятия осуществления власти. Часть I.]
ÁI 6/88:481-489.

SZABÓ Imre: Küzdjünk a jogszabályok tultengése ellen. [Struggle against the abundance of legal norms. Борьба с избытком правовых норм.]
ÁJ 1/88:3-12.

SZILÁGYI Péter: Lehren einer verantwortungstheoretischen Dis-

kussion. [Conclusions drawn from a discussion on the theory of responsibility. Выводы дискуссии о теоретических вопросах юридической ответственности.]
= Annales Bp. Tomus 28. 1987. 221-244.

SZILÁGYI Péter: Társadalmi felelősség - jogi felelősség. [Responsibility of the society and legal responsibility. Общественная ответственность - юридическая ответственность.]
= ELTE Acta. 28. köt. 1986. 121-140.

UJLAKI László: A méltányosság külföldi tudománytörténeti áttekintése. [A survey of equity in the history of science in foreign sources. Принцип справедливости в свете зарубежной истории науки.]
ÁJ 1/88:126-144.

VARGA Csaba: Lukács [György] és az európai jogi kultura. [György Lukács and Europe's legal culture. Дьердь Лукач и европейская правовая культура.]
ÁJ 1/88:120-125.

VARGA Csaba: Kelsen jogalkalmazástana. Fejlődés, többértelműségek, megoldatlanságok. [Kelsen's theory on the application of the law. Its development, ambiguous meanings, unresolved problems. Учение Кельзена о применении права.]
ÁJ 4/88:569-591.

VARGA Csaba: A modern formális jog és kultúrája: kihivások, buktatók. [Szimpózium megnyitó előadása. Balatonkenese, 1987. máj. The modern formal law and its culture: challenge and difficulties. Opening lecture of the symposium. Balatonkenese, May, 1987. Современное формальное право и его культура: вызовы и трудности. (Вступительная речь на совещании в Балатонкенеше, май 1987 г.).]
JK 1/88:53-55.

VASTAGH Pál: Az állam funkcióiról a szocialista orientáció országaiban. [State functions in the countries of socialist orientation. О функциях государства в странах социалистической ориентации.]
= Szilbereky-emlékkönyv. 1987. 309-322.

VASTAGH Pál: A szocialista jogelmélet kialakulásának kezdeteiről. [On the initial stages of development of the socialist theory of law. О началах становления теории социалистического права.]
JK 11/87:581-586.

II. STATE LAW. CONSTITUTIONAL LAW - II. ГОСУДАРСТВЕННОЕ ПРАВО. КОНСТИТУЦИОННОЕ ПРАВО

Books - Книги

Alkotmánybiráskodás. A jogintézmény elméleti alapjai és működési tapasztalatai, valamint az Európában működő alkotmánybiróságok tevékenységére vonatkozó jogszabályok. 1-2. köt. Szerk. Varga Ildikó. [Közzétesszi a] Magyar Tudományos Akadémia Államtudományi kutatások programirodája. [Constitutional jurisdiction. Theoretical bases and operational experiences of this legal institution, and the statutory rules on the activity of constitutional courts functioning in Europe. Vols 1-2. Конституционный суд. Теоретические основы и опыт функционирования, нормативные акты, регулирующие деятельность конституционных судов в европейских странах. Том 1-2.]
Bp. [mimeogr.] 1987. [1988.] 282, [4], 283-580 p.

Az állampolgári alapjogok és kötelezettségek alkotmányjogi szabályozása. [Közzéteszi a] Magyar Tudományos Akadémia Államtudományi kutatások programirodája. Uj. kiad. [Regulation of the rights and obligations of the citizens under constitutio-

nal law. New ed. Конституционное регулирование прав и обязанностей граждан. 2-е изд.]
Bp. [mimeogr.] 1987. [1988.] 286 p. /Az alkotmány továbbfejlesztésének tudományos megalapozása 2./ Bibliogr. passim.

Press statutes in the Hungarian People's Republic. [Законодательные акты ВНР о прессе.]
[Bp. mimeogr.] 1987. 52 p. /Publications of the Ministry of Justice, Department for Science and Information 21./

Rechtsvorschriften über die Presse in der Ungarischen Volksrepublik. Red. Sieber Edit. [Press statutes in the Hungarian People's Republic. Законодательные акты ВНР о прессе.]
[Bp. mimeogr.] 1987. 60 p. /Ministerium der Justiz. Publikationen der Hauptabteilung für Wissenschaft und Information 22/

Articles - Статьи

ÁDÁM Antal: A Nemzetközi Alkotmányjogi Társaság második világkongresszusáról. [Párizs-Aix-en-Provence, 1987. aug. 31. - szept. 5. Report on the 2nd world congress of the International Association of Constitutional Law, held in Paris and Aix-en-Provence, from August 31 to September 5, 1987. Вторая всемирная конференция Международного конституционно-правового общества (Париж-Акс-ан-Прованс, 31. VIII. - 5. IX. 1987 г.).]
ÁI 3/88:274-282.

BORICS Gyula: A jogalkotásról szóló törvényjavaslat. [Draft bill on law-making. Законопроект о правотворчестве.]
MJ 2/88:97-103.

CSALÓTZKY György: A választások törvényességi biztositékainak továbbfejlesztése. [Further improvement of the legality guarantees of elections. Дальнейшее развитие гарантий законности выборов.]
ÁI 4/88:335-346.

CSIBA Tibor: A választások törvényessége garanciarendszerének erősitése. [The strengthening of the guarantee system of elections. Усиление системы гарантий законности выборов.]
ÁI 4/88:328-334.

FICZERE Lajos: A miniszteri intézmény és kapcsolatrendszere. [The institution of ministry and of its system of relationships. Институт министров: система взаимосвязей.]
JK 11/87:591-601.

FÜRCHT Pál: A községi közös tanács, az elöljáróság választása. [The election of joint village council, the local authority. Вопросы совместного сельского совета и управы.]
ÁI 4/88:354-364.

GYENESEI István: A testületi demokratizmus továbbfejlesztése. [The further development of corporative democracy. Дальнейшее развитие демократизма в работе коллегиальных органов.]
ÁI 5/88:394-502.

HÁMORI Vilmos: Személyhez füzödő jogok védelme és a sajtószabadság. [The protection of personal rights and the freedom of the press. Защита прав личности и свобода печати.]
JK 11/87:606-613.

HOLLÓ András: A párttag képviselők (tanácstagok) felelőssége. [The party member (council representative) responsibility. Ответственность депутатов (членов Советов), являющихся членами партии.]
JK 11/87:601-606.

HOMOKI NAGY Mária: A sajtószabadság kérdése Both Ödön munkáiban. [Problem of the freedom of the press in the works of Ödön Both. Вопросы свободы печати в работах Эдэн Бот.]
= Both-emlékkönyv. 1987. 355-360.

HORVÁTH Ferenc: A helyi tanácselnök megválasztásának lehetőségei. [The alternatives of the election of local council president. Возможности выбора председателя местного совета.]
ÁI 4/88:347-353.

KILÉNYI Géza: A bíróság az alkotmányfejlődés tükrében. [Courts as reflected by constitutional development. Суд и развитие конституционализма.]
MJ 6/88:481-489.

KISS László: A tanácsi döntéstervezetek társadalmi vitáinak néhány kérdése. [Some problems of the open debates of council-level drafts of decisions. Некоторые вопросы общественного обсуждения проектов решений.]
ÁI 5/88:409-416.

KOLLÁTH György: Egyesület, önkormányzat. [Associations and autonomy. Объединение граждан и самоуправление.]
MJ 6/88:508-520.

KÖRÖSÉNYI András: Pártpluralizmus és korporativ parlament. [Party pluralism and corporative Parliament. Партийный плурализм и корпоративный парламент.]
Társadkut. 1/88:128-137.

KUKORELLI István: A politikai intézményrendszer szerepe a képviselőjelöltek előzetes kiválasztásában az 1985-ös választásokon. [The role of political institution system in the preliminary selection of candidates during the election of 1985. Роль системы политических институтов в предварительном выборе кандидатов парламента в ходе выборов 1985 г.]
ÁI 4/88:300-307.

LACÓ Bálint: Az önkormányzat fejlődése a tanácsi szabályozás uj rendszerében. [The development of self-government in the new system of council regulations. Развитие самоуправления в

новой системе регулирования советов.]
ÁI 2/88:139-150.

MAGYAR Henrik: Az állampolgári fegyelemről. [The discipline of citizens. О гражданской дисциплине.]
ÁI 2/88:133-138.

MOLNÁR István: A képviselő- és tanácstagválasztás szétválasztásának lehetőségei, a választások időpontja. [The alternatives of separating the election of representatives and council members, the date of elections. Возможности для раздельного проведения выборов депутатов в парламент и депутатов в местные советы; сроки выборов.]
ÁI 4/88:365-369.

MOLNÁR István: Kanada államberendezkedésének alkotmányjogi alapjai. [Constitutional law basis of Canada's state system. Конституционно-правовые основы государственного устройства Канады.]
JK 1/88:45-48.

PÁLNÉ KOVÁCS Ilona: A tanácsok szerepe a helyi politikai rendszerben. [The role of councils in the local political system. Роль советов в местной политической системе.]
ÁI 1/88:48-58.

PATKÓ Imre - SEEREINER Imre: A tanácsi testületi munka fejlődése. [The development of the council-level corporative work. Развитие коллегиальной рабрты в советах.]
ÁI 2/88:108-122.

SOLTÉSZ István: Az 1985. évi képviselő és tanácstagi választások fontosabb tapasztalatai. [Important experiences of the elections of representatives and council members in 1985. Важнейшие опыны выборов парламентских и советских депутатов в 1985 г.]
ÁI 4/88:290-299.

SÜTŐ Miklós: Törvényességi felügyelet és a reform. [The supervision of legality and the reform. Прокурорский надзор и реформа.]
MJ 3/88:244-247.

SZAMEL Lajos: A peticiós jog (kérelmezési és panaszjog). [The rights of petition (rights of claims and complaint.) Право на петицию (право на ходатайство и жалобу.).]
ÁI 3/88:193-204.

SZAMEL Lajos: A gyülekezési szabadság.[The freedom of assembling. Свобода собраний.]
ÁI 6/88:490-502.

SZEGVÁRI Róbert: Érdekképviselet - jelölés - választás. [Interest - representation - selection of candidates. Представительство интересов, кандидатура, выборы.]
ÁI 4/88:308-312.

TÓTH Károly: A jelöltek egyéni programja - viszonya a népfront választási programjához. [The personal program of candidates - its relation to the election program of the Patriotic People's Front. Индивидуальная программа кандидатов в депутаты, и её отношение к избирательной программе народного фронта.]
ÁI 4/88:321-327.

TÓTH Zoltán: A választások előkészitését, lebonyolitását támogató számitógépes rendszerről. [Computer system serving the preparation and arrangements of elections. Использование вычислительной техники в подготовке и проведении выборов.]
ÁI 4/88:370-375.

TÖRŐ Károly: Hogyan védi jogunk a szabadságot? [How freedom is protected by our law? Как защищает наше право свободу?]
JK 12/87:631-638.

TRÓCSÁNYI László, ifj.: A Nemzetközi Alkotmányjogi Társaság II. világkongresszusa. [Párizs-Aix-en-Provence, 1987. aug. 31. - szept. 5. 2nd world congress of International Association of Constitutional Law. II Всемирный конгресс Международной Ассоциации конституционного права. (Париж - Акс-ан-Прованс, 31. VIII - 5. IX., 1987 г.).]
JK 3/88:156-158.

UDVAROS Miklós: A 200 éves amerikai alkotmány előzményei. Személyek és események. [Antecedents of the 200-years old American Constitution - persons and events. 200-летие Конституции США. (Лица и события.).]
JK 2/88:71-73.

WEINER György: A képviseleti testületek társadalmi összetétele. [The social composition of the representative organs. Общественный состав коллегиальных депутатских органов.]
ÁI 4/88:313-320.

ZONGOR Gábor: A helyi tanácsi önkormányzatokról. [The local council autonomy. О местном самоуправлении советов.]
TSZ 1/88:45-51.

III. ADMINISTRATIVE LAW - III. АДМИНИСТРАТИВНОЕ ПРАВО

Books - Книги

BÁRSONY Jenő: A gazdaságirányitás továbbfejlesztése a szocialista országokban. [Improvement of economic management in the socialist countries. Развитие системы хозяйственного управления в социалистических странах.]
Bp. Közgazdasági és Jogi Kiadó, 1987. 360 p. 1 t. /Időszerü közgazdasági kérdések./ Bibliogr. passim.

Belkereskedelmi jogszabályok gyüjteménye. 1-2. köt. Szerk.

Schargin Tamás. Lezárva: 1987. dec. 31. [Collection of statutory rules of internal trade. Vols 1-2. Closed: December 31, 1987. Сборник нормативных актов из области внутренней торговли. Том 1-2. Материалы включены по 31 декабря 1987 г.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 1105, [2,6], 1115-2005, [2] p.

A közigazgatási büntetőbiráskodás fejlődése az utolsó 100 évben - Entwicklung der Verwaltungsstrafgerichtsbarkeit in den vergangenen 100 Jahren. Tanulmánykötet. Szerk. Máthé Gábor - Révész Tamás. [Development of the criminal jurisdiction in public administration during the last 100 years. Essays. Развитие уголовной юстиции по административным правонарушениям за последние 100 лет.]
Bp. [mimeogr.] 1986. [1988.] 483 p. /Igazságügyi Minisztérium Tudományos és tájékoztatási főosztály kiadványa 17./ Bibliogr. passim.

A külkereskedelem hatályos jogszabályainak gyüjteménye. A Külkereskedelmi Minisztérium hivatalos kiadványa. Összeáll. és szerk. Dienes-Oehm Egon - Szabó Gábor. Lezárva: 1987. máj. 2. [Collection of the statutes in force in foreign trade. Official publication of the Ministry of Foreign Trade. Closed: May 2, 1987. Сборник действующих нормативных актов по внешней торговле. Официальное издание Министерства внешней торговли. Материали включены по 2 мая 1987 г.]
Bp. Pécsi Szikra ny. 1987. 479 p.

Az önkormányzatu állami vállalatok törvényességi felügyelete. Tanulmánykötet. Szerk. Szép György. [Supervision of autonomous state enterprises for legality. Essays. Надзор за законностью государственных самоуправляющихся предприятий.]
[Bp. mimeogr.] 1987. 231 p. /Igazságügyi Minisztérium Tudományos tájékoztatási főosztály kiadványai 23./ Bibliogr. passim.

TOLDI Ferenc: A közigazgatási határozatok birói felülvizsgála-

ta. [Judical supervision of administrative decisions. Судебный пересмотр административных решений.]
Bp. Akadémiai Kiadó, 1988. 148, [4] p. /Jogtudományi értekezések./ Bibliogr. passim.

Articles - Статьи

BALÁZS István: A közszolgálat francia rendszeréről. [The French system of public service. О французской системе службы в публичной администрации.]
ÁI 1/88:36-47.

BALÁZS István: Kormánystruktura és államigazgatási szervezet. [Governmental structure and administrative system. Структура правительства и организация государственного управления.]
JK 11/87: 615-617.

BALOGH Zsolt: Az országos hatáskörü szervek szervezeti változásai. Fejlődéstörténeti áttekintés. [Organisational changes of bodies with nation-wide competence. Организационные изменения в органах всевенгерской компетенции. Обзор исторического развития.]
ÁI 3/88:230-240.

BARTA Barnabás: Gondolatok az urbanizáció és a társadalmi folyamatok kölcsönhatásáról. 1949-1980. [Some ideas on the mutual effects of urbanisation and social processes. Размышления о взаимосвязи урбанизации и общественных процессов.]
ÁI 6/88:503-520.

BODNÁRNÉ KOVÁCS Katalin - UNGVÁRI István: Község-megye kapcsolatok Szabolcs-Szatmár megyében, különös tekintettel a felügyeleti vizsgálatokra. [The new features of county and villages relations in Szabolcs-Szatmár county, particularly considering the supervision examinations at the council organs. Новые черты во взаимоотношениях между комитатами и селами в комитате

Саболч-Сатмар, уделяя особое внимание результатам исследования по надзору а органах совета.]
ÁI 1/88:64-71.

BŐHM Antal - PÁL László: Tapasztalatok a lakossági részvétel gyakorlatáról. [Experiments about the participation of the inhabitants. О практике участия населения.]
Társadkut. 1/88:18-30.

CSANÁDI Mária: A döntési mechanizmus szerkezetéről. [On the structure of the decision-making mechanism. О системе механизма по принятию решений.]
Társadkut. 4/87:5-27.

DUDÁS Ferenc: A lakossági ügyintézés szolgáltató jellege. [The service aspects of the citizens' affairs. Обслуживающий характер делопроизводства для населения.]
ÁI 1/88:72-82.

EGEDY Gergely: A bürokratikus hatalom a fejlődő országokban. [Bureaucratic power in the developing countries. Бюрократическая власть в развивающихся странах.]
Társadkut. 4/87:88-101.

GÁSPÁR István - MOLDOVÁN Ernő: Gondolatok a tisztességes visszavonulásról. [Ideas on the decent withdrawal. Размышления об уходе на пенсию, покидании государственной службы с достоинством.]
ÁI 6/547-551.

GYÖRGY István: Közigazgatás, demokratimus, hatékonyság. [Public administration, democratism, efficiency. Публичная администрация, демократизм, эффективность.]
ÁI 3/88:241-250.

IRK Ferenc: Viski László nézetei a közlekedésbiztonság fokozá-

sáról. [László Viski's views on the increase of security in traffic. Взгляды Ласло Вишки о безопасности дорожного движения.]
= Viski-emlékkötet. 1987. 51-70.

IVÁNCSICS Imre - KISS László: A megye-község kapcsolatok jelene és fejlesztésének perspektivái - egy felmérés tükrében. [The present situation and the development perspectives of the relations between county and village communities reflected by a survey. Настоящее и перспективы развития отношений между комитатами и селами - опыт одного исследования.]
ÁI 1/88:18-28.

KALTENBACH Jenő: A felügyelet intézménye az államigazgatásban. [The institution of supervision in the public administration. Надзор в государственном управлении.]
JK 3/88:125-137.

KISS György: Hozzászólás Gondolatok a közigazgatási karrierrendszer továbbfejlesztéséről cimü tanulmányhoz. [Comments on the paper titled "Ideas on the further development of public administratice career system". Заметки к статье Мысли о дальнейшем развитии системы карьеры в публичной администрации.]
ÁI 6/88:552-554.

KOVACSICS József: Die Gestaltung des Gebiete und der Verwaltungseinteilung des Komitats Veszprém. [Formation of the territory and the administrative division of the county Veszprém. Формирование территориального устройства и административного деления в комитата Веспрем.]
= Annales Bp. Tomus 28. 1987. 161-177.

KOVACSICSNÉ NAGY Katalin: A szabálysértési eljárás és az elzárásbüntetés alakulása. [The development of offence procedure and loss of liberty punishment. Рассмотрение дел об административных правонарушениях и развитие наказания в виде ареста.]
JK 12/87:643-647.

LEHOCZKY Zsuzsa - HORNYIK Lajos: Államigazgatási irányitási eszközök az ÁISH területén. [Administrative means of management in the activita of the National Office in charge of the youth and sports. Административные средства управления в работе Государственного молодёжного комитета.]
ÁI 4/88:376-379.

MADARÁSZ István: Az állampolgárok jogait sértő cselekmények bíróság előtti megtámadásának lehetősége a Szovjetunióban. [Possibilities in the Soviet Union of addressing a court for actions causing injury to the citizen's rights. Возможность обжалования в суд действий, нарушающих права граждан, в СССР]
ÁI 2/88:180-182.

MOLNÁR Miklós: Közigazgatási biráskodás a Német Szövetségi Köztársaságban. [Public administrative courts in the Federal Republic of Germany. Административное правосудие в Федеральной Республике Германии.]
ÁI 2/88:183-185.

MOLNÁR Miklós: Gondolatok az államigazgatási aktusok jogi kötöttségéről. A határozatlan jogi fogalmakról. [Ideas on the legal binding effects of public administrative procedures. О правовой обусловленности государственной администрации.]
ÁI 6/88:539-540.

MÓNUS Lajos: Az állami tevékenység demokratikus fejlesztéséhez. Egy év hordaléka. [On the develpment of democratic elements in state activities. К вопросу о демократическом развитии государственной деятельности.]
JK 11/87:586-591.

MÓZES Pál: Tanácsi koordináció a nyilt várospolitika szolgálatában. [Co-ordination at the councils serving the open communal policy. Координация деятельности совета на службе открытой городской политики.]
ÁI 5/88:433-439.

NÉMETH Miklós: A népgazdaság 1988. évi tervéről. [The 1988 plan of the people's economy. О народохозяйственном плане 1988 г.]
TSZ 2/88:3-12.

OLÁH László: A Magyar Posta jogállása. [The legal status of the Hungarian Post. Правовой статус Венгерской Почты.]
ÁI 3/88:251-259.

OROSZ Éva: Önkormányzati törvényt vagy egy uj tanácstörvényt? [A new law for self-government or for the councils? Что было бы лучше: закон о самоуправлении или новый закон о советах?]
ÁI 6/88:521-525.

OROSZ László - KISS József: A tanácsok és nem tanácsi szervek gazdasági együttmüködése. [Economic co-operation of the councils and non-council organs and their effect on the community development. Хозяйственное сотрудничество советов и органов, не принадлежащих к системе советов.]
ÁI 3/88:260-264.

PÁPAY Gyula - SZABÓ Gábor: Az elöljáróságok müködésének tapasztalatai. [The experiences of the operation of local authorities. Опыты функционирования местных управ.]
ÁI 2/88:157-166.

PAPP Lajos: A tanácsok feladatai a kormány munkaprogramjának végrehajtásában. [The tasks of councils to carrying out of the governmental work program. Задачи советов по исполнению правительственной программы.]
ÁI 1/88:1-17.

PILLÉR András: A központi államigazgatási szervek belső szervezetének és müködésének néhány kérdéséről. [Some questions of the inner system and operation of the central public administrative organs. Некоторые вопросы внутренней организации и функ-

ционирования центральных органов государственной администрации.]
ÁI 2/88:97-107.

PÖLÖSKEI István: Tisztségviselő-változások a budapesti kerületi tanácsoknál 1950-1985 között. [The changes of councilmen at the district councils in Budapest between 1950-1985. Изменения в составе должностных лиц районных советов в Будапеште, 1950-1985 г.г.]
ÁI 5/88:440-450.

RAFT Miklós: Szervezeti változások a kormányzati irányitásban. [Organisational changes of governmental management. О структурных изменениях правительственного руководства.]
ÁI 5/88:385-393.

RIBLING Ferenc: Az egységes tanácsi számitástechnika megteremtéséért. [For the establishment of the universal data technique at council level. За создание единой системы вычислительной техники для советов.]
ÁI 1/88:29-35.

SAJÓ András: A környezetszennyezés leküzdését célzó gazdasági-jogi eszközök. A magyar eszköztár a nemzetközileg körvonalazódó lehetőségek tükrében. [Economic and legal means in the fight against environmental pollution. The Hungarian instruments as reflected by the possibilities taking shape at international level. Хозяйственно-правовые средства преодоления загрязнения окружающей среды. Система мер, используемые в Венгрии, в свете международной практики.]
ÁJ 4/88:545-568.

SIMÓ Tibor: Eltérő társadalom-szerveződés a településeken: elrő válaszok a kihivásokra. [Different societal organisation at the communities: different answers to the challenges. Различные социальные образования в населённых пунктах - различные ответы на вызовы.]
JK 3/88:143-147.

SZABÓ József - GYARMATHI Mihály: A közlekedéshatósági munka Borsod-Abauj-Zemplén megyében. [The activities of traffic authorities in Borsod-Abauj-Zemplén county. Властные полномочия по управлению транспортом в комитата Боршод-Абауй-Земплен.]
ÁI 1/88:90-96.

TAMÁS András: Modern politics and policies for environmental protection. [Современная политика и принципы охраны окружающей среды.]
= Szilbereky-emlékkönyv. 1987. 297-307.

TATAI Zoltán: A tanácsi gazdálkodás fejlődésének néhány kérdése. [Some problems of the development of council-level economic management. Некоторые вопросы развития хозяйствования советов.]
ÁI 5/88:424-432.

TÖRÖK Gábor: Elvi megjegyzések a felszámolás hazai gyakorlatához. [Remarks of principle on our practices concerning the winding up of enterprises. Принципиальные замечания о практике ликвидации хозяйственных субъектов.]
JK 1/88:7-11.

TÖTTŐ János: A kétszintü igazgatás megteremtésének utján. [On the way of development of two-tier administration. На пути к двухзвенному управлению.]
ÁI 5/88:417-423.

TRÓCSÁNYI László: A környezetvédelem szervezete Franciaországban. [The organization of environment protection in France. Организация охраны окружающей среды во Франции.]
ÁJ 1/88:13-23.

TRÓCSÁNYI László: A környezetvédelem szervezete a Német Szövetségi Köztársaságban. [The organization of environment protection in the Federal Republic of Germany. Организация охраны ок-

ружающей среды в ФРГ.]
ÁJ 2/88:216-228.

VEREBÉLYI Imre: A kétszintü igazgatásra áttérés alapkérdései. [Some basic problems of turning to two-level administration. Основные вопросы перехода к двухступенчатому управлению.]
ÁI 3/88:205-217.

VEREBÉLYI Imre: Önkormányzati reform - közigazgatási szempontból. [Reform of self-government - from an administrative point of view. Реформа системы самоуправления: административно-правовые аспекты.]
TSZ 1/88:36-44.

IV. FINANCIAL LAW - IV. ФИНАНСОВОЕ ПРАВО

Books - Книги

Act on public finances. [Act II of 1979.] Unified and up-to-date text of the amended Act and decree covering its order of implementation. Publ. Ministry of Finance. О государственных финансах (с изменениями и дополнениями, включая постановление о его введении в действие.]
Bp. Hungarian Banknote Print. 1988. 86 p. /Public finance in Hungary 42./

MÉSZÁROS Kálmán: Bevezetés a tőzsdejogba. A tőzsdejog nemzetközi szabályozása, magyar vonatkozásu tanulságok. [Introduction to the law of Exchange. International regulation of the law of Exchange and lessons of Hungarian concern. Введение в биржевое законодательство. Международное регулирование вопросов деятельности бирж, уроки для венгерской практики.]
Bp. Pallas Kiadó, 1988. 169, [2] p. Bibliogr. [171-172.]

The new income regulation of enterprises. Publ. Ministry of

Finance. Новое регулирование вопроса доходов предприятий.]
Bp. Hungarian Banknote Print. 1987. 52 p. /Public finance in Hungary 40./

State budget. 1988. Publ. Ministry of Finance. [Государственные финансы.]
Bp. Hungarian Banknote Print. 1988. 62 p. /Public finance in Hungary 41./

VÉKÁS István: Sur la réforme du systéme des finance. [On the reform of the financial system . О реформе финансовой системы.]
Pécs, Pécsi Szikra ny. 1987. 19 p. /Studia oeconomica autoritate Universitatis Pécs publicata./ Bibliogr. 18.

Articles - Статьи

CSUCS László: Reform a közteherviselésben. [Reform in the general and proportional sharing in taxation. Реформа в системе несения общесоциальной бремени.]
Mj 1/88:24-45.

FERENCZY E[ndre]: Les rapports financiers entre le citoyen et l'administration. [Financial relations between citizens and the administration. Взаимоотношение гражданина с финансовым управлением.]
AJurid. 3-4/86:277-298.

KOMÁROMI László: A pénzügyi-gazdasági és az árellenőrzési szervezet átalakitási folyamata Vas megyében. [The development trend of the financial-economic organisation and the organisation of price control in Vas county. Процесс формирования системы финансо-экономического хозяйствования и контроля цен в комитате Ваш.]
ÁI 6/88:555-561.

PETŐ Márton: A keresetszabályozás és tanulságai. [Regulation

of incomes and lessons drawn from it. Из опыта регулирования заработной платы.]
TSZ 4/88:47-52.

RÉCZEI László: A factoring ügyletről. Hitelezés. [On the contract of factoring. Credit. Сделка-факторинг.]
JK 1/88:11-18.

V. CIVIL LAW - V. ГРАЖДАНСКОЕ ПРАВО

Book - Книга

Névjegyünk - a védjegy. Két évtized a magyar védjegykultura szolgálatában. Szerk.biz.eln. Pusztai Gyula. [Közzéteszi a] Magyar Gazdasági Kamara Védjegy Bizottsága. [The trade mark, our personal card. Two decades in the service of the Hungarian trade mark system. Товарный знак - наша визитная карточка. Два десятилетия на службе развития культуры товарного знака.]
[Bp.] Zalai ny. 1988. 67, [2] p.

Articles - Статьи

BAUER Miklós: A polgári jogi helytállás formái. Felelősség és kártérités. [The forms of civil responsibility: liability and damages. Формы гражданско-правовой ответственности (ответственность и возмещение вреда.).]
JK 4/88:195-205.

BAUER Miklós: Felelősség és kártérités - de lege ferenda. [Responsibility and idemnity de lege ferenda. Ответственность и возмещение вреда - de lege ferenda.]
JK 5/88:272-281.

BACHER Vilmos: A szolgálati találmányok dijazása joggyakorlatának időszerü kérdései. 1-2. r. [Topical problems of the le-

gal practice concerning the renumeration of service invention. 1-2. part. Актуальные вопросы вознаграждения за изобретения в судебной практике. Том 1-2.]
MJ 4/88:343-350., 5/88:411-421.

BESENYEI Lajos: A szerződés érvénytelenségéről - elsősorban a birói gyakorlat oldaláról. [The invalidity of contracts as reflected by judical practice. О действительности сделки в свете судебной практики.]
=Szilbereky-emlékkönyv. 1987. 43-52.

BIRÓ György: A keretszerződés - uj megközelitésben. [The general contracts from a new point of view. Новый подход к рамочным договорам.]
JK 4/88:204-213.

BURIÁN László: A deliktuális felelősség kolliziós szabályinak fejlődése az Amerikai Egyesült Államokban. [Development of the collision norms of delictual responsibility in the USA. Развитие коллизионных норм деликтной ответственности в США.]
ÁJ 4/88:632-650.

EIGNER József: A végrendeleti közremüködésről de lege lata és de lege ferenda. [Co-operation at the last will de lege lata and de lege ferenda. Участие по завещанию de lege lata и de lege ferenda.]
JK 12/87:654-658.

GÁLFI Tibor: Kártéritési felelősség a sportbalesetért. [Responsibility of idemnity for accidents in sports. Ответственность за вред, причинённых несчастным случаем во время спортивной деятельности.]
MJ 2/88:145-154.

HARMATHY Attila: A verseny szabályozásának jogi eszközeiről. [Legal means of the regulation of competition. О правовых

средствах регулирования конкуренции.]
MJ 3/88:197-202.

KECSKÉS László: Állami immunitás és kárfelelősség. [State immunity and responsibility for damages. Государственный иммунитет и ответственность за вред.]
JK 4/88:174-185.

KECSKÉS László: Az alapitványi jog fejlődéséről. [Development of the law of funds. Развитие законодательства о пожертвованных фондах.]
Mj 2/88:104-116.

KEMENES Béla: A polgári jogi felelősség néhány elvi és gyakorlati kérdése a gazdálkodó szervek körében. [Some theoretical and practical problems of the civil law liability of economic organizations. Некоторые вопросы теории и практики гражданско-правовой ответственности, связанной с деятельностью хозяйственных организаций.]
= Szilbereky-emlékkönyv. 1987. 137-145.

KENYERES János: A vegyesvállalatok alapitási eljárása. [The establishment procedure of joint ventures. Порядок создания смешанных предприятий.]
ÁI 6/88:526-532.

KIRÁLY Miklós: A felszámolási eljárás egyes polgári jogi vonatkozásairól. [Civil law aspects of the liquidation procedure. Некоторые гражданско-правовые аспекты ликвидационного производства.]
MJ 6/88:538-541.

KOVÁCS László: A szerződéskötés előtt fenállott helyzet visszaállitásának megoldatlan kérdései. [Unresolved problems of the restitution of the pre-contractual situation. Проблематические вопросы восстановления положения, существовавшего до

заключения договора.]
Mj 3/88:203-210.

KOTZ László: A tulajdonfogalom. Az elsődleges jogalanyok és a társaság. [The notion of property. Primary subjects at law and associations. Понятие собственности. Первичные субъекты права и общество.]
Mj 6/88:521-530.

NOCHTA Tibor: A belföldi reklámtevékenység jogáról. [Our internal law on dvertising. Право на осуществление рекламной деятельности внутри страны.]
JK 1/88:24-30.

LÁBADY Tamás: A nem vagyoni kártérités biztositás fedezete. [Security for non-material indemnification. Вопросы страхования неимущественного вреда.]
= Jogász szöv. ért. 1987. 3. köt. 101-106.

LENKOVICS Barnabás: Die Kleinunternehmungen und das ungarische Zivilrecht. [Small-scale undertakings and Hungarian civil law. Мелкие предприятия и венгерское гражданское право.]
= Annales Bp. Tomus 28. 1987. 179-195.

LŐRINCZE P[éter] - KOMÁROMI P[éter]: The development of the legal status of the Hungarian Chamber of Commerce. [Развитие правового статуса венгерской Торговой Палаты.]
AJurid. 3-4/86:341-348.

OROSZLÁN Zsuzsa: Verseny és versenyjog a biztositásban. Kerekasztal konferencia. Budapest, 1987. szept. 7-8. [Competition and the law of competition in the field of insurance. A round-table conference in Budapest, September 7-8, 1937. Конкуренция и законодательство о конкуренции. (Конференция, Будапешт, 7-8 сентября 1987 г.).]
MJ 1/88:98.

PÁLOS György: Szerői jogilag védett müvek és a számitógép. [Works protected by copyright and computers. Охраняемые авторским правом произведения и ЭВМ.]
JK 2/88:79-84.

PATASSY Benedek: Az igényérvényesitès lehetőségei hivás teljesitès esetén. [Possibilities of enforcing a claim in case of faulty fulfilment. Возможности предъявления иска в случае ненадлежащего качества исполнения.]
MJ 5/88:385-401.

RÉCZEI László: A cégkizárólagosságról. [The exclusivity of firms. О фирменной исключительности.]
JK 2/88:96-97.

SÁRKÖZY Tamás: Az un. kisvállalkozások jogi szabályozásának alapvonalairól. [Fundamental features of the legal regulation of the as called small enterprises. Об основных чертах правового регулирования форм мелкопринимательской деятельности.]
ÁJ 3/86:393-437.

SÓLYOM László: A nem vagyoni kártérités a mai polgári jog értékrendjében. [Non-material idemnity in the order of values of contemporary civil law. Возмещение неимущественного вреда в современном гражданском праве.]
= Jogász szöv. ért. 1987. 3. köt. 11-16.

SÓLYOM L[ászló]: Zivilrecht und Bürgerrecht oder was man darf, was nicht. [Civil law and civil rights. Гражданское право и права граждан.]
AJurid. 3-4/86:255-276.

SOLT Pál: A nem vagyoni kártérités egyes kérdései a Legfelsőbb Biróság polgári itélkezésében. [Some questions of non-material idemnity in the civil jurisdiction of the Supreme Court. Некоторые вопросы возмещения неимущественного вреда в практике

Верховного Суда по гражданско-правовым делам.]
= Jogász szöv. ért. 1987. 3. köt. 44-49.

SZEGEDINÉ SEBESTYÉN Katalin: A részvényjog egyes kérdései a cégjog tükrében. [Some problems of the right of shares as reflected in the right of firms. Акционерное право в свете законодательства о фирме.]
MJ 2/88:131-144.

SZÉKELY János: Passzivitás. [Birtokháboritás. Passivity. Trespass. Пассивность. (Нарушения института владения.).]
JK 11/87:613-615.

SZÉKELY János: A vásárlói jogok érvényesülésének néhány kérdése. [Some questions about the enforcement of the rights of customers. Некоторые вопросы реализации прав покупателя.]
JK 1/88:19-24.

TAKÁTS P[éter]: Commercial contracts in the practice of Hungarian industrial firms. [Торговые сделки в практике венгерских промышленных фирм.]
AJurid. 3-4/86:299-320.

TÖRŐ Károly: Személyiségvédelem a születés előtt. [Protection of personality before birth. Защита личности до рождения.]
JK 3/88:118-124.

UDVAROS Miklós: A tulajdon védelme a svéd jogrendszerben. [The protection of property in the Swedish legal system. Защита собственности в правовой системе Швеции.]
JK 1/88:37-40.

UJLAKI László: A generálklauzulák jelentősége a magyar polgári jogi birósági gyakorlatban. [The significance of general clauses in Hungarian civil litigation practices. Значение генеральных клазул в венгерской судебной практике по гражданским

делам.]
JK 1/88:1-7.

VÁRGEDŐ Cs. Lajos: Tipizálás, szervezeti strukturák és kisebbségvédelem a társasági jogban. [Typification, organizational structures, and the protection of minority views in the law of associations. Типизация, организационные структуры и охрана меньшинства в праве о товариществах.]
ÁJ 1/88:145-172.

VÖRÖS Imre: A biztositásfelügyelet helye a gazdasági verseny, a tisztességes gazdasági tevékenység jogi szabályozásában. [The place of the supervision of assurance in the legal regulation of economic competition and fair economic activity. Место надзора за страховным делом в правовом регулировании хозяйственного соревнования с точки зрения добросовестной хозяйственной деятельности.]
ÁJ 4/88:615-631.

ZINHOBER Ferenc: Az "állampolgári" tulajdonról. [On the "citizen's ownership". О "гражданской" собственности.]
JK 3/88:112-118.

ZLINSZKY János: Épitményi jog és osztott tulajdon de lege interpretanda. [The right affecting buildings and structures and shared property de lege interpretanda. Законодательство о сооружениях и делимая собственность de lege interpretanda.]
JK 2/88:73-78.

VI. LABOUR LAW - VI. ТРУДОВОЕ ПРАВО

Books - Книги

European regional congress of labour law and social security, 1st - Congrés régional Européen du droit du travail et de la sécurité sociale, 1er - Europäischer regionaler Kongress des

Arbeitsrechts und der sozialen Sicherheit, 1. [Szeged, September 19-21, 1984. Proceedings.] Vols 1-2. Ed. Nagy László. Первая европейская региональная конференция по вопросам трудового права и социального обеспечения. Том 1-2.]
Bp. Akadémiai Kiadó, 1987. IX, 607, VII, [2], 611-1020, [2] p. Bibliogr. passim.

Munkaerőpiac, munkaerő-politika, bér. Szerk. Fébó László. [Kozzéteszi az] MTA Közgazdaságtudományi Intézete. [Market of the manpower policy, wages. Рынок рабочей силы, политика по использованию рабочей силы, заработная плата.]
Bp. [mimeogr.] 1987. 123 p. /Tanulmányok a gazdasági irányitásról és szervezetéről 29./ Bibliogr. 127-128.

Tanulmányok a szociális gondozás témaköréből. Szerk. Sáhó Erzsébet. [Közzéteszi a] Bárczi Gusztáv Gyógypedagógiai Tanárképző Főiskola. 2. kiad. [Essays from the field of social care. 2nd ed. Сборник статьей по вопросам социального обеспечения.]
Bp. Tankönyvkiadó, 1988. 343 p. Bibliogra. passim.

Articles - Статьи

BREZNAY Tibor: A nem vagyoni kár a munkaügyi és szövetkezeti tagsági vitákban. [Non-material damages in disputes concerning labour relations and co-operative membership. Неимущественный вред в практике по трудовым спорам относительно вопросам членства в кооперативах.]
= Jogász szöv. ért. 1987. 3. köt. 64-71.

BREZNAY Tibor: A munkaügyi itélkezés időszerü kérdései. [Topical problems of the administration of justice in labour cases. Актуальные вопросы рассмотрения трудовых споров.]
MJ 4/88:305-316.

DABIS Erzsébet: A Legfelsőbb Bíróság 18. számu Irányelve [a munkafegyelemmel összefüggő itélkezési gyakorlatról] alkalma-

zásának tapasztalatai a Szegedi Munkaügyi Bíróságon. [Experiences with the application of the Directive No. 18. of the Supreme Court on jurisdiction practice related with labour discipline, as collected by the Szeged Labour Cort. Опыт применения судами руководящих указаний № 18 Верховного Суда по трудовым вопросам.]
MJ 5/88:422-429.

HÉTHY Lajos: A bérreform céljai és dilemmái. [The aims and dilemmas of wagw reform. Цели и дилеммы реформы в системе заработной платы.]
TSZ 4/88:53-57.

KAMARÁS Károly: Foglalkoztatási rehabilitáció és területi feladatai. [Professional rehabilitatien and territorial aspects. Реабилитация по занятости и её задачи на территориях.]
ÁI 1/88:83-89.

LEHOCZKYNÉ KOLLONAY Csilla: Kollektiv vállalatvezetési szervek az európai szocialista országokban. [Corporative organs of company management in the European socialist countries. Коллективные органы управления в европейских социалистических странах.]
= ELTE Acta. 28. köt. 1986. 189-207.

MIHOLICS Tivadar: Munkajogi eszközök a hatékonyabb munkaerőgazdálkodás szolgálatában. [The means of labour law serving a more efficient management of manpower. Средства трудового права на службе более эффективного использования рабочей силы.]
MJ 3/88:248-256.

TÓTH József János: Munkahelyi beilleszkedés a fővárosban elhelyezkedő közigazgatászok körében. [The workplace adaption for the public administrative staff in the capital. Проблема трудоустройства и приобретения навыков среди специалистов государственного управления, поступающих на работу с столице.]
ÁI 5/88:451-460.

TRÓCSÁNYI László: A munkaügyi biráskodás Franciaországban. [Labour law jurisdiction in France. Разрешение трудовых споров во Франции.]
JK 2/88:84-86.

UDVAROS Miklós: A közigazgatási eljárás uj utjai Svédországban. [The new paths of public administrative procedure in Sweden. Новые пути административного прцесса в Швеции.]
JK 3/88:154-156.

ZSIGA László: A csehszlovák munka törvénykönyv módositásának elvei. [Principles of the amendment of the Czechoslovak Labour Code. Основные изменения Закона о труде в Чехословакии.]
MJ 6/88:542-545.

VII. FAMILY LAW - VII. СЕМЕЙНОЕ ПРАВО

Articles - Статьи

Act No. IV. [of] 1952 on marriage, family and guardianship. [Text with amendment. Закон № IV от 1952 г. "О браке, семье и опеке". (Основной текст с изменениями.).]
HLR 1-2/86:25-52.

GÖNCZÖL Katalin: Die gesellschaftliche Reproduktion der Verbrechensbegehung in der Familie. [The social reproduction of crime of family. Общественная репродукция криминогенных явлений в Венгрии.]
= Annales Bp. Tomus 28. 1987. 65-87.

Loi No IV de l'an 1952 sur le mariage, la famille et la tutelle. [Texte modifié. Act No. IV of 1952 on marriage, family and guardianship. Text with amendment. Закон № IV от 1952 г. "О браке, семье и опеке". (Основной текст и изменения.).]
RDH 1-2/86:29-57.

PETRIK Ferenc: The major items of the amendment of the Act on family law. Важнейшие принципиальные положения изменённого Закона о семейном праве.]
HLR 1-2/86:5-22.

PETRIK Ferenc: Les théses de principe plus importantes de la modification de la loi sur le droit de famille. [The major items of the amendment of the Act on family law. Важнейшие принципиальные положения изменённого Закона о семейном праве.]
RDH 1-2/86:5-25.

[PETRIK Ferenc] Ференц Петрик: Важнейшие принципиальные положения изменённого Закона о семейном праве.[The major items of the amendment of the Act on famoly law.]
OVPr 1-2/86:5-29.

Закон № IV от 1952 г. "О браке, семье и опеке". (Основной текст с изменениями.) [Act No. IV of 1952 on marriage, family and guardianship. Text with amendment.]
OVPr 1-2/86:33-64.

VIII. LAND LAW - VIII. ЗЕМЕЛЬНОЕ ПРАВО

Articles - Статьи

HALMAI Péter: Zwischenbetriebliche Organisationen und Wirtschaftlicher Mechanizmus in der sozialistischen Landwirtschaft. [Inter-enterprise organizations and economic mechanizmus in the socialist agriculture. Межхозяйственные организации и экономический механизм в социалистическом сельском хозяйстве.]
= Annales Bp. Tomus 28. 1987. 89-106.

HOFFER István: A földtörvény tanácsi végrehajtásához. 1987. évi I. tv. [The implementation of the land law at the councils. Act I of 1987. Об исполнении советами закона о земле. Закон

№ I от 1987 г.]
ÁI 2/88:123-132.

IX. LAW OF CO-OPERATIVES - IX. СЕЛЬСКОХОЗЯЙСТВЕННОЕ ПРАВО

Articles - Статьи

DOMÉ Györgyné: Le róle des associations économiques dans l'integration agricole. [The role of economic associations in the agricultural integration. Роль хозяйственных объединений в сельскохозяйственной интеграции.]
= Annales Bp. Tomus 28. 1987. 13-27.

HALMAI Péter: Vállalkozás a magyar mezőgazdaság vállalati szektorában. [Undertaking in the corporation sector of Hungarian agriculture. Предпринимательство в сельскохозяйственном секторе венгерского сельского хозяйства.]
= ELTE Acta. 28. köt. 1986. 85-102.

PRUGBERGER Tamás: A szövetkezetek jogi szabályozásának lehetősége egységes vállalati törvény keretében. [The possibility of legal regulation of co-operatives in the framework of a uniform enterprise act. Возможность правового регулирования кооперативов в рамках единого закона о предприятиях.]
ÁI 1/88:59-63.

PRUGBERGER Tamás: A szövetkezetek jogi szabályozásának lehetősége egy egységes vállalati törvény keretében. [The possibility of legal regulation of co-operatives in the framework of a uniform law of enterprises. Возможность правового регулирования кооперативов в рамках единого закона о предпритиях.]
JK 12/87:647-654.

SZENDREI György: A szövetkezeti alapszabály jogi természetéről. [The legal nature of the statute of co-operatives. О правовой

природе устава кооператива.]
JK 2/88:61-65.

X. CRIMINAL LAW. - X. УГОЛОВНОЕ ПРАВО.

CRIMINAL SCIENCES ВСПОМОГАТЕЛЬНЫЕ НАУКИ УГОЛОВНОГО ПРАВА

Books - Книги

GÖNCZÖL Katalin: Bünözés és társadalompolitika. [Criminality and social policy. Преступность и общественная политика.]
Bp. Akadémiai Kiadó, 1987. 188, [4] p. /Szociológiai tanulmányok 29./ Bibliogr. passim.

A Jogtudományi Közlöny - 1865-1934. - büntetőjogi tárgyu adatai. Szerk. Szük László. Kiad. az Igazságügyi Minisztérium Tudományos és tájékoztatási főosztálya. [Data concerning criminal law in the law gazette (Jogtudományi Közlöny), 1865-1934. Уголовно-правовые пебликации ж. (1865-1934 r.r.).]
[Bp. mimeogr.] 1988. 252 p. /A felszabadulás előtti jogi folyóiratok repertóriuma 1./ Bibliogr. passim.

HARMATHYNÉ HORVÁTH Anna: Társadalmi tulajdon és büntetőpolitika. [Collective property and penal policy. Общественная собственность и уголовная политика.]
Bp. Akadémiai Kiadó, 1988. 178, [2] p. Bibliogr. 162-167.

A kábitószer és a kábító hatásu anyagok fogyasztásának büntetőjogi problémái. Szerk. Polt Péter. [Közzéteszi az] MTA Magyar Kriminológiai Társaság. [Criminal law problems of the consumption of narcotic effect. Уголовно-правовые вопросы потребления наркотиков и иных приравненных к наркотикам веществ.]
Bp. [mimeogr.] 1987. 109 p. /Kriminológiai közlemények 15./ Bibliogr. 40-41., 89.

KORNIEK László: Rejtett bünözés. [Disguised criminality. Скрытая преступность.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 311 p. Bibliogr. 296-312.

KRÁNITZ Mariann: A korrupciós bünözés. [Criminality connected with corruption. Преступления, связанные с коррупцией.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 340, [4] p. /Az országos Kriminilógiai és Kriminalisztikai Intézet tudományos kiadványai./ Bibliogr. 335-341.

A magyarországi bünözés várható alakulása az ezredfordulóig, különös tekintettel a személyek javait károsító büncselekményekre. Szerk . Hack Péter. [Közzéteszi az] MTA Magyar Kriminológiai Társaság. [Prognosticized development of criminality in Hungary till the end of of the second millennium, with special regard to criminal acts causing damages to personal property. Предполагаемая тенденция развития преступности в Венгрии в период до 2000 года, с учётом преступлений против личной собственности граждан.]
Bp. [mimeogr.] 1987. 78 p. /Kriminológiai közlemények 14./ Bibliogr. 69.

Articles - Статьи

BAKÓCZI Antal: A testi épség elleni szándékos bünözés kriminológiája. [Criminology of deliberate crimes directed against corporal integrity. Криминология умышленной преступности против телесной неприкосновенности.]
= Krim. tanulm. 25. köt. 1988. 27-89.

BÉKÉS Imre: Dogmatique et politique criminalle. [Criminal dogmatics and policy. Уголовно-правовая теория и практика.]
= Annales Bp. Tomus 28. 1987. 3-12.

CZILI Gyula: A LegfelsőbbBiróság büntetőjogi és büntető eljárásjogi iránymutatásainak felülvizsgálatáról. [On the supervi-

sion of the Supreme Court directives in matters of criminal law and criminal procedure. О пересмотре руководящих указаний Верховного Суда по уголовному и уголовно-процессуальному праву.]
MJ 4§88:289-295.

DÁNOS Valér: A szervezett bünözés néhány elméleti kérdése, a szervezett bünözés egyes jegyeinek megjelenése a hazai bünözésben. [Some theoretical problems of organized criminality and appearance of some of its elements in Hungary. Некоторые теоретические вопросы организованной преступности, появление единичных признаков организованной преступности в Венгрии.]
MJ 1/88:18-23.

FEHÉR Lenke: A bünözés uj jelenségei. A bünözés megelőzése. Vitaülés. Budapest, 1987. jun. 5.[New phenomena in criminal activities. Crime prevention (scientific debate). Budapest, June 5, 1987. Новые явления преступности - предупреждение преступности. (Дискуссия.)]
JK 11/87:619-623.

GÖDÖNY József: A bünözés uj jelenségei. [Recent manifestations of deliquency. Новые явления в преступности.]
= Krim. tanulm. 25. köt. 1988. 7-26.

GYÖRGYI Kálmán: Viski László és az általános büncselekménytan. [László Visli and the general doctrine of criminal acts. Ласло Вишки и общее учение о преступности.]
= Viski-emlékkötet. 1987. 7-29.

HLAVATHY Attila: Bünügyi jogsegélykapcsolatok a pannon régióban. [Relations of judical assistance in criminal cases in the Pannonian region. Оказание правовой помощи по уголовным делам в регионе Паннонии.]
= Jogász szöv. ért. 1987. 3. köt. 107-114.

HORVÁTH Tibor: Megjegyzések a büntetőpolitika és a büntetési rendszer összefüggéseiről. [Remarks on the relations between criminal policy and penal system. Замечания о взаимоотношении уголовной политики и системы наказания.]
JK 12/87:639-642.

IRK Ferenc: A skandináv kriminilógia és kriminálpolitika. [Criminology and criminal policy in Scandinavia. Скандинавская криминология и политика по криминологии.]
= Krim. tanulm. 25. köt. 1988. 286-318.

KEREZSI Klára: Bevezetés a gyermek-és fiatalkoruak sérelmére elkövetett büncselekmények viktimológiai értelmezésébe. [Introduction to the victimological explanation of deliquency committed against children and juveniles. Введение в виктимологическую трактовку преступлений, совершенных в ущерб малолетних и несовершеннолетних.]
= Krim. tanulm. 25. köt. 1988. 175-207.

KONCZER István: A visszaeső bünözők, az utazó bünözés és a szervezett bünözés kapcsolata a fővárosban. [Relations between recidives, travelling and organized criminality in the capital. Рецидивисты, преступники-мигранты и организованная преступность в столице.]
MJ 1/88:9-17.

KRÁNITZ Mariann: A prostitució mai nemzetközi arculata. [International aspects of prostitution today. Современный международный облик проституции.]
= Krim. tanulm. 25. köt. 1988. 90-139.

MAGYAR György: Az átmeneti intézet elméleti kérdései. 1- 2.r. [Theoretical problems of the temporary institute. 1-2. part. Теоретические вопросы полуоткрытого исправительного учреждения.]
MJ 3/88:221-232., 4/88:331-342.

MERÉNYI Kálmán: A nemi erkölcs elleni erőszakos bűncselekmények okai és megelőzése. [Causes and prevention of violent criminal acts against the sexual moral. Причины и профилактика насильственных преступлений против половой морали.]
= Szilbereky-emlékkönyv. 1987. 155-167.

MÜNNICH Iván - VÁG András: Az intelligencia-szinvonal mutatói (MAWI-teszt) egy hazai reprezentativ bünelkövetői mintában. [Intelligence-level markers (MAWI-test) in a representative criminal pattern in Hungary. Показатели уровня интеллигентности (тест МАВИ): результаты исследования одной отечественной репрезентативной группы преступников.]
= Krim. tanulm. 25. köt. 1988. 254-285.

NAGY Ferenc - CSERHÁZI Ágota: A halálbüntetés az USA-ban. [The death penalty in the USA. Смертная казнь в США.]
= Szilbereky-emlékkönyv. 1987. 211-236.

[A nyolcadik pannon jogász napok a nem vagyoni kár felmerülése, megtéritési igénye és a bünügyi jogsegély témakörében. Szombathely, 1987. szept. 11-13. Szabó Győző, Borics Gyula megnyitója, előadások. Nagy László zárszava. The 8th Pannonian Lawyers' Days discussing the occurence and claims for indemnification of non-material damages and judical assistance in criminal cases. Szombathely, September 11-13, 1987. Восьмая встреча юристов Паннонии: обсуждение вопросов возникновения и возмещения неимущественного вреда и вопросов по оказанию уголовно-правовой помощи. (11-13 сентября 1987 г.)]
= Jogász szöv. ért. 1987. 3. köt. 5-117.

PUSZTAI László: Viski László kriminalisztikai munkásságáról. [László Viski's work in criminalistics. Ласло Вишки как криминалист.]
= Viski-emlékkötet. 1987. 30-50.

RÁCZ György: Sulyositó körülmény-e a bünselekmény okozta köz-

felháborodás? [Is public indignation, caused by a criminal act, an aggravating circumstance? Считается ли отягчающим обстоятельством общее возмущение, вызванное совершением преступления?]
MJ 4/88:351-352.

[SZÜK László] Ласло СЮК: О краткосрочном лишении свободы. [About the short-term imprisonment.]
AJurid. 3-4/86:321-340.

TAVASSY Tibor - PATERA Antal: A szabadságvesztés-büntetésből szabadulók utógondozása. [After-care of convicts after they had worked out their time. Постпенитенциарная забота о лицах, освобождённых из мест лишения свободы.]
= Krim. tanulm. 25. köt. 1988. 208-253.

[VIGH] VIG József: Предупреждение преступности и реальность в Венгрии. [Crime prevention and reality in Hungary.]
= Annales Bp. Tomus 28. 1987. 265-278.

VIGH József - TAUBER István: A hátrányos társadalmi helyzet kialakulásának mechanizmusa. [Mechanism of the process of formation of a handicapped social situation. Механизм формирования социального неравенства.]
= ELTE Acta. 28. köt. 1986. 141-173.

VIRÁG György - VÁG András: Elméletek a bünöző személyiségéről. [Theories on criminal personality. Теория о личности преступника.]
= Krim. tanulm. 25. köt. 1988. 140-174.

VISKI László: Integrált bünözés-elmélet és közlekedési kriminológia. [Integrated theory of criminality and the criminilogy of transport. Интегрированная теория преступности и дорожно-транспортная криминология.]
= Viski-emlékkötet. 1987. 74-102.

XI. JUDICIAL ORGANISATION - XI. СУДОУСТРОЙСТВО

Books - Книги

Law-decrees No. 3 of 1983 on the legal advisers' activities and No. 4 of 1983 on the Bar issued by the Presidential Council of the Hungarian People's Republic. [Publ.] Ministry of Justice. [Указ № 3 1983 г. О юрисконсультах и № 4 1983 г. Об адвокатуре. Издаётся Министерством юстиции.]
Bp. Egyetemi Print. 1987. [1988.] 96 p. /The statutes of the Hungarian People's Republic./

VARGA Emil: Az ügyész a gazdasági perben. [Közzéteszi a] Magyar Tudományos Akadémia Államtudományi kutatások programirodája. [The public prosecutor in economic lawsuits. Прокурор в хозяйственных спорах.]
Bp. [mimeogr.] 1987. 64 p. Bibliogr. 63-64.

Articles - Статьи

ONOZÓNÉ WENNER Margit: A hivatásos pártfogók helyzete, munkája a bíróság szervezetében. [The situation and work of professional patrons in the organization of courts. Официальные патроны, их деятельность в судебной системе.]
MJ 2/88:155-161.

TÖRŐ Károly: Jogalkalmazás, jogértelmezés, jogalakitás a Legfelsőbb Bíróság müködésében. [The application, interpretation, and formation of the law in the work of the Supreme Court. Применение, толкование и модификация права в деятельности Верховного Суда.]
MJ 5/88:402-410.

XII. CIVIL PROCEDURE - XII. ГРАЖДАНСКИЙ ПРОЦЕСС

Book - Книга

NOVÁK István: A különleges polgári peres eljárások határozatai és iratai. [Resolutions and documents of special civil procedures. Решения и материалы по особому производству в гражданском процессе.]
Bp. Közgazdasági és Jogi Kiadó, 1987. 331, [2] p.

Articles - Статьи

BAJORY Pál: A bírósági egyezség. [Conciliation at court. Институт судебного примирения.]
= Szilbereky-emlékkönyv. 1987. 21-33.

CSERNOK Gyula: A bizonyitékok mérlegelése a polgári perben. [The deliberation of evidence in civil actions. Оценка доказательств в гражданском процессе.]
MJ 2/88:117-130.

FARKAS József: Kötöttségi elemek a bizonyitékok szabad mérlegelésénél a polgári perben. [Engagement in the free deliberation of evidence in civil procedure. Жестокие элементы при взвешивании доказательств в гражданско-правовом споре.]
= Szilbereky-emlékkönyv. 1987. 66-74.

HORVÁTH János: Bírósági hatáskör az adókivetés összegszerüsége tekintetében. [Competences of the courts respecting the amount of tax assessment. Компетенция судов по определению суммы налога.]
MJ 1/88:46-48.

IMREGH Géza: Tárgyaláselőkészités a Szlovák Szocialista Köztársaságban. [Preparation of negotiations in the Slovak Socialist Republic. Подготовка судебного заседания в Словацкой Социа-

листической Республике.]
MJ 1/88:54-60.

JUHÁSZNÉ ZVOLENSZKY Anikó: Az elsőfoku tárgyalás elmulasztásának következményei - a jogalkotás fejlődésének tükrében. [Consequences of the failed appearance at the first instance hearing as reflected in the development of legislation. Последствия пропуска срока рассмотрения дел на первой инстанции в свете законодательства.]
= Szilbereky-emlékkönyv. 1987. 123-136.

KENGYEL Miklós: A jogérvényesitès akadályai és a "joghoz jutás" lehetőségei a polgári igazságszolgáltatásban. [The obstacles of the validation of rights and the possibilities of an "access to justice" in the civil courts. Барьеры реализации права и возможности "приобретения прав" в буржуазном правосудии.]
JK 4/88:185-194.

KIS-LUKÁCS Margit: A külföldi jog alkalmazásának hatása a perköltségre. [Effect of the application of foreign law on legal costs. Влияние применения иностранного права на судебные расходы.]
MJ 6/88:531-537.

MAJOROS Richárd: A kibontakozás problémái a gazdasági birásko-dásban. [Problems of finding solutions in the jurisdiction on economic matters. Проблемы стабилизации при рассмотрении хозяйственных споров.]
MJ 5/88:430-436.

MATHIÁSZ Tivadar: A keresetlevél kézbesitése és a kézbesitési ügygondnok jogállása. [The service of the complaint and the legal status of the trustee for service. Вручение искового заявления и правовое положение поверенного по его вручению.]
= Szilbereki-emlékkönyv. 1987. 147-153.

NÉMETH János: A res iudicata mint perujitási ok polgári perjogunkban. [Res iudicata - cause for new trial in our civil procedure. Res iudicata как причина возобновления иска в нашем гражданском процессе.]
= Szilbereky-emlékkönyv. 1987. 237-240.

NOVÁK István: A biró polgári eljárásjogi felelőssége - tárgyaláselőkészitő felelőssége. [Responsibility of the judge in civil procedure - responsibility for the preparation of the hearing. Гражданско-процессуальная ответственность судьи - ответственность по подготовке дела к рассмотрению.]
= Szilbereky-emlékkönyv. 1987 241-248.

NOVÁK István: A keresetindítás eljárásjogi felelőssége. [The processual responsibility of the bringing of an action. Процессуально-правовая ответственность за предъявление иска.]
JK 4/88:214-218.

SALAMONNÉ SOLYMOSI Ibolya: A gazdasági birság az itélkezési gyakorlatban. [Fine in jurisdictional practice. Хозяйственный штраф в судебной практике.]
MJ 4/88:317-329.

SOÓSNÉ LAJOS Ilona: A polgári perekben hozott határozatokról. [On decisions taken in civil cases. Решения в гражданском процессе.]
MJ 3/88:233-245.

WEISS Emilia: A 7. Deutscher Familiengerichtstag. Brühl, 1987. okt. 28. - okt. 31, 1987. Deutscher Familienberichtstag. [Состоявшиеся 21-28 октября 1987 г. в г. Брюл.]
MJ 3/88:257-261.

XIII. CRIMINAL PROCEDURE - XIII. УГОЛОВНЫЙ ПРОЦЕСС

Books - Книги

Intézkedések a büntetőjogban és a büntető eljárásbeli kényszerintézkedések cimü nemzetközi konferencia. Szeged, 1986. dec. 18-19. A konferencia anyagát összeáll. Cséka Ervin. [Measures in criminal law and coercive measures in criminal procedure. Report on an international conference, held at Szeged, December 18-19, 1986. Меры воздействия в уголовном праве и принудительные процессуальные действия: материалы международной конференции (Сегед, 18-19 декабря 1986 г.).]
Szeged, [mimeogr.] 1988. [4], V, 135 p. Bibliogr. passim.

Kriminológiai és kriminalisztikai tanulmányok. 25.[köt.] Szerk. Gödöny József. Közzéteszi az Országos Kriminológiai és Kriminalisztikai Intézet. [Essays on criminology and criminalistics. Vol. 25. Сборник статьей по криминологии и криминалистике. Том 25.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 344 p. Bibliogr. passim. -- Русск.содерж.; Eng.summary; Dt. Zusammenfassung; Rés.franc.

Articles - Статьи

BERKES György: A Legfelsőbb Bíróság uj büntető elvi döntése a felnőttkoruak próbára bocsátásáról és a büntetés végrehajtásának felfüggesztéséről. [A new decision of principle in criminal matters of the Supreme Court on the probation of adults and the suspension of the implementation of punishments. Новые руководящие указания Верховного Суда о назначении испытательного срока и об отсрочке исполнения приговора.]
MJ 6/88:490-507.

CSÉKA Ervin: A másodfoku birósági eljárás hatékonyságának kérdései a magyar büntető eljárási jogban. [Questions of efficiency of the second instance judicial procedure in Hungarian criminal procedure. Вопросы эффективности рассмотрения дел судами второй инстанции в свете венгерского уголовного процесса.]
= Szilbereky-emlékkönyv. 1987. 53-64.

ERDEI Árpád: Hazugságvizsgálat és igazságszolgáltatás. [The examination of lie and the administration of justice. Детектор лжи и юстиция.]
MJ 3/88:211-220.

HOFSZANG József: A kényszerintézkedések a büntető eljárási jog rendszerében. [Forced measures in the system of criminal procedure. Принудительные меры в уголовном процессе.]
= Szilbereky-emlékkönyv. 1987. 75-85.

Az ügyvédi titok és a büntetőeljárás. [Az MJSZ büntetőjogi szakosztályának zártkörü kerekasztal-beszélgetése. Budapest, 1988. okt. 20. A vitát vez. Király Tibor.] [The council's secret and criminal procedure. Closed round-table conference of the section for criminal law of the Hungarian Lawyers' Association. Budapest, October 20, 1986. Адвокатская тайна и уголовный процесс. (Встреча за круглым столом в секции уголовного права Ассоциации венгерских юристов. 20 октября 1986 г.)]
= Jogász szöv. ért. 1987. 3. köt. 119-142.

XIV. INTERNATIONAL LAW - XIV. МЕЖДУНАРОДНОЕ ПРАВО

Articles - Статьи

KARDOS Gábor: The resources of OECD in the service of western economic policy co-ordination. [Средства ОЭСР на службе координации экономической политики Запада.]
= Annales Bp. Tomus 28. 1987. 145-159.

LAMM Vanda: A nemzetközi biráskodás fejlődésének vázlata az ókortól az első világháboruig. [Outlines of the development of international jurisdiction from the Antiquity until World War I. Очерк развития международного судебного разбирательства от древности до первой мировой войны.]
ÁJ 1/88:24-81.

URANOVICZ Imre: Az emberi jogok napja. [The day of human rights. День права человека.]
MJ 3/88:193-196.

VALKI László: Uncertanties about military doctrines. [Неясности в военной доктрине.]
= Annales Bp. Tomus 28. 1987. 245-263.

XV. PRIVATE INTERNATIONAL LAW- XV. МЕЖДУНАРОДНОЕ ЧАСТНОЕ ПРАВО

Book - Книга

LONTAI Endre: Jogegységesités a nemzetközi iparjogvédelem területén. [Unification of law in the field of the international protection of industrial property. Унификация права по вопросам международной охраны промышленной собственности.]
Bp. Akadémiai Kiadó, 1988. 241, [2] p. Bibliogr. passim.

Articles - Статьи

FICZERE Lajos: The aims, operational principles and legal mechanism of CMEA. Цель, принципы и правовой механизм деятельности СЭВ.
= Annales Bp. Tomus 28. 1987. 29-46.

FICZERE Lajos: A KGST müködésének elvi és jogi rendszere. [The principles of functioning and legal system of the CMEA. Принципы и правовая система сотрудничества в рамках СЭВ.]
ÁJ 4/88:529-544.

MÁDL Ferenc: Követelések biztositása a magyar jogrendszerben - jogösszehasonlitás jogi szempontokkal. [Bonded debts in the Hungarian legal system - legal comparison with legal points of view. Обеспечение требований в венгерской правовой системе: сранительно-правовые аспекты.]
ÁJ 2/88:265-279.

MÁDL Ferenc: Választott bíróságok hatásköréről nemzetközi kereskedelmi ügyekben. [The competence of boards of arbitration in cases of international trade. Компетенция арбитражных судов по международным коммерческим делам.]
ÁJ 3/88:468-491.

MÁTYUS Imre: Versenykorlátozó üzleti praktikákra vonatkozó szabályok az Európai Gazdasági Közösség jogában. [Rules on competition-limiting business manipulations in the law of the European Economic Community. Нормы о запрете недобросовестной конкуренции в праве ЕЭС.]
MJ 4/88:352-358.

NAGY Boldizsár: A transznacionális vállalatok fölött gyakorolt ellenőrzés indokai, lehetőségei és korlátai a befogadó fejlett tőkés országokban. [Motives, possibilities, and limits of the supervision over transnational enterprises in the recipient developed capitalist countries. Причины, возможности и пределы контроля за деятельностью транснациональных корпораций в развитых капиталистических странах.]
= ELTE Acta. 28. köt. 1986. 103-120.

VÉKÁS Lajos: Igazságosság és nemzetközi magánjog. [Righteousness in international private law. Справедливость и международное частное право.]
ÁJ 2/88:229-264.

VÉKÁS Lajos: A nemzetközi magánjog funkcióképességéről, fogalmáról és határairól. [The capacity of functioning, concept, and limits of international private law. О понятии, пределах и функциональной способности международного частного права.]
ÁJ 3/88:438-467.

XVI. HISTORY OF STATE AND LAW-XVI. ИСТОРИЯ ГОСУДАРСТВА И ПРАВА

Books - Книги

BENDA Kálmán - PÉTER Katalin: Az országgyülések a kora ujkori magyar történelemben. Kiad. [az] MTA Történettudományi Intézet - Országos Pedagógiai Intézet. [Diets in Hungarian history at the beginning of the modern age. Парламентская деятельность на первых этапах новейшей истории Венгрии.]
Bp. [mimeogr.] 1987. 30 p. /Előadások a Történettudományi Intézetben 6./ Bibliogr. passim.

BÖLÖNY József: Magyarország kormányai. 1848-1987. Csatolva: Közös miniszterek - horvát bánok - fiumei kormányzók. 1867-1918. 3. bőv. kiad. [Hungary's governments. 1848-1987. Annexe: Ministers of the Austro-Hungarian cabinet, governors of Croatia, governors of Fiume. 1867-1918. 3rd enl. ed. Правительства в Венгрии (1848-1987 г.г.) Включены: совместные министры - хорватские баны - фиумские губернаторы (1867-1918 г.г.). 3-е доп. изд.]
Bp. Akadémiai Kiadó, 1987. 469, [2] p. 1 t.

HORVÁTH Pál: Az állam- és a jog fejlődéstörténete. [History of development of the state and law. История развития государства и права.]
Bp. Akadémiai Kiadó., 1987. 391 p. /Összehasonlító jogtörténeti tanulmányok./ Bibliogr. passim.

NAGY László: Erdélyi boszorkányperek. 2. átdolg., bőv. kiad. [Witchcraft trials in Transylvania. 2nd rev., enl. ed. Тяжбы в Трансильвании, связанные с обвинением в колдовстве. 2-е доп. и пересмотр. изд.]
[Bp.] Kossuth Kiadó, 1988. 235, [2] p. Bibliogr. 233-234.

PÖLÖSKEI Ferenc: A dualista Magyarország államrendszere és továbbélése. Kiad. [az] MTA Történettudományi Intézet - Országos Pedagógiai Intézet. [State system and survival of the dualist Hungary. Государственная система Венгрии во время дуализма.]
Bp. [mimeogr.] 1987. 27 p. /Előadások a Történettudományi Intézetben 5./

Az Ujjáépitési Minisztérium müködésének válogatott dokumentumai. 1945-1946. Összeáll. és bev. Boreczky Beatrix. [Közzéteszi az] Uj Magyar Központi Levéltár. [Selected documents on the functioning of the Ministry of Reconstruction. 1945-1946. Избранные материалы, относящиеся к деятельности Министерства по восстановлению страны (1945-1946 г.г.).]
Bp. Közgazdasági és Jogi Kiadó, 1987. XLVI, [2], 280, [4] p. /Források a magyar népi demokrácia történetéhez 6./ Bibliogr. passim.

Articles - Статьи

HOMOKI NAGY Mária: Női különjogok érvényesülése a szentesi uriszék joggyakorlatában. 1836-1846. [Enforcement of the special rights of womwn in the judical practice of the manor court of Szentes. 1836-1846. Реализация особых прав женщин в практике манориального суда г. Сентеш (1836-1846).]
= Szilbereky-emlékkönyv. 1987. 87-95.

HORVÁTH Pál: Sowjetstaat und Sowjetrecht in der Zeit des Zweiten Weltkriege, des Wiederaufbaus und der Beendigung der sozialistischen Aufbauarbeit. [Soviet state and Soviet law in the period of World War II, the subsequent reconstruction, and the accomplishment of socialist building work. Советское государство и право в период второй мировой войны, реконструкции хозяйства и завершение социалистического строительства.]
= Annales Bp. Tomus 28. 1987. 127-144.

HORVÁTH Pál: A jogfejlődés kezdetei. Az antik jogfejlődés előzményei. [Beginnings of legal development. Antecedents of the development of law in the Antiquity. Зарождение права. Предыстория античного правового развития.]
= ELTE Acta. 28. köt. 1986. 45-62.

HORVÁTH Pál: Szemere Bertalan és a reformkor büntetőjogi gondolkodása. [Bertalan Szemere and the thoughts on criminal law

in the reform era. Берталан Семере и уголовно-правовое мышление в эпохе реформ.]
JK 2/88:65-70.

IJJAS József: Német-Ausztria kormányzati rendszere. 1918-1919. [System of government in Austria. 1918-1919. Правительственная система Немецкой-Австрии (1918-1919 г.г.)]
= ELTE Acta. 28. köt. 1986. 175-187.

MERÉNYI Kálmán: A rablás pönalizálásának fejlődése a kezdeti kodifikációs törekvésektől a felszabadulásig. [Development of the penalization of rubbery, from initial efforts of codification to Liberation in 1945. Развитие пенализации грабежа с первых стремлений кодификации до освобождения страны.]
JK 4/88:171-174.

MEZEY Barna: A börtönügyi szakirodalom kezdetei Magyarországon. [Beginnings of the special literature on inprisonment in Hungary. Первые публикации по вопросам тюремного управления в Венгрии.]
= ELTE Acta. 28. köt. 1986. 63-83.

RÁCZ Lajos: Kormányzási dilemmák a fejedelemkori Erdélyben. [Dilemmas of government in the principality of Transylvania. Дилеммы правления в Трансильванском княжестве.]
ÁJ 4/88:592-614.

RÉVÉSZ T[amás] Mihály: The present and future of legal history. Настоящее и будущее истории права.]
= Annales Bp. Tomus 28. 1987. 197-204.

TAKÁCS Albert: A jog forrásai és a jogi gondolkodás módszere Hugo Grotius jogelméletében. [The sources of law and the method of legal thinking in the theory of law of Hugo Grotius. Понятие права и способ юридического мышления в философии права Г. Гроция.]
ÁJ 1/88:82-119.

TÓTH Árpád: Szemere Bertalan alakja Both Ödön néhány tanulmányában. [Bertalan Szemere's figure as presented in some studies by Ödön Both. Оценка деятельности Верталана Семере в работах Эдэн Вот.]
= Both-emlékkönyv. 1987. 335-343.

XVII. ROMAN LAW - XVII. РИМСКОЕ ПРАВО

Books - Книги

FEKETE Orsolya: A római polgárjog a pannóniai feliratos emlékek tükrében. [Roman civil law as reflected by Pannonian inscription records. Римское гражданское право в свете письменных источников, найденных в Паннонии.]
/Publicationes Institutu Iuris Romani Budapestinensis. Fasc.7./
Bibliogr. passim. -- Dt. Zusammenfassung.

PÓLAY Elemér: A római jogászok gondolkodásmódja. Kazuisztika és absztrakció. Egyetemi segédkönyv. [The way of thinking of legal Romanists. Casuistics and abstraction. Auxiliary university textbook. Мышление римских юристов. Казуистика и абстракция. Учебник для вузов.]
Bp. Tankönyvkiadó, 1988. 214, [2] p. Bibliogr. 209-214.

Articles - Статьи

BAJORY Pál: Bizonyitás a római jogban. [Evidence in the Roman law. Доказательство по римскому праву.]
JK 12/87:658-666.

FÖLDI András: Polgári jogunk és a római jog. [Hungarian civil law and Roman law. Наше гражданское право и римское право.]
= ELTE Acta. 28. köt. 1986. 7-26.

FÖLDI András: Beszámoló az első magyar-olasz romanisztikai és

civilisztikai konferenciáról. [Róma, 1986. máj. 15-17. Report on the first Hungaro-Italian conference on Roman law and civil law, held in Rome, May 15-17, 1986. О первой венгерско-итальянской конференции по романистике и цивилистике. (Рим, 15-17 мая 1986 г.)]
MJ 1/88:86-88.

HAMZA Gábor: Remarqes sur le développement de l'usucapion á l'époque impériale du droit romain. [Some remarks about the development of the usucapio in the imperial period of Roman law. Некоторые вопросы развития института присвоения в римском праве в период империи.]
= Annales Bp. Tomus 28. 1987. 107-125.

HAMZA Gábor: Az elbirtoklás intézményének változása a klasszikus és a posztklasszikus-jusztiniánuszi római jogban. [Change of the institution of usucaption in the classical and postclassical-Justinian Roman law. Изменение института присвоения владения в классическом и постклассическом римском праве.]
= ELTE Acta. 28. köt. 1986. 27-44.

HAMZA G[ábor]: Juristische Widerspiegelung der sozialen Verhältnisse im römischen Recht. [Juridical reflection of social relations in Roman law. Юридическое отражение общественных отношений в римском праве.]
AJurid. 3-4/86:210-213.

MOLNÁR Imre: A preklasszikus jog felelősségi rendszere. [Responsibility system of the preclassical law. Система правовой ответственности в римском праве доклассического периода.]
= Szilbereky-emlékkönyv. 1987. 169-210.

PÓLAY Elemér: Die römischrechtlichen Wurzeln des zivilrechtlichen Schutzes der Persönlichkeit. [Roman law roots of the protection of personality in civil law. Гражданско-правовая защита личности: корни защиты, уходящие в римское право.]
=Szilbereky-emlékkönyv. 1987. 257-280.

PÓLAY Elemér: A modern magánjog római jogi gyökerei. [Az első magyar–olasz jogászkonferencia. Róma, 1986. máj. 15-17.] [The Roman law roots of the modern private law. The first Hungaro-Italian conference of legal scientists. Rome, May 15-17, 1986. Корни римского права в современном частном праве.(Первая венгерско-итальянская конференция юристов. Рим, 15-17 мая 1986г.)]
JK 12/87:670-672.

XVIII. MISCELLANEOUS - XVIII. СМЕШАННОЕ

Articles - Статьи

BALOGH Elemér: Both Ödön a szakjogtörténet müvelője. [Ödön Both, a distinguished author of the special history of law. Эден Бот как учёный по истории права.]
= Both-emlékkönyv. 1987. 345-353.

BURIÁN László - TÖRÖK Gábor: Az első svájci–magyar jogásznapok Veszprémben. 1987. jun. 15-17. [The first Swiss-Hungarian jurists' days in Veszprém. June 15-17, 1987. Первая встреча швейцарских и венгерских юристов в г. Веспрем. 15-17 июня 1987 г.]
JK 12/87:669-670.

Az európai szocialista államok jogalkotásáról. Sipos Katalin: Szovjetunió. Horváth Anna: Bulgária Népköztársaság. Trócsányi László: Csehszlovák Szocialista Köztársaság. Sprém István: Lengyel Népköztársaság. Salzmann Géza: Német Demokratikus Köztársaság. Lázár Miklós: Románia Szocialista Köztársaság. [On the new legal rules in the European socialist countries. О законодательстве европейских социалистических стран.]
JK 2/88:86-93.

GYÖRGY István: A közigazgatás felső szintü oktatása az Egyesült Államokban. [The university-level public administrative educa-

tion in the United States. Вузовское преподавание публичной администрации в США.]
ÁI 5/88:403-408

HORVÁTH Pál: A Horvát Boldizsár emlékülésről. [Session in memoriam: Boldizsár Horvát. Совещание в памяти Болдижара Хорват.]
JK 5/88:296-298.

HORVÁTH Pál: Horvát Boldizsár [1822-1898] az igazságügyminiszter. [Boldizsár Horvát as minister of justice. О министре юстиции Болдижпр Хорват.]
MJ 2/88:181-186.

HORVÁTH Pál: Szalay László. [1813-1864.] emlékére. [In memoriam László Szalay. 1813-1864. Памяти Ласло Салаи (1813-1864).]
MJ 6/88:569-571.

LÉVAI Miklós: Tudósitás a Magyar Jogász Szövetség Kriminológiai és Kriminalisztikai Szakosztályának 1987. november 19-i üléséről. [Report on the meeting of the Section for Criminology and Criminalistics if the Hungarian Lawyers' Association, held on November 19, 1987. О заседании секции по криминологии и криминалистике Ассоциации венгерских юристов. (19 ноября 1987 г.).]
MJ 3/88:277-279.

Nagy Lajos. 1911-1986. [Nekrológ. Irta] Sz[abó] A[ndrás]. [An obituary. Некролог.]
ÁJ 2/86:213-215.

Nagy Lajos. 1911-1986. [Nekrológ.] [An obituary. Некролог.]
AJurid. 3-4/86:253.

NAGY László: A Magyar Jogász Szövetség 1987. évi tevékenységéről. [The activity of the Hungarian Lawyers' Association in

1987. Отчётный доклад о деятельности Ассоциации венгерских юристов в 1987 г.]
MJ 1/88:3-8.

Nezvál Ferenc. [1909-1987. Nekrológ. Irta] Korom Mihály.] [An obituary. Некролог.]
MJ 1/88:1-2.

SZABÓ András: Viski Lászlóra [1929-1977] emlékezve. [In memoriam Viski László. Воспоминания о Ласло Вишки.]
= Viski-emlékkötet. 1987. 4-6.

SZABÓ Győző: A szakmai program értékelése. [A VII. pannon jogász napokról.] [Assessment of the professional programme. On the 7th Pannonian Lawyers' Days. Результаты профессиональной встречи. (Оценка деятельности VIII. встречи юристов Паннонии.)]
= Jogász szöv. ért. 1987. 3. köt. 115-116.

SZABÓ Imre: Társadalomfejlődési vetületek és célok Szilbereky Jenő tudományos munkáiban. [The projections and aims of social development in Jenő Szilbereky's lifework. Вопросы общественного развития в научных трудах Йэне Силбереки.]
= Szilbereky-emlékkönyv. 1987. 281-296.

Szilbereky Jenő tudományos munkáinak jegyzéke. [List of the scientific works of professor Jenő Szilbereky. Список научных работ Йэнэ Силбереки.]
= Szlbereky-emlékkönyv. 1987. 323-326.

TAKÁCS György: Jogásztanár képzés és jogismereti tanárképzés. [Professional formation of teachers in law and legal knowledge. Подготовка преподавателей права и правовых знаний.]
MJ 1/88:49-53.

T[RÓCSÁNYI] L[ászló, ifj.]: Előadások a skandináv jog köréből. [Eivind Smith előadásai. Budapest-Pécs, 1987. márc. 31. - ápr.

Bibliographia

1. Lectures on Scandinavian law, delivered by Eivind Smith. Budapest-Pécs, March 31 - April 1, 1987. Лекции Евинда Смита о скандинавском праве.(Будапешт-Печ, март-апрель 1987 г.).] JK 2/88:102.

UJLAKI László: György Ernő [1888-1977.] centenárium. [Ernő György centenary. Столетний юбилей: Эрнэ Дьёрдь.(1888-1977.)] JK 5/88:304-305.

Viski László legjelentősebb publikációi. [László Viski's principal publications. Список основных научных трудов Ласло Вишки.]
= Viski-emlékkötet. 1987. 103-109.

WEINER A. Imre: Viski László tevékenysége a Nemzetközi Büntetőjogi Társaságban. [László Viski's activity in the International Association of Criminal Law. Деятельность Ласло Вишки в Международной ассоциации уголовно-правовых наук.]
= Viski-emlékkötet. 1987. 71-73.

ZOLTÁN Ödön: A jogászokról és a jogéletről. [On jurists and law life. О юристах и юрической жизни.]
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DIE PARTEIAUTONOMIE IM UNGARISCHEN INTERNATIONALEN PRIVATRECHT*

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Die Abhandlung untersucht vorerst, inwieweit die Autonomie mit dem Hintergrund des materiellen Rechts in Zusammenhang steht. Auch in der ungarischen Rechtsentwicklung wurde die Parteiautonomie des internationalen Privatrechts deshalb eine reale und wichtige Institution, weil die Rechtssubjekte des wirtschaftlichen Verkehrs eine breite Autonomie innehatten. Die Abhandlung analysiert ferner die geschichtliche Entwicklung und die positivrechtliche Erscheinung der Willensautonomie früher in der Rechtssprechung, danach ab 1979 im Kodex des internationalen Privatrechts. Im Laufe der weiteren Erörterungen werden auch die Probleme der Praxis dargestellt, mit besonderer Rücksicht auf die Verträge, gleichzeitig werden aber auch andere, mögliche Geltungsgebiete der Parteiautonomie (Arbeitsrecht, Erbrecht, usw.) hingewiesen.

I. Einleitende Bemerkungen

1. Behandelte Fragen

Für die Wissenschaftler des IPR ist es natürlich selbstverständlich, dass die Privatautonomie in dieser Disziplin die Autonomie der Rechtswahl bedeutet. Dieses Referat beschränkt sich auch auf die Rechtswahl, zwar hat die Parteiautonomie auch in dem ungarischen Recht eine grössere, im Grunde genommen eine sehr grosse Rolle. Sie ist eine grundlegende, oder sogar die wichtigste Institution und das fundamentale Prinzip des bürgerlichen Rechts und des Handelsrechts. Sie hat aber auch in ande-

*Referat an der Konferenz in Pécs, 26. September - 2. Oktober 1987.

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ren Rechtszweigen der Zivilistik auch eine bedeutende Rolle. Wenn es auch ein wenig übertrieben scheint, dass die Privatautonomie im IPR nur eine Erscheinungsform der materiellrechtlichen Autonomie, oder sogar der Dispositivität ist, sicher ist, dass die Entfaltung der Privatautonomie im IPR und die zunehmende allgemeine materiellrechtliche Rolle der Willensautonomie miteinander im Zusammenhang stehende Erscheinungen sind. Anders ausgedrückt: unter den ungarischen Bedingungen des Rechtsdenkens und der Rechtsentwicklung konnte man früher und kann man auch heute deshalb mit Erfolg für die Stärkung der internationalprivatrechtlichen Autonomie kämpfen, weil die Autonomie der Parteien im bürgerlichen materiellen Recht immer grösser wird. Deswegen, weil in der Gestaltung der Rechtsverhältnisse die Waren- und Geldverhältnisse, das Wertgesetz, die regulierende Rolle des Marktes ausschlaggebend geworden ist. Das bedeutet in den vorher erwähnten Verhältnissen notwendigerweise die Entfaltung der Autonomie des Menschen und anderer Rechtssubjekte. Der Staat, also die Macht, die mit zwingenden Normen reguliert, zieht sich von dieser Sphäre bedeutender Weise zurück. Er sieht ein, dass es effektiver und kluger ist, die oben genannten Regulatoren wirken zu lassen. Er setzt zwingende Normen oder andere Schranken nur dort ein, wo es soziale, wichtige wirtschaftliche oder rechtspolitische Erwägungen bedürfen. Aus diesen Erscheinungen heben wir die internationalprivatrechtliche Privatautonomie hervor. Die Thematik des Referats umfasst viele Fragen. Man könnte (und sollte) über die Privatautonomie - was das ungarische Recht anbelangt - ein Buch schreiben. Wir haben es versucht, in den gegebenen Rahmen über das wesentliche, die wichtigsten Fragen zu entfalten. Die anschliessenden ungarischen Referaten dehnen sich auf die Möglichkeiten der Autonomie im Erbrecht, im Arbeitsrecht, im Deliktsrecht und im Ehegüterrecht (L. Burián), und auf jene oder einige relevante internationale Abkommen aus, in welchen Ungarn auch beteiligt ist (Ch. Bán).

2. Der Weg bis heute: historische Betrachtungen

Einführend soll vielleicht auch etwas über die Geschichte der Privatautonomie gesagt werden, einiges darüber, wie wir bis

zur heutigen Situation gelangt sind. Es würde uns natürlich weit führen und es würde auch weitgehende Forschungen erfordern, wenn wir hier eine wirkliche ungarische IPR- und Privatautonomiegeschichte darstellen wollten. Es ist aber angebracht, aus diesem Anlass auf solch einem europäischen Forum darüber zu sprechen, dass sich das ungarische IPR - wenn es auch von Zeit zu Zeit durch konkrete historsiche Ereignisse gehindert wurde (türkische Herrschaft im 16-ten und 17-ten Jh., die habsburgische Unterdrückung nach dem Freiheitskrieg zwischen 1849 und 1867, die sogenannten 50-er Jahre in unserem Jh.) - in der eurpäischen Ströhmung der Rechtskultur befand. Was unsere Themen anbelangt, ist ein guter Beweis das Buch von Gy. Bónis (Rechtsgelehrte im mittelalterlichen Ungarn) und die Studie von J. Zlinszky (Die Anfänge des IPR in Ungarn, Jogtudományi Közlöny, (1981.).

Vor allem aber einige Worte über die Entwicklung des IPR in Ungarn im allgemeinen. Es ist bekannt, dass die Kategorie des Kollisionsrechts für die Lösung der internationalen Rechtsverhältnisse erst von den Glossatoren am Ende des 12-ten Jahrhunderts bewusst formuliert wurde (Accursius Glossa Ordinaria C. 1.1.1. "Cunctos populos" stammt ungefähr aus dem Jahre 1228). Auch ungarische Juristen studieren an den ersten grossen Universitäten (in Bologna, Padova, Paris, usw.), in Veszprém gab es zur gleichen Zeit (im 13-ten Jh.) auch höheren Rechtsunterricht (J. Gutheil: Veszprém zur Zeit der Arpaden, 2. Auflage, Veszprém, 1979. pp. 126-137.). Die Erscheinung der bewussten kollisionsrechtlichen Regelung der Rechtsverhältnisse im 14-ten Jh. in Ungarn ist also kein Zufall. Es ist selbstverständlich, und entfaltet sich in einer bedeutenden Praxis (cf. Zlinszky, op. cit. pp. 941. et seq.). Die wissenschaftliche Bearbeitung der Fragen beginnt auch in Ungarn erst im 19-ten Jh., einige Jahrzehnte nach der Erscheinung des Werkes von Savigny (Band VIII. des "System des heutigen römischen Rechts" im Jahre 1849), man darf aber nicht vergessen, dass der Freiheitskrieg eben in diesen Jahr durch die russische und österreichische Armee niedergeschlagen wurde, bis 1867 folgte eine Periode der Unterdrückung der Habsburger.

Im Jahre 1867 kam es dann zum Ausgleich zwischen Öster-

reich und Ungarn, so kann die Tatsache auch symbolisch aufgefasst weeden, dass die erste umfangreiche, wissenschaftliche internationalprivatrechtliche Bearbeitung des Werk eines Wieners namens Johann Vesque von Püttlingen "Handbuch des in Österreich und Ungarn geltenden internationalen Privatrechts" (Wien, 1878) war. Die ungarische Literatur liess aber auch nicht lange auf sich warten. In einem Vortrag im ungarischen Juristenverein sprach R. Dell'Adami schon im Jahre 1888 - geleitet von der Idee des Weltrechts der Weltwirtschaft - über den Fortschritt des ungarischen IPR, und im Jahre 1892 schrieb M. Szántó auf den Bewerbungsaufruf der Ungarischen Akademie der Wissenschaften das erste grosse selbständige Buch des ungarischen IPR (Budapest, 1893). Wegen des zunehmenden internationalen Personenverkehrs ist auch die kollisionsrechtliche Praxis reicher geworden, was schon im vergangenen Jahrhundert zu internationalen Vereinbarungen geführt hat, welche auch internationalprivatrechtliche Aspekte hatten (cf. Zlinszky, op. cit. pp. 947-948). Ungarn nahm auch an den Konferenzen in Den Haag teil, deren Arbeit noch im vorigen Jahrhundert begonnen hat.

Was die Geschichte der Privatautonomie anbelangt, kann folgendes gesagt werden: Es ist bekannt, dass diese Idee schon am Ende des 15-ten Jahrhunderts, also in Widerspruch zu den früheren Behauptungen noch vor Dumoulin bei Curtius, gest. 1495, auftauchte, seine Entfaltung folgte erst von der Mitte des 19-ten Jahrunderts (Savigny, Wächter ABGB §§ 36-37). Sie war auch in Ungarn am Ende des 19-ten Jahrhunderts und zu Beginn des 20-sten Jahrhunderts eine allgemein anerkannte und gebrauchte Institution. Die ungarische Kurie (das Oberste Gericht) hat die Privatautonomie in seinem Urteil 7674/1905. nicht nur als ein Element des ungarischen Rechts deklariert, sondern sie hat die Privatautonomie kurz darauf auf einige Gebiete des Arbeitsrechts und auf das Ehegüterrecht ausgedehnt (es ist aber zu bemerken, dass der Arbeitsvertrag damals als eine Kategorie des Privatrechts galt).

Ein Versuch der Kodifikation des im gewohnheitsrechtlichen System funktionierenden ungarischen IPR nahm I. Szászy im Jahre 1948 vor. Sein Entwurf hatte die kodifikationsrechtliche Postulation der progressiven gewohnheitsrechtlichen Praxis sein kön-

nen. Es ist zwar zu bemerken, dass Szászy die Privatautonomie nur im Sinne des materiellen Rechts richtig befunden hat, die Rechtswahl hatte bei ihm nur brevitatis causa die Realisierung der durch die Dispositivität gegebene Möglichkeit bedeuten können. Seine oben erwähnte Auffassung hat Szászy auch später nicht verändert, zwar hat er auch die positiven Züge der kollisionsrechtlichen Auffassung der Privatautonomie anerkannt (I. Szászy: Das IPR der europäischen Volksdemokratien, Budapest, 1962, pp. 233. et seq.). Ungewollt hat diese Ansicht von Szászy die Auffassung, die die uneingeschrankte Entfaltung der Privatautonomie besonders am Anfang der 50-er Jahre behinderte, unterstützt. In den 50-er Jahren verstärkten sich die Ansichten, die am Anfang in der sowjetischen Rechtslehre und im sowjetischen Rechtsdenken auftauchten. Im sowjetischen Recht haben diese Gedanken zwar teils ihre Gründe gehabt, weil dort der Staat als solcher im Aussenhandel tätig war, und so hat die dort besonders dominierende Lehre der absoluten Immunität die Anwendung eines ausländischen Rechts damals ausgeschlossen. In Ungarn wurde aber der Aussenhandel immer durch selbständige, vom Staat getrennte Rechtssubjekte geführt. Deswegen war hier der Widerstand und das Verwerfen der Autonomie sinnlos, eigentlich eine rein formale Nachahmung der sowjetischen Theorie, welche durch eine wissenschaftliche rechtsvergleichende Analyse nicht unterstützt werden konnte.

Die Argumentation hat nachgelassen, die Argumente haben sich verändert. Sie lauteten: Es ist nicht logisch, zu behaupten, dass es die Aufgabe und das Recht des Gesetzgebers ist, ein Recht zu geben, und zugleich sagen, "macht, was Ihr wollt", dass die Privatautonomie der Gedanke des Liberalkapitalismuses sei, und deswegen wir es nicht brauchen können, dass dadurch die westlichen Grossunternehmen die sozialistischen Unternehmen auch was das Recht anbelangt, in eine ungünstige Lage versetzen, usw. Diese und andere ähnliche Auffassungen, die die Entfaltung der Privatautonomie verhinderten, haben teils an Intensität nach den 50-er Jahren viel verloren, oder sind teils ganz verschwunden. Das ist einerseits der Einfluss der Praxis (Praxis der Staats- und Aussenhandelsverträge), andererseits das Erscheinen von neuen modernen Theorien zu verdanken. (Cf. z.B.

F. Mádl: Theoretische Erwägungen für praktische Ziele zur Fassung internationalprivatrechtlicher Normen, Jogtudományi Közlöny, 9. 1969.; idem: Vergleichendes internationales Privatrecht, Budapest, 1978, pp. 139. et seq. und M. Hontvári: Haftung für die Qualität im internationalen Kauf, Budapest, 1979. pp. 215-283.).

Vielleicht kann man so formulieren, dass sich die Wissenschaft und das internationalprivatrechtliche Denken aus den Fesseln der dogmatischen Bindungen und des schematischen Denkens befreien konnte. Die Privatautonomie hat sowie in der Literatur, als auch im Prozess der beginnenden Kodifikation wieder einen Rang erobert. Dies geschah nicht nur in Ungarn, sondern auch in den anderen sozialistischen Ländern. Die sich dahinter befindenden prinzipiellen - filosophischen Überlegungen und Tatsachen sind schon oben unter Punkt 1. erwähnt worden. (Waren- und Geldbeziehungen, Markt, Wertgesetz und deren Anerkennung.) Das Prinzip der friedlichen Koexistenz und des internationalen Zusammenwirkens spielte dabei auch eine bedeutende Rolle. Zu der internationalen Handelspraxis gehört nämlich, dass die Handelspartner auch auf dieser sozialistischen Seite frei und elastisch die Mittel anwenden können, die für die Gestaltung der rechtlichen Positionen Ihnen zur Verfügung stehen. Zu diesen Mitteln gehört auch die Privatautonomie. Das Détente ist also zum bedeutenden inhaltlichen Unterstützungsfaktor der Privatautonomie geworden.

Die Befreiung der internationalprivatrechtlichen Privatautonomie von den früheren Gebundenheiten ist in Ungarn an sich genommen volkommen geworden. Bis zum Beenden der Kodifikation in 1979 gab es aber nicht genug Kraft, den Anwendungsbereich damals deklariert über die Vertrage hinaus ausdehnen zu können, wie das in der internationalen Praxis im Ausland in vielen Ländern der Fall war. Der nächste Schritt in der wissenschaftlichen Vorbereitung ist eben aufgrund der rechtsvergleichenden Analyse unseres Forums schon heute zeitmässig. Unter anderen auch deswegen, weil in den uns auch berührenden internationalen Verträgen schon die elastischere Auffassung (die Ausdehnung der Privatautonomie) zur Geltung kommt.

II. Die Parteiautonomie im Vertragsrecht nach dem ungarischen IPR-Gesetz

Einführend muss bemerkt werden, dass hier über die Parteiautonomie bezüglich der Verträge des Schuldrechts die Rede sein wird.

1. Freie Rechtswahl

a/ Der § 24. der Gesetzverordnung No. 13. aus dem Jahre 1979 formuliert kurz und eindeutig: "Auf die Verträge soll jenes Recht angewandt werden, das durch die Parteien zur Zeit des Vertragsabschlusses, oder später gewählt wurde." Daraus ist ersichtlich, dass das ungarische Recht den Parteien die vollkommene Freiheit der Rechtswahl gibt. Auch ein solches Recht kann also gewählt werden, welches mit dem konkreten Fall nichts zu tun hat. Sehr oft wird in der Vertragspraxis, z.B. das schweizerische Recht (bzw. die schweizerische Gerichtsbarkeit) gewählt. Einerseits, weil das schweizerische Obligationsrecht sehr entwickelt und gut bekannt ist, andererseits, weil die Schweiz ein neutraler Staat ist, und hat eine grosse Praxis in der Arbitrage, dazu kommt noch, dass die Parteien das schweizerische Recht oft als eine Konzession wählen, wenn ihr eigenes Recht nicht gewählt werden kann.

Im ungarischen Recht muss das gewählte Recht nicht die geringste Verbindung mit dem Fall haben, wie es z.B. das polnische Recht vorsieht. Die Möglichkeit der Rechtswahl wird in den modernen Rechten fast ausnahmslos gestattet. Die Allgemeinheit der Rechtswahl wird auch dadurch gekennzeichnet, dass sie in der Literatur zu einer unbestrittenen Axiome geworden ist (cf. Keller-Siehr: Allgemeine Lehren des internationalen Privatrechts, Zürich, 1986. pp. 365, 372. et seq.; Mádl-Vékás: Nemzetközi magánjog, Budapest, 1985. pp. 325. et seq.), und auch durch internationale Verträge zu einer klassischen These des modernen Rechts geworden ist. Das enthält die Hager Konvention über die internationalen Kaufverträge, für die EWG wird sie durch das Abkommen der EWG über die Verträge in einer einheitlichen Konzeption verallgemeinert. In dieser zuletzt genannten

Fassung ist sie auch ein Teil des deutschen Rechts geworden, als Art. 27. des IPR-Gesetzes aus dem Jahre 1986. Die Rechtswahl ist auch ein Teil des IPR anderer sozialistischer Staaten geworden (Polnisches IPR Gesetz §. 25., Tschechoslowakisches IPR Gesetz § 9., Sowjetische Grundlagen § 126., Rechtsanwendungsgesetz der DDR § 12.).

b/ Aus der ungarischen Regelung kommt es klar zum Ausdruck, dass die Parteien zu jeder Zeit die Möglichkeit der Rechtswahl haben, natürlich bis zum Beginn des gerichtlichen Verfahrens. Aus diesem lakonischen Text folgt auch, was das deutsche Gesetz im Art. 27. Abs. 2. sagt, d.h., dass die Parteien statt des schon gewählten Rechts später auch ein anderes Recht wählen können. Was daraus folgt, was für eine Wirkung die neue Rechtswahl auf die Rechte Dritter, welche diese aus dem Vertrag haben, ausübt, darauf kehren wir später zurück.

c/ Oben wurde schon darauf hingewiesen, dass einige Experten die Privatautonomie früher und auch im Laufe der Kodifikation durch die Rechtsnatur der Rechtswahl abgrenzen wollten. Sie argumentierten so, dass die Rechtswahl nur im Kreis der Dispositivität möglich sei, und sich auf die zwingenden (cogenten) Normen nicht erstrecke (so ist es nur eine im inländischen Recht gegebene Möglichkeit, dass die Parteien ihren Vertrag frei gestalten können, kurz gesagt "brevitatis causa" sagen sie dass beliebiges ausländisches Recht das Recht des Vertrages bilden soll). Gemäss der herrschenden Auffassung ist die Rechtswahl eine kollisionsrechtliche Institution. So ist der Parteien die Möglichkeit der Rechtswahl nicht durch die zivilrechtliche Dispositivität, sondern durch die allgemeinen Regeln des IPR gegeben, und so kann sie auch gegen zwingende Normen angewandt werden. Dagegen wurde das Argument von den Gegnern der kollisionsrechtlichen Rechtswahl gestellt, dass sich die Rechtswahl so in einem Vakuum befindet, besten Falls ist sie eine naturrechtliche Erscheinung. (Es ist hier zu sehen, dass sich in der ungarischen Literatur auch in dieser Hinsicht das ausländische internationalprivatrechtliche Denken gut widerspiegelt. Cf. Keller-Siehr, op. cit. pp. 370-371.) Auf diese vielleicht eine wenig übertriebene rechtstheoretische Diskussion kann folgendes geantwortet werden: Die Gesetzverordnung stellt klar fest, dass

es sich hier um eine grundlegende Institution des IPR handelt, daraus folgt auch, dass sich die Rechtswahl nicht im Vakuum befindet, und dass sie auch keine naturrechtliche Erscheinung, sondern eine zugelassene und wirkende Institution ist, weil sie durch das Recht des Forums vorgeschrieben wurde. Dieser Befehl des Forumstaates gilt genauso, wie jener, welche mangels einer Rechtswahl aussagt, was für ein Recht zu einem solchen Fall ansonsten massgebend ist. Was von Fall zu Fall auch anders ist, wie das Recht des Forums. In unserem geltenden Recht wird die Rechtswahl also im kollisionsrechtlichen Sinne aufgefasst.

2. Zulässigkeit und Gültigkeit der Rechtswahl

Theoretisch kann die Frage, nach wessen Recht die Möglichkeit, der Inhalt und die Form der Rechtswahl beurteilt werden soll, verschieden beantwortet werden. Eine Antwort wäre, dass sie nach dem gewählten Recht, die andere, dass sie nach dem abgewählten Recht zu beurteilen wäre. Ein Beispiel auf die erste könnte der Art. 2. des damals sich noch auch auf die ausservertraglichen Schuldverhältnisse erstreckenden EWG-Entwurfs sein. Auf die zweite könnte man die frühere, vor dem Inkrafttreten des neuen IPR-Gesetzes befolgte österreichische Praxis als Beispiel nennen (Schwind: Handbuch des Österreichischen Internationalen Privatrechts, Wien-New York, 1975. p. 290.), das wird aber auch durch den Entwurf des schweizerischen IPR-Gesetzes gezeigt: "Die Rechstwahl muss ausdrücklich sein, sich eindeutig aus dem Vertrag, oder aus den Umständen ergeben. Im übrigen untersteht sie dem gewählten Recht." Der aus dem EWG Abkommen übernommene Art. 27. des deutschen Gesetzes weist auf die Artikel 11., 12., 29. und 31. des Gesetzes, welche differenziert unter eine Art favor negotii stehen.

Im ungarischen Gesetz gibt es über diese Frage keine explizite Regelung. Trotzdem ist eine einheitliche gerichtliche Praxis zu erwarten und zu befürworten, wie folgt: Was die Zulässigkeit anbelangt, kann die oben genannte Regel des ungarischen Rechts nur so interpretiert werden, dass der Gesetzgeber die Freiheit der Rechtswahl sichern wollte, und sichern will. Ein ungarisches Forum kann diese Vorschrift nur so verstehen. Die Rechtswahl bindet die Parteien in Ungarn, ohne Hinsicht

darauf, was das gewählte, oder das abgewählte Recht darüber sagt. Es ist anzunehmen, dass der Gesetzgeber seinen Befehl vom gewählten oder vom abgewählten Recht abhängig machen wollte. Solche formale Spekulationen und abstrakte Fallen wollte er bestimmt nicht ins Gesetz einbauen. Ein Teil der nur so interpretierbaren "klaren Rede" lautet, dass die Zulässigkeit der Rechtswahl in seiner oben genannten Vollkommenheit verstanden sein kann (Punkt 1.), die Schranken des gewählten und des abgewählten Rechts sind irrelevant. Es ist eine andere Frage, ob die Rechtswahl, als ein Geschäft formal und materiell gültig ist, oder nicht. In dieser Hinsicht müssen die expliziten Vorschriften befolgt werden. Das wesentliche ist hier auch die favor negotii. Gemäss des Artikles 30. Abs. 1. und 3. des Kodex ist die Vereinbarung über die Rechtswahl gültig,

a/ wenn es gemäss des gewählten Rechts gültig ist. Die formale Konvalidation kann weiter

b/ auf das Recht des Forums,

c/ auf das lex loci actus und

d/ auf das Recht des Landes ruhen, wo die vorgesehenen Rechtsfolgen entstehen.

3. Die Wahl mehrerer Rechte

Wegen der lakonisch gefassten Regeln des Kodex gibt es keine Vorschriften darüber, ob auf einen Vertrag auch mehrere Rechte gewählt werden können. Es kann aber trotzdem mit Überzeugung gesagt werden, dass diese Möglichkeit auch in den Freiheitsgedanken des Kodex hineinpasst. Eine gegenseitige Auffassung, irgendein Verbot kann aus dem früher zitierten Text des §-en 24. nicht abgeleitet werden. Dagegen aber weist der Abs. 1. des §-en 30., als es über die Reichweite des Rechts der Obligation spricht, ausdrücklich darauf hin, dass sich das Recht des Vertrages auf gewisse Vertragsteile (auf die den Vertrag sichernde Vereinbarungen, auf das Einrechnen, auf die Zession und auf die Übernahme der Forderungen, die mit dem Vertrag im Zusammenhang stehen) nur in dem Falle erstreckt, wenn die Parteien darüber nicht anders ausdrücklich vereinbart haben. Daraus und auch aus dem Abs. 2. desselben §-en folgt, dass in der Konzeption des Gesetzgebers auch die Unterwerfung mehrerer Rech-

te eine reale Möglichkeit ist. Diese Ansicht wird durch die internationale Praxis verstärkt. (Z.B. Art. 27. Abs. 1. des deutschen Gesetzes, Keller-Siehr op. cit. pp. 381-382., das österreichische Recht, Schwind, op. cit. pp. 290-291.).

4. Wahl der Billigkeit?

Es ist fraglich, ob die in der internationalen - besonders in der schiedsgerichtlichen Praxis - anerkannte amiable compositeur, also die Beurteilung ex aequo et bono auch zu der grossen Freiheit des §-en 24. gehört, ob also der Richter auch nur aufgrund der Billigkeit einen Fall beurteilen darf, oder nicht. Kann das auch aufgrund dieses §-en gewahlt werden? Es ist bekannt, dass in der amiable compositeur die Richter durch die Parteien bevollmächtigt werden, ohne irgendein Rechtssystem in Betracht zu ziehen den Fall nach ihre eigenen Beurteilung zu entscheiden. Es ist wahr, dass diese Entscheidung auch keine völlige Loslösung von jeder Rechtsordnung ist, da sie auf den Vertrag und auf die allgemein bekannten und anerkannten vertragsrechtlichen Theorien ruht, das Iudicium der Richter kann auch daraus abgeleitet werden, und schliesslich beruht das Urteil doch auf irgendeiner Normenordnung. Man könnte sagen, dass dies ja auch nur "ein anderes Recht" ist, welches im allgemeinen gewählt werden kann, warum könnte das auch nicht anerkannt werden genauso, wie das Urteil. Dies alles hört sich gut an, und harmonisiert mit der Elastizität der internationalen handelsgerichtlichen Praxis. Es gibt auch keine Sorgen, wenn es in der gegebenen Relation ein solches internationales Abkommen gibt, welches diese Institution kennt. Wenn es aber nicht der Fall ist, braucht man eine ausgedehnte Interpretation des §-en 24., womit auch die durch die Parteien gewählte Billigkeit als irgendein materielles Rechtssystem betrachtet werden kann. In Wirklichkeit handelt es sich um Thesen, die in der Beurteilung der Richter auf dem konkreten Fall adoptiert, und der Form nach frei gebildet sind.

Aufgrund des §-en 24. könnte die ex aequo et bono Rechtswahl so dazu führen, dass das Forum zuletzt gegen die Parteien handelt, oder das eigentlich dem Gesetz nach massgebende Recht anwendet, obwohl die Parteien es nicht gewollt haben. Die grosse

Freiheit der Privatautonomie will auch der Gesetzgeber, aber..., und man könnte wieder von Anfang an beginnen, im gewissen Sinne befinden wir uns in der Falle der 22-er. Die praktische Lösung wäre vielleicht die Anerkennung der Institution des ex aequo et bono, wodurch man die Harmonisierung mit der Praxis der internationalen Schiedsgerichtsbarkeit, also der internationale Entscheidungseinklang etappenweise erreicht werden könnte.

5. Ausdrückliche und stillschweigende Rechtswahl

Das ungarische Recht sagt nichts über die stillschweigende (oder implied) Rechtswahl, verbietet aber auch deren Anwendung nicht. In vielen anderen Ländern folgte - bei einer ähnlichen gesetzlichen Lösung - die Anerkennung der implied Rechtswahl, wenn sie aus allen Umständen des Falles eindeutig war. Das tschechoslowakische Gesetz konzipiert, wie folgt: "Wenn hinsichtlich des ausgedrückten Willens mit Rücksicht auf die gegebenen Umstände kein Zweifel besteht." (§. 9.) Ähnlich regelt die Frage das österreichische Gesetz: "Die Schuldverhältnisse sollen nach dem Recht beurteilt werden, das die Parteien ausdrücklich oder stillschweigend gewählt haben" (§. 35.). Der Art. 27. des deutschen Gesetzes sagt: "Die Rechtswahl muss ausdrücklich sein, oder sich mit hinreichender Sicherheit aus den Bestimmungen des Vertrages, oder aus den Umstanden des Falles ergeben." Ähnlich lautet auch der oben schon zitierte Art. 113. des schweizerischen Entwurfes. Bei dieser Regelung des Kodex muss die Theorie und die Praxis in dieser Frage Stellung nehmen. Die für das ungarische bürgerliche Recht und für diesen Teil des internationalen Privatrechts charakteristische weitgehende Autonomie und Dispositivität unterstützt die Anerkennung der stillschweigenden Rechtswahl. Wenn z.B. sich A und B in mit dem Vertrag und besonders mit dem Rechtsstreit zusammenhängenden Schriften wiederholt auf ein bestimmtes Handels- oder Zivilgesetz des Landes C hinweisen, so kann diese Tatsache, als eine stillschweigende Rechtswahl betrachtet werden; es ist daher sinvoll, dass das Gericht das Recht des Landes C anwendet.

6. Die Änderung des anwendbaren Rechts

Ein Grund dafür, dass über die Änderung des anwendbaren Rechts gesprochen werden soll, liegt darin, dass die Parteien - wie oben unter Punkt 1. erwähnt wurde - anstatt des einmal schon gewählten Rechts ein anderes Recht wählen können. Diese Freiheit kann aber die Rechtsstellung Dritter nicht berühren. Dieses Prinzip ist zwar im Kodex nicht explizit ausgedrückt, bildet aber einen Teil der ungarischen zivilrechtlichen Lehren, und kommt in jenen ausländischen Gesetzen auch expressis verbis zum Ausdruck, die die Rechtswahl ausführlicher erörtern. (Deutsches Gesetz Art. 27., Abs. 2., schweizerischer Entwurf Art. 113., Abs. 3.).

Der andere Grund, warum die Änderung des anwendbaren Rechts erwähnt werden soll, ist, dass sich das gewählte Recht selbst zwischen den Zeitpunkten des Wahltreffens und der tatsächlichen Anwendung des gewählten Rechts ändert, was eine natürliche Erscheinung ist. Es kann fraglich sein, ob die Parteien das Rechtssystem in seiner organischen und sich ändernden Vollkommenheit oder mit seinem zur Zeit der Rechtswahl geltenden aktuellen Inhalt gewählt haben. Unsere Antwort im Einklang mit der internationalen Praxis lautet: die Rechtswahl gilt für eine Rechtsordnung als eine dynamische Einheit, ausgenommen, wenn die Parteien ausdrücklich davon abweichen.

7. Grenzen der Rechtswahl und der Änderung des gewählten Rechts

Davon, wie weit die Privatautonomie über die Grenzen der Verträge des Schuldrechts hinaus ausgedähnt werden kann, oder sollte, ist im Referat von L. Burián die Rede. Hier muss man über jene Grenzen sprechen, die innerhalb der Verträge des Schuldrechts vorhanden sind. (In der Literatur cf. Keller - Siehr, op. cit. pp. 379. et seq., Mádl-Vékás op. cit. pp. 326-327.). Die Willensautonomie hat nämlich trotz der grossen Freiheit auch im ungarischen Recht seine Grenzen. Diese ergeben sich einerseits aus der Interpretation des Gesetztextes, andererseits aus der gemeinsamen Anwendung der Hauptregel des §-en 24., und anderen Vorschriften des Gesetzes.

a/ Es ist z.B. selbstverständlich, dass jenes ausländische Recht, das ins ungarische ordre public stossen würde (so der §. 7. des Gesetzes), auch durch Rechtswahl unanwendbar ist. Diese Vorschrift betont aber den ausserordentlichen Charakter der Anwendung der Clausel, damit, dass die Anwendung des ausländischen Rechts allein deswegen nicht ausser Acht gelassen werden kann, weil die gesellschaftliche-wirtschaftliche Ordnung des ausländischen Staates von dem ungarischen abweicht.

b/ Der Kodex schreibt ferner vor, dass mangels ausdrücklicher Vereinbarung sich das gewählte Recht auf einige Fragen der Übernahme (Untersuchungspflicht, Art und Weise der Untersuchung, die davon sich ergebenden Einwände) nicht erstreckt. Für diese Fragen hält auch das ungarische Recht das Recht jenes Staates für massgebend, wo der Bestimmungsort liegt, oder wo die Übernahme stattfindet.

c/ Im Verhältnis zur Rechtswahl ist die Rechts- und Handlungsfreiheit der Parteien eine Vorfrage (für jeden Fall eine andere Frage), die auch eine Bedingung der Gültigkeit der Rechtswahl ist.

Aus der gemeinsamen Interpretierung des §-en 24. über die Rechtswahl und der §-en 10-15. über die Rechts- und Handlungsfähigkeit ergibt sich die Folgerung, dass für die Rechts- und Handlungsfähigkeit die lex personae massgebend ist. (Cf. Mádl - Vékás, op. cit. pp. 333-334.). Hier handelt es sich um eine Art Grenze der Rechtswahl, zwar kommt die favor negotii auch in den vorherigen §§-en zur Geltung (das Rechtsgeschäft kann nämlich neben der lex personae auch nach dem ungarischen Recht die Handlungsfähigkeit konvalidiert werden).

Ferner kann auch diese Rolle des gewählten Rechts nach dem Gesetzestext festgestellt werden, der §. 30. Abs. /1/ schreibt nämlich vor, dass das Recht des Vertrages sich auch auf die materielle Gültigkeit des Schuldrechtsverhältnisses ausdehnt; wenn die Handlungsfähigkeit die Frage der materiellen Gültigkeit und die Rechtswahl auch ein Schuldrechtsverhältnis ist, dann kann die Rolle des gewahlten Rechts nicht bestritten werden, und demgemäss kann hier nicht von der Einschränkung der Privatautonomie die Rede sein.

d/ Auch jene Rechte, die den Renvoi im weitesten Sinne anerkennen, sind darüber einig, dass die Rechtswahl nicht die Annahme der Kollisionsregeln des gewählten Rechts bedeutet. Im Falle einer Rechtswahl sind immer die materiellen Regeln des gewählten Rechts anzuwenden. Es kann gesagt werden, dass diese Grenze der Rechtswahl (d.h., dass es zu keinem Renvoi führen kann) auch gemäss dem ungarischen Recht selbstverständlich ist (cf. Mádl-Vékás, op. cit. p. 327.). Wenn die Parteien nicht ausdrücklich auf die Annahme des Renvoi hinweisen (dies kann im ungarischen Recht nur im Falle honoriert werden, wenn es zur Rückverweisung führt), dann kann ihre Rechtswahl nur so betrachtet werden, dass sie das materielle Recht des Landes X für ihr Rechtsgeschäft wählen wollten.

e/ Wenn in einem Vertrag auch Dritte (Bürgen oder andere Garantiegeber) irgendeine Rolle haben, kann auch jene Frage gestellt werden, ob die Rechtsstellung dieser durch die Rechtswahl modifiziert werden kann, oder nicht. Zwar enthält der ungarische Kodex über diese Frage keine explizite Vorschrift (mit der Ausnahme von der dolosen Anknüpfung des §-en 8.), die Antwort kann im Sinne der allgemeinen Lehren des ungarischen bürgerlichen Rechts, im Sinne des Gesetzes und gemäss der internationalen Praxis nur negativ sein.

f/ Zum Schluss muss auch etwas über die Problematik der sogenannten Sonderanknüpfung, Nachknüpfung oder Durchgriff gesagt werden. Wie bekannt, handelt es sich darum, dass die Parteien mit der Hilfe der Rechtswahl für ihr Rechtsverhältnis ein bestimmtes Statut wählen (ordnen). In den vergangenen Jahrzehnten ist aber jene Ansicht und Praxis besonders stark geworden, dass die schwächere Partei auch gegen die eigene Rechtswahl geschützt werden soll. (z.B. im Falle der Verbraucherverträge müssen jene zwingenden Bestimmungen, die für den Verbraucher günstiger sind, auch gegen das gewählte Statut geltend gemacht werden. (Durchgriff, disregard), besonderer Rechtsschutz und solche Begriffe sind in diesem Kreis gut bekannt. So lautet z.B. der §. 24. des deutschen Gesetzes. Für die imperativen Normen (z.B. Devisenrechtsnormen) ist das sogenannte Wirkungsstatut im allgemeinen in der internationalen Praxis massgebend geworden, d.h., dass diese Normen des Forumstaates

das Forum auch gegen das gewählte Recht anwenden wird (wenn es auch im gewählten Recht keine solche Normen gibt), ohne dies würde das gewählte Recht nämlich im gegebenen Lande zu solchen Wirkungen führen, die gegen die ordre-public-artigen Normen, oder gegen die öffentlich-rechtlich geregelten Verhältnisse, wie das Zollrecht, das Kartellrecht, das Devisenrecht und das Wettbewerbsrecht, usw. stossen würden. Die Nachknüpfung, Durchgriff oder disregard wirken auch gegen das gewählte Statut, nachdem diese Erscheinung heute schon in das System der internationalprivatrechtlichen Anknüpfungsprinzipien inkorporiert wurde. (Deutsches Gesetz Art. 27. Abs. 3.; zur internationalen Praxis cf. Schwind, op. cit. pp. 299. et seq. und Mádl-Vékás, op. cit. p. 69.). Was in diesen Fragen das ungarische Recht betrifft, kann für die imperativen Normen das Wirkungsstatut als allgemein enerkannt betrachtet werden; auf diese hat also die Rechtswahl keine Wirkung, diese Normen müssen wegen ihrer öffentlichrechtlichen und positiv regelnden Natur tatsächlich zur geltung kommen, mit der Rechtswahl kann ihre öffentlichrechtliche Normenpotenz nicht beseitigt oder beschränkt werden (cf. Mádl-Vékás, op. cit. p. 114.). Eine andere Frage ist es, dass nach einer zukünftigen Modifizierung in einem ausführlicher geregeltem Kapitel über die Verträge dies auch explizit formuliert werden sollte.

АВТОНОМИЯ СТОРОН /PARTY AUTONOMY/ ПО МЕЖДУНАРОДНОМУ ЧАСТНОМУ ПРАВУ

Ф. Мадл

В статье рассматривается связь автономии с материально-правовым фоном. В развитии венгерского права международная частноправовая автономия сторон также представляет собой реальный и важный институт вследствие того, что субъекты экономического оборота пользуются широкой автономией в формировании своих отношений. В дальнейшем автор анализирует историческое развитие автономии сторон и ее первое положительно-правовое проявление в судебной практике и, с 1979 года, в Кодексе о международном частном праве. В ходе анализа представлены и проблемы практики, с особым учетом мира договоров, и сделаны ссылки на иные возможные сферы реализации автономии сторон /трудовое право, наследственное право, и т.п./.

Die Parteiautonomie im Ungarischen Internationalen Privatrecht

PARTY AUTONOMY IN THE INTERNATIONAL PRIVATE LAW

F. Mádl

As a start the paper surveys the relations of autonomy to the substantial law background. In the development of Hungarian law the party autonomy of international private law is transformed to a realistic and important institution because the legal subjects of business dealings enjoy a high grade of autonomy in shaping their relations. Furthermore the paper analyzes the historical development of party autonomy and its substantial law appearance in the judicial practice, since 1979 in the Code of International Private Law. In this course it outlines the problems of practice as well, particularly concerning the world of contracts, moreover it refers to other possible relevant areas of party autonomy /labour law, inheritance law, etc./.

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BUILDING CONTRACTS AND VARIATIONS IN HUNGARIAN LAW*

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Part I of the essay gives an overview on those factors, which are important from the aspect of understanding the regulation and practice of building contracts. In its framework the paper deals with some economic, organizational factors and gives a short glimpse on the historical changes of the given legal field. Afterwards it outlines the shapes of the valid legal regulation. For the elaboration of the substance of Hungarian legal regulation and practice it gives a short comparison to the rules of other socialist countries, emphasizing the similarities and differences.

Furthermore, the paper gives a presentation about the contractor's right to give orders, mentioning the uncertainty of contract modification and variation orders. It deals with the problems which appear in the application of law at the juridical practice. It mentions the validity conditions of the orders, furthermore the rights of the entrepreneur /contractor/ in case of the order of owner, finally, gives a summary on the changes of the sums of fees.

1. EXPLANATORY REMARKS ON HUNGARIAN LAW OF BUILDING CONTRACTS

Hungary is a small country and it cannot be expected that characteristic features of its economy and its legal system are generally known. Therefore it seems necessary to give some information as an introduction to the paper. The introductory remarks concern the economic background of the functioning of building contracts and variations, they outline the legal development in the given sphere and the legal framework of the rules on variations. At the end of the introduction some comparative remarks are to be found aiming at pointing out some elements

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common to the socialist law and mentioning some other elements which can be found only in one or another socialist country.

1.1. The economic background

Essential points of the economic system prevailing in Hungary are made by the Constitution.[1] These are the following:

- the social ownership of the means of production is the base of the economic order /para. /1/ s. 6./;
- the economic life of the country is determined by the state's national economic plan. Relying on the enterprises, the co-operatives and institutions in social ownership, the State directs and controls the national economy /s.7./;
- the state enterprises and economic organizations, serving the general interests of society, manage independently the assets and property entrusted to them in the manner and with the responsibility provided for by law /s.9./;
- the co-operatives are part of the socialist system of society; in conformity with the social and economic objectives of the State they serve the interests of their members /para. /1/ s. 10./;
- the State recognizes the socially useful economic activities of small-commodity producers. However, private property and private initiative must not be prejudicial to the interests of the community /s.12./.

In addition to the above-said para. /1/ s. 88 of the Civil Code states the great majority of the means of production to be the property of state or the property of co-operatives.

On basis of the above theses the question can be raised whether the parties to important building contracts are usually state enterprises. Prior to 1968 /the year when an economic reform was introduced/ the answer to this question was affirmative.

Since 1968 the role of co-operatives has been growing. New important steps have been taken since 1981: small enterprises and co-operatives have been organized and the sphere of private

[1] The consolidated text of the Constitution is formulated by the Act I of 1972 amending the Act XX of 1949.

initiative has been growing. It is shown by the following data:

Building activity carried out by the different sectors of the economy /in % of all building activities/[2]

year	state	co-operatives	employees' supplementary activity	private
1975	73,5	15,2	6,1	5,2
1983	62,0	18,8	7,8	11,4
1984	59,4	16,9	10,7	13,0

Since the early 1960s the market has been dominated by big state enterprises. At that time there was a small number of big state enterprises and similarly big co-operatives and the number of small enterprises and that of private industry was negligible Since 1981 the government has tried to encourage the foundation of small enterprises and small co-operatives and, at the same time, to encourage private initiative as well. New forms of groupings were created partly as a kind of partnership of employees working in the framework of an enterprise and partly as a partnership working independently of any state enterprise. Artisans get some aid, too.

Number of organizations dealing in construction works[3]

	1975	1983	1984
state enterprises	115	120	121
co-operatives	301	200	198
projecting, engineering bureaus enterprises working as agents	94	86	86
small enterprises		27	57
small co-operatives		84	115
groupings working in the framework of an enterprise		1733	2486
partnership working independently of any enterprise		1194	1896
artisans	17660	26706	25497

[2]Statisztikai Évkönyv /Statistical Yearbook/ 1984, Budapest, 1985. p. 137.

[3]Statisztikai Évkönyv, see note 2, supra p. 136.

The real importance of the organizations can be stated if the number of employees is taken into consideration as well.

Number of employees /in 1000s/[4]

	1975	1983	1984
state enterprise	270,4	227,3	218,4
co-operatives	77,5	61,6	61,8
projecting, engineering bureaus enterprises working as agents	37,7	31,6	28,9
small enterprises		2,9	6,7
small co-operatives		2,5	3,9
groupings working in the framework of an enterprise		17,2	25,1
partnerships working independently of any enterprise		7,2	13,4
artisans /number of artisans + their employees/	25,0	35,4	35,1

On basis of the above data it can be stated that a relatively small number of contractors are operating on the market of important construction works. The enterprises are usually specialized as a result their number is smaller for a given kind of work. Artisans and partnerships have a role in building family-houses. The number of employees and the members of partnerships are limited. As a result their role in important construction works is megligible.

Up to this point only the contractor's side has been examined. Turning to the other side the economic system must be the starting point. As a result of the political and economic system there are restrictions concerning private property. The kind of objects and the volume of private property is limited. This fact has an influence on building contracts. On the one side, citizens are important employers in building contracts but the value of the individual contracts is not high. On the other side, state enterprises and co-operatives have equipment needed for important construction works. Thus, enterprises and co-operatives are parties to important building contracts.

[4]Statisztikai Évkönyv, see note 2, supra p. 136.

Building contracts

In connection with the contracts of state enterprises and co-operatives the question is whether the parties have the autonomy to contract or they must act according to the decision of a central organ. Prior to 1968 the state enterprises had little autonomy in the field. One of the main ideas of the economic reforms was to ensure greater autonomy to the enterprises. Investments may have, however, a serious, decisive effect on the development of the economy as a whole. Therefore, the most important investments have been decided by central organs even after the changes of 1968. Up to 1984 two main kinds were distinguished from the point of view of decision making. The first category was the so-called enterprise investment, where the decision was made by the enterprise /co-operative/. In the second category state organs decided on investments. There were three groups in this category: a/ huge investment projects, b/ several smaller investment projects having the same aim and decided upon in groups not separately, c/ some other investments specified by legal rules. Since 1984 the above two categories exist but a third category has been added: investments of local councils.

In 1984 the importance of the categories was the following:

Value of investment according to categories of decision making[5] /in million Forints/:

huge investment projects	21893
group of investment having the same aim	27013
other state investments	30468
entreprise investments	109418

It is to be noted that a great part of investments is building work. In 1984 the proportion of building work was 48,6% of the value of all investments.

The statistical data show that enterprises and co-operatives have a considerable autonomy. In reality the role of central

[5]Statisztikai Évkönyv, see note 2, supra p. 77.

organs is very significant as they influence the decision of enterprises and co-operatives by means of credits and subsidies.

Examining the economic background it can be said that the rules based on market equilibrium can have a role only to a certain degree. The market is not perfect as there are oligopolies on the contractor's side /mainly for specialized construction works/. On the owner's side there is a tendency for strong state intervention which does not always take into account the market situation.

1.2. Legal development

Some remarks seem to be necessary as a historical background. Three main periods can be distinguished for examining the problem. The first period is the era of private enterprise. The end of the period cannot be fixed exactly. It is approximatively 1950. By that time the process of nationalization had ended and a system of strict comprehensive planning had been brought about. The second period is the epoch of a planned economy with instructions providing for minute details of enterprise activity. The third period is that of the present system after the introduction of the economic reform.

1.2.1. The period before 1950

In Hungary the dichotomy of civil law and commercial law was generally accepted. In 1875 a Commercial Code was enacted. But there were drafts of a Civil Code. Although, there were several statutes on civil law matters, the civil law as a whole was judge made law. The first Civil Code was enacted in 1959.

The private law doctrine reached a considerable degree of development. Usually problems were discussed by comparing the Hungarian law with the law of other European states. The comparative method was often used by the draftsmen when working on different drafts of the Civil Code. Judges did not neglect the drafts even if they were not enacted. Thus, indirectly, legal solutions worked out in other European countries had an influence on Hungarian civil law. It was mainly the German law and, to

some extent, the Austrian law which had a rather great impact on the development of the Hungarian private law and commercial law. Many lawyers spoke German and studied law in Germany and Austria.

In civil law and in commercial law were no special rules on building contracts. The building contract was not considered as a special type of contract. Rules on contracts for work /locatio conductio operis/ were to be applied on construction contracts as well.

Problems of variations were not discussed. The very influential last draft of Civil Code brought before the Parliament in 1928 /but never voted/ did not contain any direct rule on the owner's power to issue unilateral variation orders. There is only a provision for the duty of the contractor to notify the owner if an order given by the owner is inadequate.[6]

In practice it was generally accepted that the contractor was obliged to act in accordance with the orders given by the owner if it was possible to do so as long as the orders did not change the equilibrium of the contract as set by the contract. It often happened that the contractor performed additional work not provided for by the contract and there were disputes on the right to additional compensation. It was held by the Curia /Supreme Court/ that an additional compensation was to be paid the contracts for the additional work if it was necessary to maintain the object of the work accomplished by the contractor or it was useful for increasing its value.[7]

In Hungary a theory of administrative contracts was not worked out. Theoreticians of constitutional law and administrative law did not pay much attention to government procurements and construction contracts. Although there were some public law rules on these contracts, the civil law was to be applied in

[6]Para. /2/ S. 1583.

[7]Magyar Magánjog /Hungarian Private Law/, ed. SZLADITS, K. Budapest, 1941. Vol. IV. pp. 647, 651.

general in case there were no special rules.[8] The special rules concerned mainly conclusion of contract /bids/ and control of use public money.[9]

There was a special rule on extraordinary changes taking place during the time of performance. Two possibilities were provided for.[10] In certain cases the contractor realized additional works had to be performed which had not been taking into account by the parties at the time of the conclusion of the contract. In this case the contractor was obligated to notify the owner within reasonable time so that the owner could obtain the additional amount needed even if it exceeded 20% of the price fixed by the contract.

The second possibility was not clearly formulated but it could be understood as variation ordered by the owner. Here again two cases were mentioned. The first case was a variation decreasing the work and the price provided for by the contract. If the reduction was more than 20% of the contractual price the contractor was entitled to get 10% of the reduction exceeding the 20% of the price. The second case was a variation increasing the work to be performed. If the value of the increase was more than 20% of the contractual price the contractor could demand a price adjustment and an extension of time to perform.

Another special rule was to be applied concerning substantial changes in the project[11]. If as a result of the change additional work was to be performed, the owner had to obtain the consent of the supervising bodies /in some cases/ and he was entitled to decide according to the general rules.

[8] HARMATHY,A.:Szerződés, közigazgatás, gazdaságirányitás, /Contract, Public Administration, Management of National Economy/ Budapest, 1983. pp. 40, 59-60.

[9] S.21. of the Act XXI of 1931 and the Joint Decree of the Minister of Trade and the Minister of the Interior No. 50.000 of 1934

[10] Para. /1/ and /2/ of the Joint Decree of the Minister of Trade and the Minister of the Interior

[11] S. 77. of the Joint Decree of the Minister of Trade and the Minister of the Interior

In a case the contractor sued for the price of additional work performed. It was held by the Curia /Supreme Court/ that the owner was not obligated to pay more than the price /a lump-sum/ provided for by the contract if the additional work was necessary for ensuring the good quality of the building. If the contractor had to perform more work than calculated by the schedule of prices contained in the contract, it was the risk of the contractor. On the contrary, the owner was obligated to pay the price of additional work if it was due to extraordinary changes which could not be reasonably foreseen by the contractor and if it was due to the order given by the owner[12].

1.2.2. The period between 1950 and 1968

After the World War II fundamental changes took place in the Hungarian political and economic structure which had a great effect on the society as a whole. The majority of the means of production was nationalized, private economic activity was restricted to a great extent and the organization of co-operatives began. The State's role became more and more important in the economy and a new system of controlling and managing the economy was built up. For several reasons /e.g. destruction of a great part of the country during the War, tensions because of the political changes and cold war in international political life/ a highly centralized system was brought about.

During the period between 1950 and 1968 the system changed drastically but its main features remained the same. The enterprise was not given freedom over its activity as the central organs decided most questions concerning the enterprise. Although theoretically the enterprise was a legal entity having its assets, in practice, there was no clear border line between the economic activity of state organs and that of enterprises. The central decision making was particularly characteristic in the field of investments. The investor enterprise giving an

[12]Közszállitási Szabaıyzat /Rules of Government Procurement/ed. by BODA-NOVY, B.-BAJMÓCZY, E. Budapest 2nd ed. 1948. pp. 154-155.

order on a construction work fulfilled a task set by central organs. There was a shortage in many kinds of commodities. Therefore, the central organs tried to increase the volume of production by all possible means. The investment policy also served the objective of increasing the volume of production, as there was a scarcity of building capacity. It was typical that the demand was greater than building capacity.

In 1961 a so-called investment code was published containing a large number of rules on investments, among them decision making, on contracts, on financing investments. The process of decision making was the following: the enterprise and its supervisory body worked out suggestions on investments and they submitted them to the Central Planning Office which coordinated the suggestions and worked out the draft of the long term national economic plan. The decision on the plan also meant a decision on investments. On basis of the long term plans the one-year plans were also worked out. The plan contained central decisions on about 80% of the amount that could be used for investment purposes. Any new important investment not provided for by the plan could be realized only if the Government had approved it.[13] The decision on the investments fixed the amounts that could be used for the given objective, and the time limit as well. If there was a need to modify the amount or the time limit, the same process was to be used as at the decision making, i.e. the variations did not depend on the intention of the owner.

The investor was designated by the supervisory bodies and it was obligated to make contracts serving the realisation of the investment plan. Projecting bureaus and construction enterprises were also obligated to conclude contracts with the investor. The investor was entitled to make a contract with an artisan only in specified cases and under certain conditions as provided for by legal rules. The parties to the building contract were obligated to modify the contract if the investment plan had been amended. The banks administering the investment fund controlled the realization of the investment plan and could require the contractor to pay to the state budget any amount that had been unduly paid by the investor.

The code did not contain any provision on the investor's right to give variation orders. On the contrary, the investor was obligated to help the contractor in case of obstacles emerging during the performance of the construction work. It was expressly stated that the investor had no right to interfere in the organization and the process of the work[14]. The official comment on the rule underlined the importance of the co-operation of the parties. But there was a limit to co-operation. It mentioned that the economic autonomy of the contractor could not be restricted by any order of the investor concerning the process of the work or the organization of the construction or the technology of the work to be performed[15].

1.2.3. The period since 1968

It has been mentioned /point 1.1/ that the economic reform put into force in 1968 increased the autonomy of enterprises. The old system of plan directives ceased to exist. Enterprises usually do not get targets to be realized. Efforts are made to divide the economic activity of enterprises from state administration. Enterprises are no more considered as state organs. They have an economic independence and it is possible they will be liquidated if they have losses. The state guides, or even controls the economy but usually only indirectly. National economic plans still have an important role. But their contents have changed. The plan now focuses on general objectives, and proportions of development, and there is no direct connection between the national economic plan and the plans of the enterprises.

Enterprises have a far greater autonomy in investments than in the previous period. Investment policy is of course an

[13]Government Decree No.45/1961. /XII.9./ Korm., Joint Decree of the President of Central Planning Office, the Miniszter of Finance and the Minister of Construction No. 1/1961. /XII.9./ OT-ÖM-PM.

[14]Para. /2/ S. 116 of the Joint Decree of the President of Central Planning Office, the Minister of Finance and the Minister of Construction

[15]Beruházási Kódex /Investment Code/, Az OT, a PM és az ÉM hivatalos kiadványa /official publication of the Central Planning Office, the Ministry of Finance and the Ministry of Construction/ Budapest, 1962. p. 78.

important part of the general economic policy and plans still contain provisions on investments. But they do not go in details. There are investments decided by central organs but there are investments made by enterprises as well.[16]

After the introduction of the economic reform, enterprises were very active in the investment sphere and there was a great demand for building work. Construction enterprises could dictate conditions because of the lack of balance in the market. There was an obligation to make contracts in case of central investments but it did not help much the investors. The rules in force on investments do not contain any provision obligating contractors to make contracts.[17] The Goverment tried to stop the overheated investment activity in 1972, and 1976 but after the relaxation of the restrictions the demand still grew rapidly. Since 1979 there has been a severe, restrictive policy.Particularly,the central state investments have decreased.[18] Up to now we cannot see, however, a fundamental change in the contractual practice showing the reestablishment of the balance of the market and the bargaining position of the parties.

The Investment Code of 1961 has been repealed. After 1967 a large number of Acts, Decrees, etc. were worked out. The new rules on investments separated the administrative law rules and the rules concerning contracts and tried to find new solutions.

1.3. Rules on building contracts

When examining the rules on building contracts it seems necessary to mention that there are different types of relationships covered by building contracts and the rules on building contracts may be different according to the relationship. In the first period of legal development mentioned above /point 1.2.1./ there were three kind of rules. There were rules of pri-

[16] Ss. 7,8.; Para. /2/ S. 30 of the Act II of 1985 on national economic planning

[17] Government Decree No. 46/1984. /XI.6./MT

[18] BÉLYÁCZ,I.:A beruházások szabályozása /The regulation of investments/, Gazdaság, 4/1983.

vate law, rules of commercial law and rules on constructions ordered by state organs. The distinction was not sharp among these groups but some differences existed. In the second period /point 1.2.2/ there were two main groups: rules on building contracts between state enterprises /and/or co-operatives/ and rules on building contracts between citizens /or citizens and enterprises, co-operatives/. The difference between these groups was considerable. In the period since 1968 we have the following groups:

a/ contracts between citizens – general rules on contracts for work of the Civil Code are to be applied;

b/ contracts between enterprises /and/or co-operatives/ – a special sub-type of the contract for work is provided for by the Civil Code, the building contract and its rules are to be applied;[19]

c/ contracts between citizens and enterprises /co-operatives/– according to para /2/ s. 406 the rules of the sub-type building contract can be applied only if the contractor is an enterprise /co-operative/ and the parties have agreed in the contract to apply the rules of building contracts;

d/ contracts between an enterprise /co-operative/ and a foreign firm /or citizen/ – if the Hungarian law will be applicable to the contract, general rules of contract for work of the Civil Code are to be applied with the exceptions specified by Law-Decree No.8 of 1978 on the application of the Civil Code on international economic relations. In the Law-Decree there are no provisions on building contracts or contracts for work but there are some special rules concerning general rules on every type of contract;

e/ contracts where the price to be paid to the contractor is covered by state budget. These are in some cases contracts where the owner is a state organ but in other cases the owner may be an enterprise getting a subsidy – the rules of building

[19] In addition see Government Decree No. 7/1978./II.1./MT on contracts of delivery and contracts for work between enterprises

contracts of the Civil Code are to be applied /point b/ supra/ and, in addition, there are some special rules concerning conclusion of contracts /bids/ and the rights of the bank to control financing.

The Civil Code was enacted in 1959 and after some amendments an important redrafting took place in 1977. The consolidated text of the Civil Code is in Act IV of 1977. The general rules on contracts for work were not amended significantly. The rules on building contracts are new in the Civil Code. Prior to 1977 there were no provisions on the building contracts. According to a well-known expert in investment problems the contractual practice had become accustomed to the dominant position of contractors existing in the last period. Because of the delay in reacting to the new situation no change can be observed in this field.[20] It might be said that the rules on contracts for work and the rules on building contracts reflect to some extent the privileged position of contractors. Yet some try to help the owner but other strengthen the contractor's position. These rules do not change, however, the character of the building contract. It belongs to the sphere of contracts for work /locatio-conductio operis/. This character was not argued even in the period between 1950 and 1968 when the logic of the system of managing the economy might have led to other conclusion, as it was the contractor who was important in the process and at the same time the contractor had not got any real risk performing the work. The civil law tradition was, however, strong and building contract was considered as a contract for work at that time as well.

The rule of the Civil Code on variations can be found among general rules on contract for work and there is no special provision on variation orders given in the framework of building contracts. Originally, in 1959 there was no restriction on the employer's right to order variation. In 1977 the text was modified and some restrictions were added /point 2.1. infra/. It

[20] SZÉLL, A.: A vállalatbaadás a nagyberuházásoknál /The conclusion of contract on great investments/ Jogtudományi Közlöny, 12/1979.

seems to me, however, that there were no practical changes in this field. In practice the rules of the first period prevailed in the second period as well. The third period has not brought about any new idea. The difference is more technical and of formulation character than substantive.

1.4. Some comparative remarks

When we examine the rules of other socialist countries, we find that there are some common features characteristic to each of these states. Important common elements derive from the identical political-economic system. I would refer here to the socialist property on the means of production and the centrally directed planning.[21]

1.4.1. The common elements are decisive for the whole legal system

There can be found, however, some differences as well. In this paper we examine legal institutions and not legal systems as a whole. Consequently we shall focus upon detailed rules and we will not discuss basic decisive elements of legal systems.[22] At the lower level of comparison the differences come to the foreground. Thus, underlining the basic similarity of the solutions of the socialist laws the differences that can be found at the level of special rules will be dealt with in the following.

The formulation of the decisive elements is not identical. According to Art. 11 of the USSR /Union of Soviet Socialist Republics/ Constitution the land is exclusive property of the state. Neither the GDR /German Democratic Republic/ nor the Hungarian Constitution contain a similar rule. This does not mean, however,

[21] Art. 10 and 16 of the Constitution of the USSR of 1977 and Art. 9 of the Constitution of the GDR of 1968 as amended in 1974

[22] SZABÓ,I.: Theoretical questions of Comparative Law, in: A Socialist Approach to Comparative Law /ed. SZABÓ,I., PÉTERI, Z./,Leyden – Budapest, 1977. pp. 14-15, 18-19, 38.

that citizens cannot own a flat or a family house in the Soviet Union. Art. 4 of the Fundamentals of Flat Legislation of the USSR of 1981 expressly states that family house can be personal property. Thus,the way of regulating the question does not result in differences as far as building contracts are concerned. Nevertheless, the solution does not seem to be identical. A Decree of the Council of Ministers of the USSR on individual flat construction provided for the system of organizing construction works.[23] According to the Decree state organs, state enterprises and co-operatives organize the construction of flats and family houses for their employees or members and the state organs, enterprises and co-operatives are the owners in the building contracts. Thus, citizens are usually not parties to building contracts /or if they are parties these contracts are of no importance in comparison with the contracts of enterprises/. In the GDR the situation is similar in that respect. The most important construction contracts are made by enterprises and co-operatives as owners. Citizens are, however, often parties to building contracts as owners when the building of family houses is concerned.[24] Thus, the Hungarian situation is similar to the German one. But in Hungary citizens have a role as contractors, too, in building contracts on family houses.

1.4.2. The second question in connection with the formulation of the above basic theses concerns planning

According to Art. 16 of the USSR Constitution the management of the economy is realized by means of plans bringing in accordance central guidance with economic autonomy and initiative of enterprises. Para. 3. Art. 9 of the GDR Constitution states that the economy of the GDR is a socialist planned economy and that the central management and planning are connected with the individual responsibility of the enterprises. The Hun-

[23] Решения Партии и Правительства по хозяйственным делам /1981-1982/, /Party and Government Resolution on economic affairs/, Moskva, 1983. t. 14. pp. 208-218.

[24] Zivilrecht, /ed. GÖHRING, J., POSCH, M./, Berlin, 1981. B.2. pp. 45-46.

garian Constitution /cited above in point 1.1/ gives a greater emphasis to the enterprise autonomy. Here the different formulation reflects the differences in the system of managing the economy.[25]

The special features of the system of economic management are reflected by the building contracts as well. In the Soviet Union the capital investments of enterprises are controlled by central organs. The enterprises get plan targets for investments and the funds are concentrated in separate accounts and controlled by the Construction Bank or the State Bank of the USSR.[26] The building contract is so closely connected with planning that plan target is considered as a characteristic feature of this type of contract.[27] The same view is expressed by Art. 67 of the Fundamentals of Civil Legislation of the USSR. Under it the contractor is obligated under the construction contract to build and transfer to the employer the object specified by the plan. On basis of the formulation of the main obligations of the contractor and the employer it can be stated that only state enterprises and co-operatives can be parties to this type of contract. Citizens cannot.

Similarities and at the same time some differences can be found in legal rules of the GDR. Art. 64 of the Act of 1982 on the System of Contracts in the Socialist Economy does not expressly mention the plan. It is clear, however, that building contracts have to serve the interest of carrying out the investment specified by the central decision and there are plan indi-

[25]For a general information see the papers: BRATUS,S.N. and IOFFE,O.S.: Legal aspects of the economic reform in the Soviet Union, EÖRSI,Gy.: Law and economic reform in Hungary, SUCH,H.: Main lines in the development of economic law in the German Democratic Republic, all these papers were published in: Law and Economic Reform in Socialist Countries, /ed. EÖRSI, Gy.: HARMATHY,A./ Budapest, 1971.

[26]ХАЛЬФИНА, P.: State Property in the USSR, Moscow, 1980. pp. 115, 120.

[27]Договоры в социалистическом хозяйстве /Contracts in the socialist economy/ ed. IOFFE, O.S.: Moskva, 1964. p. 257; Комментарии к гражданскому кодексу РСФСР /Commentary of the Civil Code of the RSFSR/, 3rd ed. by BRATUS, S.N. SADIKOV, O. N., Moskva, 1982. p. 431.

cators concerning the investment to be realized. Several rules concerning investments show a direct link between plan and investment.[28] Under these conditions contracting parties agree on different points of the building contract. They can add some new elements to central decisions but the contents of building contracts are generally provided for by central organs.[29] Thus, the close connection between plan and building contracts is a characteristic feature of this type of contract in the GDR as well even if the plan target is not a constructive element of the building contracts. The German legal rules usually mention contracts carrying out an investment without mentioning building contracts. They are considered as a type of the contract coming under this heading.

Because of the differences existing since the economic reform Hungarian enterprises have a considerable autonomy in contracting and there is usually no direct connection between the state economic plan and the construction contracts. Thus, plan targets are no elements of the notion of building contracts under the Hungarian law.

1.4.3. Comparing legal institutions of the three countries differences of some fundamental legal solutions can be found as well. In the German Democratic Republic economic law, civil law and international economic law are considered as separate branches of law. This also formed the basis of codification. In the Soviet Union and in Hungary there are discussions on economic law but the basis of codification was the unity of civil law embracing state enterprises and co-operatives as well. The rules of the Civil Code are to be applied to contracts of state enterprises and to international economic relations, as well even if there are special rules concerning these contracts.

[28] Kommentar Zum Gesetz über das Vertragssystem in der sozialistischen Wirtschaft vom 25 März 1982, /ed. WALTER, G./, Berlin, 1985. pp. 188-189.

[29] Wirtschafts- und Aussenwirtschaftsrecht für Ökonomen /ed. PFLICKE, G./, Berlin, 1977. pp. 594-595.

Building contracts

As a result of the different codification principles the rules on building contracts can be found in the GDR in a different way than in the other two countries. As it has been mentioned the Act of 1982 concerning contracts of socialist organizations also contains rules on contracts carrying out investments and one of these contracts is the building contract. The Civil Code of 1975 does not contain rules on contracts for work /locatio conductio operis/ but instead of it a group of contracts can be found under the heading of "services". In the framework of this group is the building service rendered to citizens by construction enterprises. Both the Act on contracts of socialist organizations and the Civil Code tried to work out new types of contracts and get rid of the traditional types which do not reflect the new relationships. Somewhat different types of contracts can be found in the Act of 1976 on International Economic Contracts. In the Act there are no special rules on building contracts but some general rules on contracts for work. According to the Commentary of the Act construction is one of the typical fields of application of the rules on contracts for work.[30]

The Fundamentals of Civil Legislation of the USSR provide rules on both contracts between enterprises and contracts between citizens. Nevertheless, it is clear that the contract for work on capital investment /the building contract is called so by the Act if the construction work is for carrying out an investment according to state plans/ can be concluded by organizations. Although the building contract concerning an investment is called by the Act a "contract for work", it has been pointed out that since the 1930s the construction industry has been protected by legal rules and construction enterprises have not run the risk of not producing a proper result by their work. As risk is an essential element of the contract for work, it has been denied that building contracts are real contracts for work

[30] Kommentar zum Gesetz über internationale Wirtschaftsverträge vom 5. Februar 1976 /ed. MASKOW, D., WAGNER, D./, Berlin, 1978. p. 156.

under the present legislation.[31] Most construction work is done under this type of contract. It is not frequent that the owner of a building contract is a citizen. In this case of a construction work ordered by a citizen the rules of another type of contract are to be applied. The another type is the contract for work /Art. 64-66. of the Fundamentals of Civil Legislation/.

The Hungarian rules are similar to the Soviet ones and different from the rules of the GDR. The Hungarian Civil Code contains the traditional types of contracts and among them the contract for work. As it has been said above /see point 1.3/ the general rules of the contract for work are to be applied to contracts whose owner is a citizen and the rules of the sub-type of building contract are applied to contracts between enterprises /co-operatives/. In the Hungarian practice it very often happens that the owner of a building contract is a citizen and on the other side it is common that the contractor is not a socialist organization but an artisan or a group of citizens dealing in construction work. This feature of the Hungarian economic life is different from the practice of the other two countries.

1.4.4. Having considered the political, economic and legal background we can turn to the question of variations. The rules on variations are in conformity with the requirements of the economic relations regulated. It is the best shown by the rules of the German Democratic Republic. A building contract, according to the Civil Code, is a contract between a citizen and a construction entreprise. The importance of these contracts is not great. The overwhelming majority of flats are built under contracts between socialist organisations. The Civil Code does not contain any rule on the right of the owner to order a variation. On the contrary, there are rules concerning the contractor's right for additional compensation. Two possibilities have been mentioned by the Civil Code. The first case is the additional work made necessary because of safety reasons. Ac-

[31] БРАГИНСКИЙ, М.И.: Совершенствование законодательства о капиталном строительстве /Improvement of the Legislation on Investement Construction/, Moskva, 1982. pp. 33, 97-99.

cording to Art. 193 the contractor has to notify the owner immediately of the necessity of additional work and to ask for the modification of the contract. If the owner does not agree to it, the contractor is entitled to terminate the contract. In the second case there is no need to do more work for safety reasons but the contractor realizes that the work to be done costs more than provided for by the contract. Art. 195 contains a rule on a price increase exceeding 10% of the price fixed by the contract. According to the rule the contractor has to notify the owner immediately and ask for his consent. If the owner does not agree to pay the additional amount, the contractor is entitled to terminate the contract unless he has caused the price increase by a behaviour contrary to the provisions of the contract. Although it is not expressly stated it follows from Art. 195 that a price increase less than 10% of the contractual price is to be paid by the owner.

The rules of the Act of 1982 on contracts between socialist organizations of the GDR are governed by quite different principles. The aim of the contract is to carry out an investment according to the plan and the performance of the contract is not simply an affair of the parties. There is no rule on the owner's right to order a variation. On the contrary, any modification of the contract meaning a deviation from the central decision on the investment needs a previous approval by the supervisory organ.[32] Furthermore, there are strict price regulations. The parties must agree initially to an interim price and later, before the beginning of the performance, to a fixed price. The fixed price can be modified only in cases specified by price regulations.[33]

A third line of regulating can be observed in the GDR Act on International Economic Contracts. According to Art. 66 of the Act the owner has the right to order variations under some

[32]Art. 15 of the Zweite Durchführungsverordnung zum Vertragsgesetz vom 25. März 1982.

[33]Kommentar zum Gesetz über das Vertragssystem... see note 28, supra, p. 191.

conditions. These conditions are: a/ the price increase should not exceed 5% of the price provided for by the contract, b/ the variation should be within the overall scope of the work. As a result of the variation order the contractor gets a higher price and the time for performance is extended. Art. 67 is similar to Art. 195 of the Civil Code. The starting point is the same in both cases, i.e. the costs cannot often be calculated well and during the performance the contractor learns that the costs are higher than provided for by the contract. There is the same limit in both Codes: 10% of the contractual price. Up to this limit the owner has to pay the surplus. In international contracts the additional costs are the risk of the contractor unless he can prove that the cost increase is not the result of any breach of contract on his behalf and that he has notified the owner asking for his consent. If the owner does not want to pay the cost increase, the contractor is entitled to terminate the contract. There is a special case of cost increase provided for by the Act on International Economic Contracts. It is the case of a price ceiling imposed by the contract. According to para /3/ of Art. 67 the contractor is entitled to remuneration exceeding the price ceiling if he could not foresee that the additional work would have to be done, taking all the necessary steps when contracting that an expert should have taken e.g. unforeseen draining was necessary.[34]

A similar distinction according to economic relations can be observed in the Soviet Union as well. There are no special rules on international contracts but contracts of citizens and contracts of enterprises are regulated in a different way. The building contracts of enterprises carrying out an investment on basis of the plan are under control of state organs and the owner has but a very limited possibility of asking for changes. Under Art. 67 of the Fundamentals of the Civil Legislation of the USSR the building contract works are to be done as specified by the plan. Therefore, any modification of the project needs a previous plan target modification or approval by state

[34] Kommentar zum Gesetz über internationale Wirtschaftsverträge... see note 30, supra, p. 161.

organs. In case of such a modification the owner has to pay damages to the contractor.[35] The prices are strictly regulated and the financing of the investment is controlled by the specialized bank organs. Therefore, if the contractor sues for an amount to be paid to him for the work done, the State Arbitration asks for proving the steps taken with competent bank. It will not give any decision of the decision of the bank given in the framework of the bank's controlling activity.[36]

The concept is quite different in cases of citizens' contract for work. Here,of course,the plan decision is failing and it is up to the parties to contract and decide on the contents of the contract. Even in this case the owner does not have an unrestricted right to order variations. The Fundamentals of Civil Legislation of the USSR do not give a rule on variation. It mentions simply that the work to be done according to the order given by the owner /Art. 64/. Civil Codes of the Soviet Republics enact detailed rules on basis of the Fundamentals of Civil Legislation of the USSR. Usually the Civil Code of the Russian Republic is referred to when speaking of republican Civil Codes. Art. 350 of the Civil Code of the RSFSR repeats the thesis of Art. 64 of the Fundamentals. The order given by the owner is also mentioned by Art. 358 of the Civil Code. According to this article the contractor must notify the owner if his order endangers the good quality of the performance. On basis of the commentaries on the articles quoted it can be stated that the right to give orders to the contractor is not understood by Soviet lawyers as a unilateral right of the owner to modify the equilibrium of the contract. It is considered as a possibility to specify in a more detailed manner the object agreed upon in

[35] Art. 17. of Правила о договорах подряда на капитальное строительство /Rules on contracts of investment construction/ Собрание Постановлений Правительства Союза Советских Социалистических Республик /Collection of Government Decrees of SSSR/, 1987. No. 4. pp. 63-78.

[36] Систематизирование сборник инструктивных указаний Государственного Арбитража при Совете Министров СССР /Systematized collection of instructions given by the State Arbitration by the Council of Ministers of the USSR/ Moskva, 1976. pp. 205--206 /especially points 9, 11 and 12/

the contract. The owner is not entitled, however, to interfere with the organization of the work to be done.[37]

The Hungarian rule on variation is similar to the Soviet rule concerning contracts between citizens /contract for work/. The basic difference is, however, that it is a general rule on every relation, i.e. the contracts between enterprises as well.

1.4.5. Summing up the above comparative remarks we can state that

- there are basic identical features of each of the mentioned socialist countries, these are the features deriving from the identical political-economic system,
- there are differences if we examine rules in detail and these differences are due partly to the different way of directing the economy, partly to different theoretical solutions, to different historical background, to different bases.

In the following we shall examine only the Hungarian law.

2. DEFINITIONS

2.1. Rules of the Civil Code on changes

According to Para. /1/ Art. 392 of the Civil Code the contractor must act in compliance with the orders given by the employer, but the order must not extend to the organization of the work, nor can it render performance more onerous.

The formulation of the rule shows that the legislator did not want to grant the employer an unrestricted unilateral power to make changes. The original text of the Code of 1959 was shorter in this respect and it did not say more but ascertained the right of the employer to give orders by formulating the obligation of the contractor to act in compliance with the orders of the employer. The motivation of the bill submitted by the Minister of Justice to the Parliament did not show any sign of

[37] Комментарии.... see note 27, supra, pp.419;424, ЙОФФЕ, О.Ш.: Обязательственное право /Law of obligations/, Moskva, 1975. pp. 424-425.

an intention to change the prevailing practice. On the contrary, it referred to the solution known in the country.[38] At that time, however, there was a special type of contract in the Civil Code for contracts between socialist organizations based on plan. Therefore, building contracts were not regulated by the chapter on contracts for work containing the rule on variations. It was the era of the Investment Code /see point 1.2.2/. The main field of application of the Civil Code rules on contract for work was the contractual relation between citizens. The prevailing practice referred to by the motivation of the Code was the rule worked out by the courts according to which the contractor was obligated to do the work in accordance with the orders given by the owner but the owner had no right to change the equilibrium of the contract.

In 1977 the Civil Code was amended to a considerable extent on basis of the experience gathered since the introduction of the economic reform. A number of rules were also added to the chapter on contract for work. In most cases these were rules that had been applied to contractual relations between enterprises /co-operatives/. The rule on variation was changed in its formulation but the legislator did not want any change in its essence. The most important change is that the rules of the chapter on contract for work are applied to the contracts of enterprises /co-operatives/ as well.

On basis of the formulation of the rule on the owner's right to give orders to the contractor clearly the owner has a unilateral power. It is quite different from modification of the contract needing both parties' consent /Para. /1/ Art. 240 of the Civil Code/.

But the owner's right to give orders to the contractor does not permit him to make a unilateral adjustment of the contract unless specifically granted in the contract. There is a special rule of the Code to be applied to any type of contract

[38] A Magyar Népköztársaság Polgári Törvénykönyve /The Civil Code of the Hungarian People's Republic/, közzéteszi az Igazságügyminisztérium /published by the Ministry of Justice/ Budapest, 1959. p. 308.

on adjustment if the parties fail to agree. According to Art. 241 the court may modify the contract if a circumstance, occurring in the longlasting relation of the parties subsequently to the conclusion of the contract, violates the substantial lawful interest of one of the parties.

Examining closer the meaning of owner's right to give a variation order it seems to us that it can be qualified as something similar to minor changes having no affect on price and time. In the order the owner gives further details of the description of the work to be done remaining in the scope of the contract. If we stop at this point the question can be raised if the order means a change at all. There are, however, some other rules in the Civil Code on variation and these rules are not quite in accordance with the above meaning of the order.

There are two other rules to be mentioned. One of them is in Para. /3/ Art. 392. According to this rule the contractor is obligated to give the owner a warning if his order is not in accordance with professional requirements or not to the purposes. Should the owner insits upon his order the contractor is entitled to terminate the contract. If he does not do so he is obligated to perform the work in accordance with the order but at the owner's risk.

The other rule can be found in Para. /4/ of Art 392. According to it the contractor must not perform the work in accordance with the order if it could lead to the violation of a regulation or of an official disposition or would endanger life or material security.

These rules show that the owner's right to give orders to the contractor cannot be restricted to an interpretation /concretization/ of contract, to giving simply some further details of the work to be done. In the light of these rules the order can be understood as adding important new elements in relation to the existing contract. The question is whether an important addition to the contents of the contract will have any effect on the price and the time of performance. Otherwise formulating it can be doubted whether the different rules on the owner's order are in harmony. Another question is how to qualify the facts in case of an order, warning, maintaining the order, per-

formance according to the order. In other words, can we speak of a modification of the contract expressed by an act indicating the intention /"facto concludente"/?

Another rule is to be referred to which is not considered to be a variation rule. It is Para. /4/ Art. 403 of the Civil Code. Although this rule can be found in the chapter on contract for work it does not belong to the general rules of the contract for work but to those of construction contracts /concerning contracts between enterprises and/or co-operatives/. It defines the obligation of the contractor. According to it the contractor is obligated to do the work listed in the project even if the price of an item of the work specified by the project is not calculated by the schedule of prices /surplus work/ and the work which is not provided for by the project but which are technically necessary for the use of the object to be constructed. In these cases there are not orders given by the owner. They seem to be different from the extras performed on basis of the order of the owner.

The Civil Code does not make any distinction between orders given by the owner on his own initiative and orders given to the initiative of the contractor. Having examined the text of the Code it can be supposed, however, that the rules on the owner's order concern orders given on the owner's own initiative. In case of an order proposed by a contractor we are not speaking of variation but of a proposed modification of the contract.

2.2. The practice

It has been mentioned that the real meaning of variation is not certain under the rules of the Civil Code. The same phenomenon can be observed in the practice.

Court decisions do not like to give definitions and we do not find a decision defining variation. It happens, however, that judges write papers or books and explain their opinions. Thus,the part of the Commentary of the Civil Code on contract for work has been written by a Supreme Court judge. There we find a broad interpretation of the owner's right to give orders to the contractor. The author refers to the fact that during

the time the work is being done the interests and the intentions of the owner may change and it is no reason to produce something which no longer accords with the needs of the owner. That is the reason why the contractor is obligated to obey the owner's orders. At this point the Commentary stops and turns to another interpretation, saying that as a result of the order the contractor's position cannot become more onerous than it had been calculated originally. The restrictive interpretation of variation is continued by the statement that if the owner wants to achieve a change affecting the contractor's position, the adjustment of the contract to new conditions can be carried out by means of modification of the contract.[39]

Another Supreme Court judge seems to have accepted the restrictive interpretation of variation. In a book on contract for work he has emphasized that the owner's right to give orders is limited. The owner is not entitled to give an order which would require work to be done outside the scope of the contract and increase of costs of the work. It is mentioned, however, that the contractor may accept an order of this type as well.[40] In this case we can speak of a modification of contract.

Thus we can see that the explanation of the meaning of variation leads us to the modification of contract. In the practice it can be observed in general that there is no clear cut borderline between variation and modification of the contract.

It is not unusual for the contractor to sue the owner and demand additional compensation. In these disputes the problem of variation is also present. In the mid 1960s the Supreme Court stated that defferent courts held different views in deciding the cases. Therefore, in 1966 the Supreme Court made the Decision of Principle of Civil Law No. XXXII.[41]

[39] A Polgári Törvénykönyv magyarázata /Commentary on the Civil Code/, ed. ERSI, Gy., GELLÉRT, Gy., Budapest, 1981. p. 1861.

[40] ZOLTÁN, Ö.: Vállalkozási szerződés, /Contract for work/, Budapest, 1963. p. 136.

[41] Published in the official gazette of the Supreme court: Bírósági Határozatok /1966. No.2./

It should be noted that the Supreme Court has not only the power to decide in cases which are in its competence according to the rules of Civil Procedure but to ensure the unity of the principles of decisions of different courts. One of the means of ensuring the unity is the so-called Decision of Principle made by the Supreme Court containing general explanations and instructions in order to establish a united trend of decisions. The Decisions of Principle of the Supreme Court are binding upon each court.[42]

The Decision of Principle No XXXII pointed to the fact that the main problem was what additional price, if any, should be paid for the work done by the contractor without a provision in the contract. The Supreme Court sought to answer the question of what role the contract price in contracts for work plays where the work cannot be specified exactly and the price cannot be calculated precisely. Remembering the historical and economic background it is understandable that usually it was not the owner's order that had as a result the demand for additional compensation but the strong economic position of contractors. Under these conditions the Supreme Court tried to protect the owner's interest against contractors and to strengthen the binding force of the contract. The Decision of Principle underlined that the contractor is obligated to do all the work necessary to assure a performance fit for the use corresponding to the function expected by the owner. Therefore, if the court states that a work was necessary under any implied condition of the contract, there is no reason to grant the contractor's claim unless he can prove that the given work had not been calculated by the parties when agreeing on the price. The owner has to pay additional compensation if the work was not due under the contract and the parties have come to an agreement, either explicitly or by acts expressing their intention /"facto concludente"/, to modify the contract and do added work for more money. If the parties failed to agree on the modification of the contract and the contractor did the work, his claim for additional payment will be decided according to the

[42]Art. 30, 45-47. of the Act IV of 1972 on the courts

rules on "negotiorum gestio" /agency of necessity/.[43]

The owner's variation order is mentioned by the Decision of Principle in connection with the modification of the contract when the parties want to adjust the contract to new conditions. One example of modification by acts which express the intention of the parties without any declaration is the owner's order to the contractor to do work not provided for by the contract the contractor accepting the order and performing the work in accordance with the order. This shows again that variation and modification are considered to be very close to one another and it depends on the court views the facts of the case.

Not only is the owner's interest protected by the courts but the contractor's interest as well. There are different legal techniques to come to a decision admitting the contractor's claim for additional payment for additional work. One of these techniques can be observed in the Decision of Principle No. XXXII. When the contractor informs the owner that additional work /costs/ are necessary, the owner gives no answer and the contractor does the work, these facts are to be considered, according to the Decision, as a tacit modification of the contract.

The same idea can be found in Decisions of the Economic Chamber of the Supreme Court on surplus costs incurred because of unforeseen extraordinary circumstances and on the use of more expensive materials for construction than provided for by the schedule of prices. In these cases, too, the acceptance of the contractor's suggestion is presumed if the owner does not give any answer. In case of unforeseen extraordinary circumstances attacking the contract on basis of mistake can also play a role.[44] In both cases the variation order is not mentioned.

[43]The consolidated text of the Decision of Principle is published in: Polgári Elvi Határozatok /Civil Law Decisions of Principle/, közzéteszi a Magyar Népköztársaság Legfelsőbb Bírósága /published by the Supreme Court of the Hungarian People's Republic/ Budapest, 1986. pp. 88-92.

[44]Decisions No. GKT 78/1973. and GKT 79/1973. published in: Polgári és Gazdasági Elvi Határozatok /Decisions of Principle in Civil Law and Economic Cases/ Budapest, 1980. pp. 504-506.

This shows that the assent, if any, given by the owner to the suggestion of the contractor, is considered as an acceptance of the modification of the contract and not as a variation.

Up to this point we have spoken only of general declarations, Decisions of Principle containing guidelines. In addition, two decisions will be mentioned in order to indicate the existence of the same tendencies in decisions made in concrete disputes as guidelines.

In the first case the constructor built a school and according to the project the gymnasium was to be covered by plastics of beige colour. The schedule of prices indicated that the price of all colours was the same except red was more expensive. During construction work the contractor informed the owner that beige plastics were not available. The owner ordered the red colour. In his answer the contractor pointed out that red plastics would be more expensive but the owner gave no answer. The contractor made use of red plastics and presented a bill accordingly for a higher than provided for in the schedule of prices. The owner did not want to pay the higher price and the contractor brought an action against him. It was held that the contract was modified as the owner tacitly accepted the amendment of the price and the owner had to pay the higher price.[45] It appears that the courts are willing to accept a reasoning based on modification of the contract because of a restrictive interpretation of the owner's right to give orders to the contractor, namely limiting the order to a sphere where there are no additional costs.

In another case a few citizens made a contract with a co-operative for building a house for a lump-sum price. During the construction the contractor had difficulties and had to do more drain work than provided for by the contract. He informed the owners but they gave no reply. The owner claimed an additional price for the work done, but the owners refused to pay more than the price fixed by the contract. The Supreme Court held that the contractor was obligated to build a house that

[45]Birósági határozatok 1980. 1. 27.

could be used according to its function. If the construction costs were higher than it had been calculated, it was the risk of the contractor. He was an expert while the owners did not know anything about construction. The claim was dismissed with reference to the Decision of Principle No. XXXII but without mentioning variation or modification.[46]

In addition to these cases a special group of variation orders can occur. Suppose work done by the contractor is not perfect, something is not functioning, some parts of the building are not of good quality. The contractor cannot repair it on basis of the original project and the owner gives an order to deviate from the contract. Suppose more expensive materials is used or more work done and as a result the building has a higher value. The courts make no distinction between the order given before the performance and the one given after the faulty performance, the contractor being obligated to do the work in both cases in accordance with the order. There will be differences in the consequences. The courts make efforts to limit the consequences of the faulty performance and those of the additional requirements of the owner. An example of this tendency is the following case. The floor of a living house built by the contractor was of bad quality. The owner ordered to put a new parquet and this time he wanted a better quality material than provided for by the schedule of prices of the contract. The contractor did the work and presented the claim for all the work and the material of better quality. It was held that he had to do the work to cure the faulty performance without any remuneration but the owner had to pay the price difference between the original parquet price and that one ordered later.[47]

3. VALIDITY

The Hungarian Civil Code formulates a traditional thesis on contracts in Para. /2/ Art. 205. It says that the formation of a contract requires an agreement of the parties on essential

[46] Birósági Határozatok 1970. 6. 641l.
[47] Birósági Határozatok 1974. 12. 485.

points as well as on points considered to be material by either of them. If the parties fail to agree on one of the essential points the consequence of it is not provided for but it is generally accepted that there will be no contractual relation between the parties. There are cases where the Courts expressed the same opinion. It is worth mentioning that the contract will be in this case non-existent, as in the Hungarian civil law there is a difference between a void contract and a non-existent contract.

In case one of the parties performs wholly or partly his obligations under a void contract its consequences will be as it is provided for in Articles 237-239 of the Civil Code /restoring the situation as it has existed prior to the making of the contract, declaration of the contract to be valid by the court, etc./. On the contrary, in case of a non-existent contract the result of a performance will be the application of Articles 361-364 on unjust enrichment.[48]

The Civil Code does not contain definitions. Thus, it has not been defined what are the essential points of the contracts of different type. According to the point of view generally accepted, the main duties of the parties are to be stipulated as essential points. It seems to be certain that the work to be done and the price to be paid are essential points of the contract for work /According to the point of view of some authors the time of performance is an essential point as well/.[49]

There are difficulties in the practice of the contracts for work in connection with the interpretation of the essential elements. The Civil Law Decision of Principle No. XXXII has pointed to the fact that in some cases neither the work nor the price can be stipulated exactly by the contract. The Decision was flexible enough not to declare the contract in these cases

[48]This has been stated by the Decision No. 36. of the Economic Chamber of the Supreme Court /Birósági Határozatok 1983. 4. p. 292./

[49]A Polgári Törvénykönyv magyarázata... see note 29, supra, p. 1850.

to be non-existent. On the contrary, the Economic Chamber of the Supreme Court accepted a rather restrictive interpretation. In its Decision No. 19 made in 1973 it required that there be an exact stipulation of the price. Otherwise the contract was considered as non-existent. This position was somewhat modified in 1983 by the Decision No. 36. but even this Decision the Economic Chamber is of the opinion that there should not be any uncertainty about the price to be paid.

The rule on variation and its restrictive interpretation has no direct connection with the concept of the formation of contracts and that of essential points. It may be supposed, however, that there is an indirect link between them. The underlying idea probably is that no room can be left for uncertainty at the time the contract is made. If so, the question is whether the requirement of firm commitments without any uncertain elements is characteristic of a simple exchange of commodities. The concept and the rules do not reflect the fact that the complicated business contract of enterprises need another approach.[50] Some of these rules were worked out in the field of state procurement and construction work ordered by the state. But these rules disappeared when the strict system of planning was brought about and the contents of contracts, especially that of building contracts concerning investments, were determined by plan instructions given by central organs.

Another question is how far the owner is free to give orders and to what extent his freedom is limited by administrative rules. There are several restrictions in different building regulations. To give a few examples: construction work must be carried out according to projects approved by the competent authority, the project can be modified and the work can be done in deviation from the original project only if the authority has given a permit to do so,[51] there are norms providing for

[50] Another aspect of the same phenomenon see HARMATHY,A.: Techniques of arbitration in the procedure of the revision of contracts, in: Comparative Law, Droit Comparé, ed. SZABÓ, I., PÉTERI,Z., Budapest, 1978. pp. 143-148.

[51] Act III of 1964 on construction

several technical details of construction work, etc. Suppose the owner gives a variation order without obtaining the permit of the building authority and/or contrary to the norms on construction. According to Para. /4/ Art. 392 of the Civil Code the contractor must not perform the work according to the order if it leads to the violation of a regulation or an official disposition. It gives, however, no answer to the question of the validity of the order. The answer is given in an indirect way by the praxis. In similar cases the courts refer to Para. /3/ Art. 403 according to which it is the owner's duty to obtain the permit of authorities necessary to the construction. In the opinion of the courts it is a breach of contract if the owner does not fulfill his obligation to obtain the permit.[52] The contract is not void in this case. Accordingly, the order will not be void but the contractor may have a claim for breach of contract.

The question of the validity of the order given by the owner to the contractor has not been raised up to now in connection with competitive bidding. The system of competitive bidding was introduced in 1982 when the Government wanted to strengthen competition among construction enterprises and co-operatives and, at the same time, to strengthen the control of the use of public money granted by the budget.[53] There is no legal rule concerning this question and both state organs and enterprises are rather inexperienced in this field.[54]

[52]Decision No. GKT 65/1973. of the Economic Chamber of the Supreme Court, published in Polgári és Gazdasági Határozatok... see note 44, supra, pp. 491-493.

[53]Government Decree No. 14/1982./IV.22./MT, Decree of the Minister of Finance No.58/1982./X.12./PM, repealed by Law Decree No.19 of 1987.

[54]VÖRÖS, I.: Beruházások versenytárgyalás utján /Investments and competitive bidding/, Budapest, 1984. pp. 79-82.

4. CONTRACTOR RIGHTS

The limits of the owner's power to order variations has been defined by Para. /1/ Art. 392. According to this rule of the Civil Code the variation order must not extend to the organization of the work nor can they render performance more onerous. It has been noted /see point 2 supra/ that the interpretation of the rule by the practice is not certain but there are several signs of a restrictive interpretation. According to this restrictive interpretation variation orders may not change the price. If there are extra-costs because of the order, an agreement of the parties modifying the contract is needed.

The Civil Law Decision of Principle No. XXXII of the Supreme Court reflects the opinion that the order must be within the scope of the work defined by the contract. If additional work necessitating payment is ordered, the court tends to consider the facts as signs of modification by express or tacit consent of the parties /outlined in point 2.2 supra/.

Should the owner give an order resulting in extra costs, affecting the contractor's position, the contractor has the right to object. The contractor may ask for a modification of the contract and if the parties cannot agree on it, the contractor is not obligated to do the work according to the order. One of the Supreme Court judges was of the opinion that in this case the contractor may even stop doing the work and under some circumstances the owner would be considered as having terminated the contract.[55] /The owner has the right to terminate the contract at any moment but he has to pay damages; Para. /1/ Art. 395 of the Civil Code./

For a better understanding of the opinions it should be taken into consideration that the right of the owner to give a variation order and the contractor's obligation to do the work in accordance with it are generally treated in the framework of the obligation of the parties to cooperate. Thus, one can reach a conclusion that it is the duty of the owner to give an order without delay if the contractor notifies him of unforeseen difficulties. The owner will be in breach of contract if he does

[55] ZOLTÁN: op.cit. see note 40, supra, pp. 141-142.

not meet his obligation which requires that he pays a penalty.[56] This is, however, a minority opinion.

In the legal literature the owner's right to give variation orders has been criticized when an optimal investment program has been worked out by means of computers. It has been pointed out that in this case variation is to be excluded and the owner must cooperate with the contractor immediately if any unforeseen circumstances occur during the performance.[57]

The owner's right to give orders to the contractor is limited by Paragraphs /3/ and /4/ of Art. 392 of the Civil Code. Para. /3/ provides for a duty of the contractor to object an order which is not in accordance with professional requirements and which is not to the purpose. The contractor is responsible and has to pay damages if he fails to object and give a warning. The contractor is entitled to terminate the contract if the owner maintains the order in spite of the warning. Para. /4/ goes further and requires the contractor not to perform the work in accordance with the order if it would be a violation of an official disposition or of a regulation or endangers life or material security.

There are some other types of additional works which are regulated as having no connection with variation order. The Civil Code tries to protect both parties' interest. It imposes an obligation on the contractor to do the work. On the other side, the owner is obligated to pay for the additional work. In Para. /4/ Art. 403 there are two rules. One of them concerns works specified in the project but not listed in the schedule of prices enclosed to the contract. The other case provided for is the necessity of doing work not specified by the project but which must be done because without them the object produced by the contractor could not be properly used. The Civil Code re-

[56] TAMÁS,I.: Polgári jogi szerződések és beruházáspolitika /Civil Law contracts and investment politics/, Budapest, 1978. p. 155.

[57] RUTAI,I.: Néhány gondolat egy korszerü beruházási módszer jogi hátterérõl /Some thoughts on the legal background of a modern investment method/, Jogtudományi Közlöny, 12/1976.

fers to separate legislation on question of remuneration but in both cases the owner has to pay for the work. /The basis of calculating the additional price is different in these cases./

The variation order may have as a consequence not only more work to be done by the contractor but less as well. This is not common. Therefore, no attention has been paid to the problem. Theoretically it can happen and it can violate the interests of the contractor. There is no solution for the problem. But a few years ago an exceptional case arose which involved a dispute on the variation order resulting in less work than expected. The contractor claimed the price of some surplus works done by him and the owner in a counterclaim required an amount to be paid back. The ground of the owner's claim was that in a variation order he had changed the line where the fence was to be put up and as a result the contractor used less material and did less work. The counterclaim was admitted.[58] It is to be noted, however, that the counterclaim was not the main issue of the dispute and the problem of the possible violation of the contractor's interest because of the variation order was not even discussed.

5. AUTHORITY

The authority to give orders and/or modify the contract is a very practical problem. It can often cause disputes between the parties. That is why the Civil Code and a Government Decree as well try to establish a clear situation formulating the rules on authority.

According to Para. /1/ Art. 404 of the Civil Code the parties are obliged to communicate the names and the spheres of activity of their agents not later than the date of the handing over of the workplace.

In Hungary the architect has a limited role. The architect is usually passive as far as the construction work is concerned. The fact is shown by the formulation of the main obligation of

[58] Birósági határozatok 1982. 2. 58.

the architect. According to Art. 408 of the Civil Code the architect's obligation is to perform technical and economic services. If the owner wants the architect to give him advice and wishes to consult him during the performance of the construction work, he needs an additional agreement on it. Even in case of a special agreement the rule is that the consulting engineer has no authority to give an order to the contractor or to modify the building contract in the name of the owner.[59]

In the practice it is the site inspector who has an important role. In a case the Supreme Court has underlined that it has been generally accepted by the courts that the site inspector is not authorized to modify the building contract unless he has been expressly authorized to it. The Supreme Court referred to the fact that implied authority is not excluded in principle in some fields but declarations on the acceptance of additional obligation need express authorization by the owner.[60] A similar decision was given in connection with declarations made by employees controlling the contractor's invoices.[61]

It has been outlined in point 2 supra that a restrictive interpretation of the variation order considers it as not resulting in additional costs. Such kind of order can be given by the site inspector in the field-memo. If the variation order is, however, interpreted in another way, namely resulting in a modification of the contract, the site inspector has no authority to do so.

6. COMPENSATION

Two methods of pricing may be used. These are the lump sum and the sum to be paid according to a detailed price schedule enclosed to the contract. The prices are either free or prices

[59] Para. /3/ and /4/ Art. 91 of the Government Decree No. 7/1978./II.1./MT

[60] Birósági Határozatok 1976. 2. 68.

[61] Birósági Határozatok 1974. 9. 389.

whose maximum is determined /fixed/ by the authorities.[62]

The problem of price consequences of a variation order has been outlined under point 2 supra. The main solutions that can be found in the practice are summed up, partly as a repetition, partly as addition to the above-said, in the following:

a/ if as a result of the order the cost is higher, the owner has to pay an additional amount /e.g. the higher price of a material of different colour/,[63]

b/ if the variation means a modification of the contract, the owner has to pay the price of the additional work,[64]

c/ if the variation order was the consequence of the breach of contract by the contractor so that the work could not be done in accordance with the project,[65] there will be, of course, no price increase,

d/ in case of unforeseeable changes of costs there are two main trends:

- in the majority of cases the owner will have to pay a higher amount and its reason will be found by using different legal techniques such as qualifying the owner's behaviour as express of tacit consent,[66] or impugning the contract referring to mistake,[67]

- in some cases the change will be the risk of the contractor e.g. the contract contained a lump sum price,[68]

e/ in case more work was done than it had been calculated three main possibilities exist:

- if the price is lump sum, the owner will have to pay ad-

[62] Art. 2. and 22. of the Joint Decree of the Minister of Construction and Town Development and the President of the Price Office No. 3/1980./I.19./ÉVM-ÁH

[63] Bírósági Határozatok 1980. 1. 27.

[64] Civil Law Decision of Principle No. XXXII.

[65] Bírósági Határozatok 1974. 3. 124.

[66] Civil Law Decision of Principle No. XXXII.; Bírósági Határozatok 1979. 6. 217.; Decision No. GKT 79/1973. of the Economic Chamber of the Supreme Court

[67] Decision No. 78/1973. of the Economic Chamber of the Supreme Court

[68] Bírósági Határozatok 1970. 6. 641l.

ditional price only for works of technical necessity when without them the object could not be used properly,[69]

– if the parties specified the price in a price schedule and the work is either a surplus work /i.e. provided in the project but not listed in the price schedule/ or of technical necessity as without which the object could not be used properly the owner is obligated to pay an additional amount and in the latter case the price basis will be higher,[70]

– if the price is specified by a price schedule and the additional work does not fall in the previous category an additional price will be paid according to the rules of either the negotiorum gestio[71] or of unjust enrichment.[72]

ДОГОВОРЫ О СТРОИТЕЛЬСТВЕ И ПРАВО ЗАКАЗЧИКА ДАВАТЬ УКАЗАНИЯ

А. Хармати

В первой части статьи автор рассматривает те факторы, которые имеют значимость с точки зрения понимания регулирования и практики договоров о строительстве. В рамках этого автор изучает отдельные хозяйственные и организационные факторы и дает краткий обзор об исторических переменах в указанной области права. Потом обрисовывается действующее правовое регулирование. В интересах освещения венгерского правового регулирования и его практики дается краткое сопоставление с регулированием других социалистических стран, подчеркивая совподение и различие.

В дальнейшем автор дает краткое изложение о праве заказчика давать указания, отмечая неопределенность отграничения изменения договора от указания. Рассматриваются проблемы, возникающие в ходе осуществления указанного права в судебной практике. Автор отмечает условия действия указания и излагает права, принадлежащие подрядчику при наличии указания заказчика. В заключение дается сводный обзор об изменениях стоимости платы.

[69] Art. 23. of the Joint Decree of the Minister of Construction and Town Development and the President of the Price Office see note 63, supra

[70] Art. 14, 19. of the Joint Decree... see note 63, supra

[71] Civil Law Decision of Principle No. XXXII.

[72] Birósági Határozatok 1977. 11. 503, and 1982.2. 58.

LES CONTRATS DE CONSTRUCTION ET LE DROIT DU CLIENT DE DONNER DES INSTRUCTIONS

A.Harmathy

La première partie de l'étude donne un aperçu des facteurs ayant une importance du point de vue de la compréhension de la réglementation et de la pratique des contrats de construction. Dans ce cadre l'auteur examine les facteurs économiques et organisationnels, donne un bref aperçu des changements historiques qui se sont opérés dans le domaine du droit et esquisse les traits les plus importants de la réglementation juridique en viqueur. En vue de présenter l'essentiel de la réglementation et de la pratique juridiques il compare les règles juridiques hongroises avec celles des autres pays socialistes en soulignant les ressamblances et les différences.

L'étude expose le droit du client de donner des instructions en indiquant les incertitudes de la délimitation des frontières entre la modification du contrat et les instructions. Il fait un tour d'horizon des problèmes qui se posent au cours de la pratique judiciaire et indique les conditions de la validité de l'instruction. Il examine les droits de l'enterpreneur en cas où le client lui donne des instructions et présente les changements du montant du tarif.

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THE ROLE OF THE PERMANENT COMMITTEES OF THE PARLIAMENT IN THE LEGISLATION

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The essay investigates the role of the permanent committees of the parliament in the legislation, regarding it as a special decision-making process. It surveys briefly the main types of the committees in the bourgeois and socialist countries, and it introduces the emergence and development of the Hungarian system of committees.

In the second part of the study the author treats the activity of the committees on the basis of empirical investigation with respect to eight parliamentary sessions. The more essential findings are illustrated in five tables.

In the opinion of the author, it would be a committee structure with powerful rights against the government and well-balanced ones in relation to the Parliament that would be more suitable. The representatives should be members in the committees in as great numbers as possible. The Hungarian committee system is unduly divided according to sectors and branches, the striving after the complexity and especially a special committee for legislation is missing. The committees should discuss the draft bills in more rounds and not only one or two committees should participate in the discussion. The discussion in the committee /minority opinion, the committee attitude relating to the motions for amendment of the representatives/ should be made public for the Parliament.

The author is of the opinion that the permanent committees of the parliament represent more and more essential factors of the legislation and are able to transmit efficiently the issues of social policy of the decisions. In the parliamentary session of 1985-1990 the role of the committees has further increased.

It is one of the particularities of 20th century parliamentarism, that the representatives paricipate in the legislation much more on the merits through the permanent committees of the Parliament.

In the bourgeois Parliaments an essential part of the legislative work was transferred from the plenum to the permanent

committees, the parliament statutes invested the committees with significant powers.[1] According to the general motivation to this process, the main advantage of this transfer of duties consists in a more efficient work, that can be done in the committees, than in the plenary sessions.

When investigating the functions and the structure of these committees, one certainly finds highly different models in the bourgeois states. By far the strongest is the historically developed committee system of the USA. The committees are sovereign and independent organs, not only in relation to the government, but also to the whole political system, they have considerable apparatuses and bases of information. The committee system is extremely divided, the committees are organized not only according to the structure of public administration but e.g. on a national basis. In addition to the high committees of the Congress and the Senate, more than 250 subcommittees are functioning and several of them became and still becomes permanent with the times.[2] The committees are highly significant factors of the initiation, and elaboration of acts, of the discussion of draft bills, of the complete process of legislation.[3] The committee system of the USA is regarded as a "miniature legislation" and, in its relation to the parliament, as an outfalling, nearly a "deviant" case.[4] It is a curious example, that each congressman spends in the estimation 20 hours weekly to the committee work.[5] This mediatory committee system corresponds to the particularities of the American political system, being founded on the private sphere and the historicity of this system is proved by the fact that the frequently cited words are already more than hundred years old: "The Congress sitting in committees is the really operative Congress".[6]

The historical and regional factors have great significance also with the committee system: this fact is well proved by the committee network of the Japanese parliament which has come into existence not as a result of an inner development but on the model and under the influence of the USA. The committee system is similarly wide-ranging and divided, but the committees do not play a determining role, moreover, they are

estimated expressly weak as compared to the Western democracies. In the legislation their role is taken over by the party and ministerial consultations, the entirety of the political system gives a different content to the committee participation.[7]

Committees to be considered powerful and specialized characterize the Italian and the West-German parliaments. A "warning" example of the increase of the scopes of authority of the committees at the expenses of the parliament is Article 85 of the statutes of the Italian house of representatives, which renders possible – though only in an urgent case – for the committees to elaborate the final drafts of the acts.

The committee system of the West-German Federal Assembly is highly precise as for the scopes of authority, and is thoroughly elaborated in nearly all respects /e.g. in its relation to the party fractions, in respect of the openness for the representatives, etc./. The frequently modified statutes give the committees more and more power and this may be stated in spite of the fact that the Constitution of the Federal Republic of Germany takes out just the legislative power from the scope of the general authorization of the committees.[8]

The studies, comparing the committees, distinguish out in addition to the powerful and the forceless committee systems, also intermediate, transitional types. The committee network of the British House of Commons is doubtless of such a type, moreover, the constitutional solutions e.g. of Canada and India are also similar.[9] In the parliamentary development of England a well-balanced situation between the plenum and the committees has been formed and the plenum watched always over not to be overshadowed by the committees.[10] The dividedness of the English committee system is poorer and more relative, for according to the statutes of the House of Commons, as many committees shall be established, as needed. The English example proves that there is no absolute connection between the number of the members of the House of Commons and that of the committees. The committees functioning in the House of Commons of the British Parliament play a "recommendatory" role, the efficiency of their work is under discussion even now.[11]

A special committee system has developed in France, as compared to the above-mentioned types. The Constitution of 1958 has broken with the committee system, divided according to the portfolios and, by increasing the numerical strength of the committees, it radically reduced their members.[12] This is the so-called "small parliamentary" system, the advantage of which consists in that it is able to discuss more comprehensively the draft bills and eliminates the ministerial influences. From among the committees, the committee dealing with the legislation should be especially emphasized.

The bourgeois Constitutions and statutes /also those in addition to the above-mentioned examples/ lay down the co-operation in the legislations as one of the most important functions of the permanent committees which, as it could be seen from the simplified models, may range from the recommendations through the amendments to the effective drafting of laws. In the practice, the committees exercise significant influence on legislation: this is the influencing zone in the process of legislation where issues of social policy may be stimulated, where the professional and political aspects may be suitably integrated, because the committees are mainly organized according to these two aspects themselves. The more efficient legislatory work is rendered possible also by the fact, that the operation of the committees is less formal, it is not so much overregulated than the legislative activities of the plenum.

In the permanent committees the full employment is realized, almost every representative is a member of one or another permanent committee. In order to avoid anarchy, some statutes declare, that the representative may be a member only in one committee,[13] however, the plurality of membership in the committees is also known and it becomes general especially with the more and more frequent establishment of subcommittees. Although it does not cope with the cited American examples, the committee work of the representatives can be regarded as significant even with the transitory models. The parliamentary permanent committee grants collective rights to the representatives and offers the possibility of a forum for participation for the representatives, wanting to join the legislation in.

Permanent parliament committees

Apart from the USA, the statutes regulate the committees with respect to the party fractions, i.e. to the division of the political system. The discussion of the draft bills, the integration of the views take place in the committees in subordination to the relations of interests and powers. Nevertheless, in the committees there are such phenomena to be observed, that the representatives want to be independent of the political influence, under the care of the committees. The rules are namely in vain that the parties should have proportional representation in the committees, the original organizational principle of the parliamentary permanent committees is not the political pluralism or the scheme of constituency but the professional-functional principle.

In the socialist countries the parliamentary permanent committees are participants recognized on a constitutional level of legislation. The Constitutions lay down two functions: the right to initiate a law, as well, as the participation in the discussion of draft bills. The Rumanian Constitution especially stresses the committee of legislation to be invested with important tasks in the codification.[14]

The detailed legislative duties of the committees /e.g. the right to move amendments, the reports on the individual initiations, modifications made by the representatives etc./ and the entire committee structure are paraphrased by the statutes. In the Soviet Union, following the Constitution and the statutes, special rules provide on the organization, operation, sphere of authority and legal status of the permanent committees.[15] In other countries, the regulation of such a level is not characteristic, not contesting, however, that the customary law of the Parliament develops internal directives, operational norms.

In the committee structure, similarities and differences may be observed both on the level of the legal norms[16] and in its practical functioning. A common development trend is at any rate the widening of the role of the committees, this fact was indicated by the literature of constitutional law already one or two decades earlier.[17] The change in the role has started together with the general granting of the right to the ini-

tiation of laws, and subsequently the committees with already not a representative composition achieved a more and more guaranteed position in the process of legislation. The differences are the results mostly of the national traditions of parliamentarism, the present development of the legal institutions, rendering possible the self-assertion of these differences, will presumably further modulate the picture.

In the Soviet Union the statutes of the Supreme Soviet decree, that during the first session both Houses elect committees in the same number. The most important committees, namely those to be established compulsorily, are enumerated in the statutes, as follows: the mandates committee, the committee of legislation, the foreign affairs committee, the planning and budget committee. In addition to them, further committees may be established depending on the decision of the Parliament, corresponding to the sectoral and functional branches of the state administration.[18] From among the committees /similarly to the Hungarian committee system/ the committee of legislation and the planning and budget committee have outstanding roles in the legislation. The draft bills are discussed by the competent committees, together with the committee of legislation, and these committees introduce the bills together with the possible amendments to the Supreme Soviet. The budget is discussed by all committees, and the topics of the debate and the forwarded motions are summarized by the planning and budget committee consisting of more members.

In the course of the sessions of the Supreme Soviet the numerical strength of the committees increased gradually, while in the first session /1937-1946/ it was only 8%, at present it rates to about 75%.[19] The rules on the committees render possible the widening of the committee network and the increase of the numbers, if the committees establish subcommittees /preparatory committee, working group/. On principle of the openness, representatives not members of the committees may participate in the work of the committee and outside experts may be also called in to collaborate. A considerable part of the representatives is therefore an active participant of the legislation already in the phase of the committee work, this

is rendered possible by the numerical strength of 35 to 45 persons seeming to be optimal.

In the majority of the socialist countries the parliamentary permanent committees developed according to the sectoral principle, similarly to the Soviet Union. Poland has the widest and strongest committee network,[20] which is in connection with the fact, that the Polish Seym is a highly significant factor of legislation, the parliamentary phase of legislation does not mean only the legitimation of laws as in the most socialist countries, but their forming, shaping, as well.

The statutes – offering a greater stability – generally regulate the committee network /e.g. Poland, Hungary, GDR/, elsewhere /e.g. Bulgaria/ it is committed to the decision of the Parliament in power. The Soviet solution applies the two principles jointly.

As against the sectoral principle, an other committee system of a "complex" type is also known /in Bulgaria and partly in Rumania/. The "small parliament" system, similar to the French committees, has been established in 1977 in Bulgaria.[21] The main reason of the reorganization is that these great committees can comprehend the questions of the social development in a complex manner. In the spirit of the complexity the committee of legislation has been established, taking part in the drafting of all bills. The complexity is released in the direction of sectoral proportions by the rule that the chief committees may establish subcommittees.

Rumania is characterized by the sectoral system rendered complex, to be achieved by the reduction of the number of committees and by the increase of the numerical strength.[22] The striving after the complexity – even if not by these methods – may be observed in the legislation of the countries advocating the sectoral division. The usual practice of the committees is the joint meeting. The complexity is proved by the fact that the draft bills are discussed by more and more committees and the topics of debates are summarized by the competent committee in the presence of the representatives of the other committees. This is the general practice in Czechoslovakia, but also the Polish parliamentary practice is similar to

that, as for its contents. In other socialist countries this is characteristic mostly of the passing of the Public Finances Acts /Soviet Union, Hungary/.

In the committees generally the representatives can hold a membership, sometimes, however, membership right is granted to outside experts and scientists /e.g. in Yugoslavia, Rumania/. The fundamental principle is the openness of the committee work, the representatives not being committee members may participate in the meeting of any other committee, the specialists of the given subject may be invited to be present as advisers.

In the socialist countries, two-thirds or three-quarters of the representatives are members of one or another permanent committee, such regulation is, however, also known according to which all representatives are members in one or the other committee /Czechoslovakia/. A further basis of the committee work is produced and the membership is widened by the fact that the committees may establish subcommittees.

Considering the connection between the committees and the Parliament in the legislation, it may be generally said that in the socialist countries a relatively balanced situation developed, except for some minute differences. The evolved committee structure is on the whole suitable for being an influencing factor not only of the parliamentary phase of the enactment but of the whole process of the legislation. This would be highly necessary just because in the socialist countries the crux of the legislation is shifted to the state administration, thus the committee system /consisting in effect of the specialists of the sectors/ may be a counterpoint, taken in good sense, of the codifying activity of the governmental organs. This counterpoint role is strengthened by the other important function of the permanent committees, their participation in the parliamentary control which comprises also the legislation and its constitutionality.

The development of the permanent committee network in the Hungarian Parliament was certainly influenced by the foreign models, at the same time, however, the special historical pathway may be drawn in which elements of the highly significant

Hungarian parliamentary inheritance also appear.

The following table shows the history of the development of the parliamentary permanent committees from 1949, from the beginning of the socialist parliamentarism.

Session	Date of election in the permanent committees	Number of permanent committees /without the committee of immunity and privileges/	Number of representatives elected in the committees	This being, as compared to the then total number of representatives %
1949-1953	June 9, 1949	17	372	92,5
	May 8, 1950	4	76	18,9
1953-1958	July 3, 1953	4	76	25,5
	August 3, 1956	9	201	67,4
	June 6, 1957	12	269	80,1
1958-1962				
	November 26, 1958	12	269	79,6
1963-1967				
	March 21, 1963	9	97	28,5
1967-1971				
	April 14, 1967	9	175	50,1
1971-1975	May 12, 1971	9	175	49,7
	December 14, 1972	10	192	54,5
1975-1980	July 4, 1975	10	196	55,7
1980-1985				
	June 27, 1980	10	210	59,7
1985-1990				
	June 28, 1985	11	231	65.6
	June 25, 1987	11	275	71,1
	December 17, 1987	12	301	77,7

The statutes of the National Assembly of 1946 stated exactly the number and strength of the special committees. Since the Parliament accepted these statutes as valid, at the beginning of the session of 1949-1953 the 19 permanent committees

were elected accordingly /and separately a committee of immunity and a committee of privileges/. The regulating principle was that each representative should be assigned to some committee, moreover, one representative might be the elected member in more committees.[23]

The committee system similar to the present one was developed by the statutes of 1956; the Parliament had then nine permanent committees consisting of 11 to 31 members. Article 15 of the statutes was amended a year later and the number of committees was increased to 12. The motivation of the amendment was: more representatives could be drawn into the work of the Parliament.[25]

A new conception arose at the beginning of the session of 1963-1967. Nine permanent committees functioned again, the committees might consist, however, only of 9 to 13 members. The motive of the conception was: the superfluous overlaps shall be eliminated, the committees can become more agile, they do not divert the attention of the representatives of the plenum and of the constituency. On the other hand, the committees were open for all representatives and – according to the explanation – this principle counterbalanced the considerable reduction of the number of representatives elected into the committees. /It may be seen in the table that a fifty per cent reduction occurred./[26]

The amendment of the statutes in 1967 reconsidered the conceptions of the former session and set the aim that in the following years more and more significant tasks should devolve on the permanent committees of the Parliament therefore the committees could be formed with 11 to 21 members. From 1967 the committee system has not been practically modified but three new committees were formed: the building and traffic committee /1972/, the committee dealing with the development of settlements and with the protection of environment /1985/, as well, as the youth and sports committee /1987/. The amendment of the statutes in 1986 augmented the upper limit of the strength of committees to 25 persons.[27]

In the more active parliamentary sessions the majority of the representatives was a member in one or another commit-

tee; the conception elaborated for the session of 1963-1967 did not work, moreover, it was criticized even at its introduction.[28] The bourgeois and socialist parliaments are generally characterized by that the majority of representatives participates in the work of the permanent committees, in fact, where the Parliament is an active participant in the governmental work, several representatives work in two or more committees, subcommittees. This was characteristic of the first two sessions of the Parliament of the people's democracy between 1945--1947 and 1947-1949. From the point of view of the representatives' participation, the Hungarian model may be ranged with those professing the lower participation and it came back to the conception starting in 1957 in the course of the last session.

Two further possibilities of the initiation into committees of the representatives may correct this low rate of participation, namely the publicity of the committee meetings for all representatives, as well, as the system of the subcommittees. As for the latter, the establishment of subcommittees did not become general, moreover, a gradual regression may be observed. In the very active session of 1967-1971 still 20 subcommittees were established, in the session of 1971-1975 seven ones and in that of 1975-1980 only two ones.[29]

Opposite tendencies may be found, when investigating the principle of publicity. An increasing number of representatives being not committee members makes use of this possibility, sometimes they ask for the regular invitation to the meetings of the given committee.[30] As a consequence of the reform of the elections in 1985 their activity further increased.

As regards the structure, the Hungarian committee system can be qualified an inbetweener, it is separated from the form of small committees but did not change over to the small-parliamentary solution. In relation to each other the committees enjoy equal rights, their memberships are identical, the standing orders do not stress one or another committees. In effect, the planning and budget committee has an outstanding role, in the former sessions the number of its members was always higher.

In the evolution of the Hungarian Parliament no committee of legislation has developed. It may be noted that the legal and judicial committee – of more distinct special line – established in 1950 was similar to the committee of legislation known in other countries. Practically – as it will be seen – the legal, administrative and judicial committee is the special committee of legislation also in the Hungarian Parliament and is active participant in the debates of all laws nearly without exception. It does not seem perhaps to be a formal suggestion to learn from the examples of other countries and to lay down in the standing orders this important constitutional function which could be expressed also by an other denomination /e.g. codification, constitutional/. In case of the reorganization of the committee the Constitutional Law Council established in 1984 should be also taken into consideration.

Our Constitution handles the legislative tasks of the committees extremely laconically; since the reform of the Constitution in 1972 the right to initiate a law has been granted to them. First the rules of procedure of 1956 contained provisions as to their role in the legislation as follows: "the permanent committees are invested with rights and liabilities as for the preparation of the deliberation of draft bills and motions falling into their range of activity". /Article 15, para 5./ The committees could bring forward motions for amendment and they had to make proposal of the mode of discussion of the draft bill, of the general and detailed /or joint/ debate.

The amendment of the standing orders in 1968 gave authority to the permanent committees in connection with the individual motions for amendment of the representatives; since then the individual motions could be relegated to the competent committee.[31]

A new colour was given to the relation of the Parliament and the committees by the amendment of 1972 which rendered possible that the draft bills to be discussed should be deliberated not only by the competent committee but any committee could have the right to express its opinion even on its own initiative. The significance of the preparation in committees on wider grounds has increased.

The time-limit for this preparation in committees on wider grounds /8 days!/ could be called extremely restricted. The amendment of the standing orders if 1986 /Article 28/ has extended this time-limit to 14 days. The amendment has maintained most of the rules /e.g. unchanged rule has been since 1956 that the reports of the committees should be distributed to the representatives in writing before the discussion of the draft bill/ but also the modifications has been considerable. The provision has disappeared, and has been softened to facultative, respectively, which ordered that the committee referee of the bills was obliged to make known also the minority opinions given in the committee. Accordingly, our committees, have they become not preparatory but case-deciding organs?

As a consequence of the amendment of the standing orders in 1986, the relation of the Parliament, the representatives and the committees to each other has changed to a considerable extent. The discussion may be ousted from the plenum the Parliament. Some provisions of the standing orders are contrary to the political decisions made on the role of the Parliament.[32]

According to the effective legal regulation, in Hungary all permanent committees are equal in the legislature. Their most important rights may be summed up as follows: they can initiate laws, each committee can discuss all laws /they have the right to do so before the introduction of the bill/, they can move motions for amendment to the bills, they accept and classify the individual initiations and amendments of the representatives.

What would be like the committee system of optimum sphere of authority? Under our conditions it is presumable that a committee structure having rights powerful as compared to the government and well-balanced as compared to the Parliament would be convenient which has opinion-giving and motion-making role towards the representation. It seems as if the regulation of 1986 would have moved towards the establishment of powerless committees against the government and powerful committees against the Parliament and the representatives.

Further on, I try to outline the contours of the partici-

pation of committees in the legislation in the first eight sessions of the Parliament of the Hungarian People's Republic on the basis of The Journals and Writings.

Session	Number of laws	Of them, laws introduced by a committee	There is committee	There is no referee
1949-1953	34	33	33	1
1953-1958	31	23	29	2
1958-1962	21	6	18	3
1963-1967	11	1	10	1
1967-1971	26	1	26	-
1971-1975	23	2	22	1
1975-1980	24	-	23	1
1980-1985	22	-	18	4

In the early sessions the participation in committees meant the presentation, the motivation of laws, the committees took practically over the role of the ministries. The bills were brought in by the ministries, the chairman of the Parliament stated this fact but the committees reported on the bill. The ministers demanded the floor in the discussion of the draft bill, if necessary. In the sessions following 1958 the practice became general that the committee's opinion followed the statement of the minister responsible for the codification of the law. The "counterpoint" role of the committees is more evident, the legislative power and the executive power are more clearly separated, the committee function is cleaned and adjusts itself to the Parliament and not to the ministries. The table shows the going to the other extreme after 1963: the propositions of the committees disappeared. The wasting of the presentation of bills primarily by the committees would be a serious mistake. The presentation by a committee is desirable anyway if the parliamentary committee wants to make use of its constitutional right to initiate a law, even if the text of the bill is not elaborated by the committee. Shortly after the reform of the Constitution granting right to initiate laws

to the committees, first the legal, administrative and judicial committee made use of this possibility and presented the bill on the prosecution.[33] Although some latent motions could be observed /e.g. in case of the law on the education and of the law on the protection of environment/ no further case can be evidenced.

The presentation of bill by a committee is unambiguous if the Parliament delegates a codification committee. The codification committee on parliamentary level is a solution applied only seldom, the national assembly elected such a committee for the preparation of the Constitution.[34]

The presentation by a committee is conceivable also in such a case if the legislature wants to bring into prominence the social-political character of strictly such concern /e.g. the law on voting/ and in case of ceremonial legislative acts /e.g. friendship and co-operation pacts/, respectively.[35]

The lack of the participation of committees can be proved with 4.6 per cent of laws. They are mostly short laws or amendments of a few articles, and commemorations of historical events /e.g. Provisional National Assembly, the Hungarian Soviet Republic/, respectively. If there is no committee referee, the disregard of the committee is not inevitable, the presenting minister may forward simultaneously the opinion of the committee on the strength of the authorization of the committee.[36] This procedure can hardly be considered exemplary, the committee referees have an outstanding role in the discussion of the bills, and even practical arguments for their disregard cannot be accepted.

The referees are for the most part functionaires of the committees who, however, – in case of enacting on wider basis of laws – interpret not only the preparatory work of the committees but forward to the parliament the social political elements of the legislation, first of all the public discussion of the draft bill, the views of the corporate organs and the full procedure of the parliamentary preparation /e.g. which committees, which county groups of representatives discussed the bill/.[37]

A significant task of the referees acting on behalf of

the committees consists in the "bridge-building" between the entirety of the preparation and the parliamentary debate. From this point of view, the 179 reports on 192 laws of the committees may be typified in several ways.[38] Waiving the pigeon-holing, perhaps the committee reports of more critical voice may be regarded as examplary which did not round down the opinions, presented also the minority views, personalized the representatives bringing forward the motions and amendments.

The following table gives information on the comprehensiveness of the preparation in committees.[39]

Session	How many committee/s/ participated in the codification					
	one	two	three	four	five	more, and all, respectively
1949-1953	27	2	1	2	-	1
1953-1958	26	-	-	-	-	3
1958-1962	7	2	-	-	-	9
1963-1967	2	2	-	-	-	6
1967-1971	8	8	-	1	1	8
1971-1975	6	5	1	1	-	9
1975-1980	4	6	1	-	1	11
1980-1985	4	2	-	1	-	11

In the early sessions the codification with the participation of one committee was general, being in connection with the then poorer committee system. In the later sessions the usual practice was the participation of two committees, one of which always the legal, administrative and judicial permanent committee. The said permanent committee functions as special committee of codification and the joint meetings are often of the order of a "small parliament".[40]

The codification with the participation of all committees – except for the budget – is not characteristic of the Hungarian parliamentary practice, though the standing orders render it explicitly possible. Several committees discussed e.g. the law on the councils, on the education of skilled workers, on the co-operatives, on the foodstuffs, on the protection of

environment, on the prohibition of unfair economic competition. With these laws an other kind of the codifying scheme takes shape; the debates of the committees and the regional parliamentary panels are summarized in the second step by the competent special committee and the legal committee. This enlarged meeting may be in fact the integrating forum of the complete codification.

The inherent initiative of the committees is disclosed by the fact that with the codification of some laws the committees notified their intention to participate, made mention of the lack of the committees' presence, of the administration--centered nature of the codification.[41]

Accordingly, the Hungarian legislation has taken measures towards the complex "small-parliamentary" codification of wider basis with the participation of the committees. This system is generally accepted with the Finances Acts /this is shown by the sixth column of the table/ each committee discusses the relative chapters of the Finances Bill.

Similarly, the majority of the committees expresses opinion on the Appropriation Accounts and the Plan laws. /The national defence committee does not report e.g. on the Appropriation Account./

Undoubtedly, the Finances Acts and the Plan laws mean a special parliamentary authority from among the laws. Their number is considerable: between 1949 and 1985 from among 192 law 67, which means 35 per cent, i.e. more than one third of the laws.

The codification practice has developed after 1957 and its development can be followed in the Journals.[42] Referring only to some phases: at the parliamentary session of 1967 the "two-stroke" discussion of the Finances Bills has begun /and though not consequently, but has been continued/ and such a pretension has been formulated that when drawing up the budget, the non-experts should be taken much more into consideration and auxiliary materials sufficient for this purpose should be elaborated. The representatives could become acquainted with the main directives of the drawing up of the budget already in an earlier stage of the arrangement, consequently, in

addition to the necessarily central elements of the preparation of the budget the democratic features assert also themselves.[43]

In the committee meetings preparing the budget about a quarter of the representatives expresses opinion to the merits, the frameworks of the participation are relatively wide. The Finances Acts are not characterized by the amendments either by the representatives, or by the committees, one explanation of which fact may be just the wide-ranging preparation.

The closing act of the preparation is the enlarged meeting of the Plan and Budget Committee which summarizes the foregoings in the presence of the chairmen of committees /representatives/ and of the experts.

The two-round discussion in committees is not unknown with other laws either.[44] The committee referee of the law on the agricultural co-operatives felicitated as a new practice the early initiation of his committee, later on, this has become an accepted method, the referee of the law on the social insurance stated already his view that the social and sanitary committee "followed for years" in the wake of the bill.[45] Obviously, this is not the general attitude of the committees based on the own initiative, the cited statement, however, shows a significant change of view. The general recognition of this committee opinion should pertain by all means to the democratic preparation. The great advantage of the "advanced" committee participation consists in that the ministry or the government can work the motions of the representatives into the text of the law, the proposals can be maturated and integrated under undisturbed conditions. In case of "post-haste preparation" these conditions are not assured. It is the practice of the committees that when reporting on the bill, the representatives /here first of all the representatives being committee members are understood/ make motions for amendment of the text of draft bill. The committee discusses these motions and decides as a public body on which of them it accepts and introduces to the Parliament. The following table contains the motions for amendment of the committees.

Permanent parliament committees

Session	Number of laws	The committee introduced motion for amendment		
		Laws	%	Number of Articles concerned
1949-1953	34	8	23.5	37
1953-1958	31	11	35.5	30
1958-1962	21	8	38.1	47
1963-1967	11	4	36.4	24
1967-1971	26	15	57.7	80
1971-1975	23	13	56.5	73
1975-1980	24	12	50.0	91
1980-1985	22	8	36.4	46

According to the data the committees made use of their collective right with nearly the half of the laws. The representatives have received in writing the committee reports containing the motions for amendment since 1957. Until now, the Parliament has adopted all written reports of the committees. The motions for amendment relate mainly to one or more articles of the laws, and have on rare occasions bearings on the content.[46] The committee referees name often personally the representatives making the motion for amendment.

It was previously mentioned that the authority has been granted to the committees from 1968 to preliminary report on the motions for amendment of the representatives. The activity of such tendency of the representatives was especially significant in the session between 1967 and 1971, between 1949 and 1985, 3.8 per cent of the representatives made use of the right to amendment at the plenary meeting of the Parliament. The committees were charged with the task of the estimation of the motions for amendment, of the settlement of disputes between the minister tabling the draft bill and the representatives, of the facilitation of the parliamentary decision. The following table records the cases when the Parliament relegated the motions for amendment of the representatives to the competent committee.

Session	Number of laws	Number of laws subject to motions for amendment of the representatives	Number of laws relegated to the competent committee
1949-1953	34	3	1
1953-1958	31	6	2
1958-1962	21	3	-
1963-1967	11	5	-
1967-1971	26	13	9
1971-1975	23	1	-
1975-1980	24	3	2
1980-1985	22	2	1

As it is to be gathered from the table, the relegation to the committees is not automatic, it depends on the initiative of the Parliament. The amendment of the standing orders is 1986 rendered this obligatory.

In the practice hitherto followed the committees reported on the motions for amendment of the representatives corresponding to the reasons of the introducing minister without exception, and the decision of the Parliament was based also thereon.

As for the conclusion, it may be briefly said that it would be an artifice to view the role of the committees in the legislature only by itself. The question is obviously in connection with the role and the change of function of the entirety of the Parliament in the governmental system and in the entire political system.[47] The political decisions made in the recent years and the expectable reform of the political law are directed to this change of function, the Hungarian national assembly arrived to a turning-point.

The Parliament of 1985-1990 is much more active than earlier. This is perceptible also with the committee system. Almost all representatives participate in the committee work, not only one committee wants to discuss the laws, the committees discuss the bills in several rounds, the number and significance of the motions for amendment made by the committees increased, several ad-hoc committees were established, etc.

As compared to the diagnosis to be gathered from the tables of the paper, these tendencies show a positive picture. Just therefore, a separate treatise has to deal with the appreciation of the work of the session between 1985 and 1990, due to its significance.

References

1/ PIKLER, K.: A nyugati parlamenti házszabályokról /Bevezető tanulmány/ /On the statutes of the western parliaments/ /An introductory essay/ p. 34-35. in: Házszabályok /Statutes/, Published by Institute of Political and Legal Sciences of the Hungarian Academy of Sciences, Budapest, 1971.

2/ Committees in Legislatures A comparative Analysis /Ed. LESS, D.J. and SHAW, M./ Martin Robertson, Oxford, 1979. pp. 23 and 388.

3/ POKOL, B.: A törvény-előkészités mechanizmusa /a szocialista és a fejlett tőkés országokban/ /Mechanism of Codification /in socialist and in well-developed capitalist countries/./MTA IX. Oszt. Közl. 1-2/1981.

4/ Cf.: SHAW, M.: op.cit.

5/ Ibid, p. 388, Shaw cites the work of BLONDEL: Comparative legislatures /1973./

6/ Ibid, p. 388, the citation textually: "Congress in its Committee rooms is Congress at work." /Woodrow Wilson told it in 1885/.

7/ Ibid. pp. 327-360. and 390.

8/ See Article 55 of the standing orders of Bundestag adopted on July 2, 1980 which legitimated the system of subcommittees, and Article 45 of the Constitution of the German Federal Republic, respectively.

9/ Op. cit. pp. 191-326.

10/ PIKLER, K.: op. cit. p. 34.

11/ Article 59 of the standing orders of the British House of Commons, see further on NIXON, J.: Evaluating select committees and proposals for an alternative perspecitve, Policy and Politics, 4/1986.

12/ PULAY, G.: Bevezető tanulmány a Francia Köztársaság alkotmánya elé /Introductory essay to the Constitution of the French Republic/. p. 90, in: Alkotmányok /Constitutions/, Published by the Institute of Political and Legal Sciences of the Hungarian Academy of Sciences, Budapest, 1972., see further Article 36 of the French Constitution.

13/ E.g. Article 40 of the Italian standing orders, Article 38 of the French standing orders.

14/ Article 125 of the Soviet Constitution, Article 71 of the Albanian Constitution, Article 76 of the Bulgarian Constitution, Article 55 of the Czechoslovak Constitution, Article 23 of the Polish Constitution, Article 61 of the Constitution of the German Democratic Republic and Articles 52-53 of the Rumanian Constitution.
/See the constitutions in the volume "Az európai népi demokráciák alkotmányai" /"Constitutions of the European people's democracies"/ Ed.: KOVÁCS, I.: KJK, Budapest, 1985/.

15/ Regulations of April 19, 1979 on the permanent committees of the Federal and Nationality Soviets of the Supreme Soviet of the Union of Soviet Socialist Republics /See in the volume "A Szovjetunió szövetségi alkotmányai /"Federal constitutions of the Union of Soviet Socialist Republics"/ /Ed. KOVÁCS, I. KJK. Budapest, 1982. p. 345./

16/ The comparison until 1971 was made by HORVÁTH, D.: see Házszabályok /Standing Orders/ Published by the Institute of Political and Legal Sciences of the Hungarian Academy of Sciences, Budapest, 1971. pp. 21-92.
Cf.: STRASBUN, B.A.: Реламенты Верховных Представительных Органов и их место в правовых системах зарубежных стран социализма, "Развитие конституций зарубежных социалистических стран", Москва, 1980. pp. 84-97.

17/ BIHARI, O.: Az államhatalmi-képviseleti szervek elmélete /Theory of the state-power – representative organs/, Akadémiai Kiadó, Budapest, 1963. pp. 245-258.; МАХНЕНКО, А.Н.: Верховные органы народного представительства социалистических стран. Москва, 1972. pp. 85-129.

18/ Article 27 of the standing orders of April 19, 1979 of the Supreme Soviet of the Soviet Socialist Republics.

19/ ЗЛАТОПОЛЬСКИЙ, Д.Л.: Верховный Совет СССР – выразитель воли советского народа. Москва, 1982. pp. 257-264.

20/ The standing orders of July 17, 1986 provided on the establishment of 21 committees among them the Committee of

Legislative Works has a significant role.

21/ Articles 16 to 48 of the standing orders of April 12, 1977.

22/ Article 21 of the standing orders amended on March 28, 1974.

23/ A Nemzetgyülés házszabályai /Statutes of the National Assembly/, Budapest, Athenaeum, 1946. Article 33.

24/ Article 8 of the standing orders adopted on May 8, 1950.

25/ Decision No. 2 of 1956 of the Parliament, see originally in the issue of August 8, 1956 of Magyar Közlöny /Official Gazette/. According to Article 15 the Parliament has nine permanent committees: legal, administrative and judicial committee, foreign affairs committee, national defence committee, plan and budget committee, agricultural committee, industrial committee, trade committee, cultural committee and the social and sanitary committee. The amendment of the standing orders on June 6, 1957 established three further committees, namely the state administrative committee, the building affairs committee and the labour committee. See proceedings of the meeting No. 39, The Journals pp. 2070 to 2072.

26/ See Writings of the Parliament convoked for March 21, 1963. Budapest, 1977, Writing No. 3.

27/ Proceedings No. 1 of the meeting of April 14, 1967, The Journals, pp. 13-14; proceedings No. 13 of the meeting of October 11, 1972, The Journals, p. 1071; proceedings No. 1 of the meeting of June 28, 1985, The Journals, p. 12; see further on the parliamentary decisions No. 9/1985--1990 /Official Gazette, July 13, 1986/, Article 19, paragraph /2/.

28/ BESNYŐ K.: Az országgyülési bizottságok müködéséről /On the activity of parliamentary committees/. JK 8/1964.

29/ See Articles 45-55 of the effective standing orders. I have taken over the data from the essay of LENGYEL, M.: Az országgyülési állandó bizottságok müködése 1967-1980. / Activity of the permanent committees of Parliament 1967--1980/ /manuscript/.

30/ LENGYEL M.: op. cit.

31/ See: Writings of the Parliament convoked for March 19, 1967, Budapest, 1979. Writing No. 16.

32/ Cp.Decision of the Central Committee of the Hungarian Socialist Workers' Party made on October 9, 1984 on the further development of the work of Parliament and of the councils, and the resolution of the 13th Congress of the Hungarian Socialist Workers' Party on the work of the party and on the further tasks, Chapter II, point 8.

33/ Proceedings No. 11 of the meeting of June 3, 1972, The Journals, pp. 835-839.

34/ Proceedings No. 3 of the meeting of June 24, 1971, The Journals, p. 218.
The committee of 25 members, consisting of representatives presented ted the bill in concert with the government. Proceedings No. 8. of the meeting of April 19, 1972, The Journals p. 554.

35/ In the session of 1958 to 1962 the committees presented still six bills /e.g. the law on the treaty of amity and co-operation entered into with the People's Republic of China /The Journals, p. 280/, the law on education /The Journals, p. 1376/, the law on the election of councillors /The Journals, p. 1887/, in the session between 1963 and 1967 the law on the right to voting /The Journals, p. 1831/, in the session between 1967 and 1971 the law on the treaty of amity and co-operation entered into with the German Democratic Republic /The Journals, p. 508/. Thereafter, this kind of presentation by the committees holds off.

36/ In 13 cases there is no committee referee, in 8 cases from these ones the presenting minister refers to the initiation of the committees. An example from the last session: the Minister for National Defence referred to the fact that the legal, administrative and judicial committee discussed the amendment of the law on the national defence in a joint meeting with the national defence committee and agreed in that. The Journals, p. 325, Proceedings No. 5 of the meeting of December 18, 1980. The amendment in 1984 of the law on councils may be mentioned as a matter

of special interest, when there was no committee referee but the committee moved motions for amendment. See Writings No. 57.

37/ See e.g. from the session from 1975 to 1980 the discussion on the law on the protection of environment /The Journals, p. 449/, on the Civil Code /The Journals, p. 1226/, on the law on home trade /The Journals, p. 1438/, from the session between 1980 and 1985 the discussion on the sixth five-year plan law /The Journals, p. 183/, on the law on administrative procedure /The Journals, p. 348/. Examples could be cited from the earlier sessions, too.

38/ In her above mentioned essay LENGYEL M. distinguishes four groups. In her opinion "In low number occur referee reports which reveal in detail the discussion in the committee and make known at least in main groups of questions the thrown out motions and the reasons thereof." Such referee reports were delivered in connection with the amendment of the Constitution in 1972, with the bill of health, of the statistics, of the family law, of the Penal Code and of the state entreprises.

39/ The table was made on the basis of the 179 committee reports to be read in The Journals, it does not contain the 8 "latent" committee participations mentioned under reference No. 36.

40/ In the joint committee discussion of the Act No. II of 1975 on the social insurance "numerous inquiring representatives" were present /The Journals, p. 2440/, in the course of the codification of the Act No. I of 1980 on the atomic energy the industrial committee and the legal committee held "joint meeting supplemented with the representatives of the social and sanitary committee as well as of the agricultural committee" /The Journals, p. 3456/, in case of Act No. IV of 1984 on the prohibition of unfair economic activity the members of other committees and invited specialists participated also in the joint committee meeting /The Journals, p. 1888/, etc.

41/ In the discussion of Act No. VI of 1977 on the enterprises it was to be heard: "in the future the state management

has to expend special care on the codification and discussion of the essential draft bills concerning wide strate and dealing with the economy". /The Journals, p. 1373/. Similar statements were made by the committees in the course of the committee reports of the Finances Act /Act No. II of 1979, The Journals, p. 1252/ and of the Franchise Act /Act No. III of 1983, The Journals, p. 1571/.

42/ See the beginning in The Journals, p. 1839, proceedings No. 36 of the meeting of June 3, 1957.

43/ The Journals, p. 1689, proceedings No. 23 of the meeting of December 19, 1973.

44/ From the session between 1967 and 1971 e.g. the Labour Code /The Journals, p. 288/, the law on the agricultural co-operatives /The Journals, p. 375/, the law on the Councils /The Journals, p. 3181/, from the session of 1975-1980 the law on the enterprises /The Journals, p. 1373/, the law on the education /The Journals, p. 713/, the law on the administrative procedure /The Journals, p. 349/, the law on the prohibition of unfair economic activity /The Journals, p. 1888/ may be mentioned.

45/ The Journals, pp. 2441-2442, proceedings No. 33. of the meeting of April 10, 1975.

46/ See e.g. the committee report presented to the Sixth Five-year Plan law containing 10 motions for amendment or the report presented to the law on the state administrative procedure containing 13 motions for amendment /Writings No. 11, and No. 16, respectively, of the session between 1980 and 1985/.

47/ BIHARI, O.: Az országgyülés /parlament/ állandó bizottságai /Permanent Committees of the National Assembly /Parliament/ in Hungary/. in: Korszerü tendenciák az államhatalom gyakorlásában. /Modern tendencies in the wielding of state power./ KJK, Budapest, 1983. pp. 194-219.

РОЛЬ ПОСТОЯННЫХ КОМИССИЙ ПАРЛАМЕНТА В ЗАКОНОДАТЕЛЬСТВЕ

И. Кукорелли

Автор в данной статье рассматривает роль постоянных комиссий парламента в законодательстве как специфическом процессе приятия решений. В ней дается краткий обзор основных типов комиссий в буржуазных и социалистических государствах и представляется становление и развитие системы указанных комиссий в Венгрии.

Опираясь на эмпирические исследования автор во второй части статьи разрабатывает деятельность комиссий в течение восьми циклов парламента. Основные выводы продемонстрированы в пяти таблицах.

По мнению автора, структура комиссий оказалась бы надлежащей, если бы она была сильной по сравнению с правительственными органами и обладала бы сбалансированными правами по сравнению с парламентом. Желательно, чтобы все большее количество депутатов вошли в состав комиссий. Система постоянных комиссий венгерского парламента является слишком разветвленной по отраслям, она нуждается в стремлении к комплексности, особенно же в специальной законодательной комиссии. Предлагается обсуждение комиссиями законопроектов в нескольких турах и участие многих комиссий в обсуждении. Мнения меньшинства и поправки депутатов, высказываемых в ходе обсуждения, следует предать гласности парламента.

Автор полагает, что постоянные комиссии парламента становятся все более серьезными факторами законодательства, которые могут эффективно передать общественно-политические соотношения решений. Роль указанных комиссий продолжалась усиливаться в цикле парламента на 1985-1990 гг.

LE ROLE DES COMMISSIONS PERMANENTES PARLEMENTAIRES DANS LA LEGISLATION

I. Kukorelli

L'étude examine le rôle des commissions permanentes parlementaires dans la législation, en sa qualité de processus spécifique de prise de décision. Elle donne un bref aperçu des principaux types de commissions des pays bourgeois et socialistes et présente le développement du système hongrois des commissions.

Dans la seconde partie de l'étude l'auteur examine l'activité des commissions au cours de 8 cycles parlementaires sur la base des recherches empiriques. Les principales constatations sont présentées dans 5 tableaux.

Selon l'opinion de l'auteur, la création d'une structure qui assure aux commissions des droits forts par rapport au gouvernement et des droits équilibrés par rapport au parlement serait conforme aux exigences. Le plus grand nombre possible de députés devrait être membre des commissions. Le système hongrois des commissions est trop fragmenté selon les domaines spécifiques, on peut lui reprocher l'absence de la recherche de la complexité et surtout le manque d'une commission législative spéciale. Les commissions devraient délibérer sur les projets de loi dans plusieurs tours, et il serait nécessaire que la participation à ces débats ne se limite pas à une ou deux commissions. Les débats des commissions (l'opinion minoritaire, la prise de position des commissions concernant les amendements des députés) devraient être livrés à la publicité du parlement.

L'auteur est d'avis que les commissions permanentes du parlement sont des facteurs toujours plus importants de la législation et qu'elles sont aptes à la transmission efficace du contexte de la politique sociale des décisions. Dans le cycle parlementaire 1985-1990, le rôle des commissions a continué de se renforcer.

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INFORMATIONES

KURZ ÜBER DAS UMVANDLUNGSGESETZ

1. Einleitung

Die Idee der Schaffung des Umvandlungsgesetzes (Gesetz Nr.XIII vom 1989) ist am Ende des Kodifikationsprozesses des Gesellschaftsgesetzes aufgetaucht, undzwar aus doppeltem Grunde. Einerseits sollte der verhältnismässig schnelle und bürokratiefreie Weg des Überganges aus einer Gesellschaftsform in die andere erschafft werden, andererseits sollte der alte neuralgische Punkt des Organisationssystems der ungarischen Wirtschaft abgeholfen werden, wo kein organisatorischer Formwechsel möglich war. Eben dieser letztere Umstand hat aber dazu geführt, dass der Kodifikationsausschuss einstimmig für die Schaffung eines selbständigen Gesetzes Stellung genommen hat, im Falle einer Regelung dieser Frage im Gesellschaftsgesetz hätte sich nämlich dessen Geltungsbereich sinngemäss nur auf die Wirtschaftsgesellschaften erstrecken können, sodass diese Aufgabe hinsichtlich der staatlichen Unternehmen und Genossenschaften durch Zweigrechtsregeln gelöst werden hätte. Es war aber zu befürchten, dass die Regelung in drei Gesetzen keine einheitlichen Grundsätze und einheitliche Praxis ergeben hätte und demzufolge der Grundsatz der schon damals als primäre Anforderung erscheinenden Wettbewerbsmentalität Schaden genommen hätte:

Nach den ursprünglichen Vorstellungen hätte das Umwandlungsgesetz schon am 1. Januar 1989 in Kraft treten sollen, der Bitte der Finanzverwaltung Folge leistend — da die Vorlagen über die staatlichen Vermögensverwaltungsorgane und den Vermögensfonds bis zu diesem Zeitpunkt nicht fertig gestellt wurden — wurden die endgültige Schaffung und die Inkraftsetzung des Gesetzes bis zum 1. Juli 1989 verschoben. (Wie es aber vorauszusehen war, wurde die Rechtsregel über die Ordnung der staatlichen Vermögensverwaltung sogar bis zum 1. Juli d.J. nicht geschafft, demzufolge hat das Umwandlungsgesetz gezwungenermassen so verfügt, dass bis zur Aufstellung dieser Organisationen die Gründerorgane ihre Rechte wahrnehmen werden.)

2. Grundsätze der Regelung

Die drei Hauptteile des Gesetzes regeln die Umwandlung der staatlichen Unternehmen, der Genossenschaften bzw. der wirtschaftlichen Gesellschaften, hinsichtlich der letzteren auch die Vereinigung bzw. Trennung der Gesellschaften einbegriffen. Es wurde schon bei den Anfangsschritten offensichtlich, dass das politisch bedenklichste Gebiet die Problematik der staatlichen Unternehmen sein wird. Das hat sich so sehr bewahrheitet,

dass gegenwärtig alle politische Gruppierungen, unabhängig von ihrer politischen Auffassung, darin einig sind, dass das Umwandlungsgesetz die bisher schlechteste Regelung der Achzigerjahre geworden ist. Merkwürdigerweise verlangen die kritischen Analytiker im allgemeinen über solche Fragen Rechenschaft von dem Gesetz, deren Lösung das Gesetz selbst nicht übernehmen hätte wollen, sogar können. Einer der grössten Einwände war, dass das Gesetz die Macht der gegenwärtigen Managerschicht hinübergerettet hat. Diese Feststellung ist – wie wir bei der Regelung sehen werden – ganz einfach nicht wahr. Gemäss dem anderen Einwand hat das Gesetz die jetzigen Eigentumsverhältnisse sozusagen konserviert. Nach einer tiefreichenden Analyse kann man aber feststellen, dass auch diese Kritik unstichhaltig ist. Das Gesetz hat die Lösung der Problematik des Eigentums bewusst nicht unternommen, es leitet also keine neue Kategorie ein, sein Ausgangspunkt konnte hingegen nur und ausschliesslich das geltende Recht sein.

Das Gesetz ist in erster Reihe eine technische Norm mit dem einzigen Ziel: das Gesellschaftsgesetz ergänzend den Wirtschaftsorganisationen die rechtliche Möglichkeit zu schaffen, sich verhältnismässig einfach in Gesellschaften umzuwandeln, undzwar so, dass im Laufe des Umwandlungsprozesses keine nachträgliche Steuer- und Gebührenpflichtigkeit entsteht.

Viele Regeln des Gesetzes wollen dazu beitragen, dass es zur Umwandlung nur dann und in solchen Fällen kommen kann, wenn sie von tatsächlichen wirtschaftlichen Zweckmässigkeitshinsichten gerechtfertigt ist. Dieser Grundsatz hat die Abneigung von gewissen Kreisen der Finanzverwaltung errungen, nach ihrer Auffassung sollte nämlich die ausschlaggebende Mehrheit der ungarischen Unternehmen kampagnemässig, von oben her befohlen, in verhältnismässig kurzer Zeit in Gesellschaften umgewandelt werden.

Wir haben schon darauf hingewiesen dass das Umwandlungsgesetz das Wirksamwerden des Gesellschaftsgesetzes zu befördern berufen ist, es soll aber betont darauf hingewiesen werden, dass das Gesellschaftsgesetz auch ohne die Rechtsnorm über die Umwandlung wirksam ist. In diesem Sinne handelt es sich nicht um eine Hilfsregelung, sondern um eine – den Ansprüchen der heutigen wirtschaftlichen, gesellschaftlichen Realität entsprechende – Ergänzungsregelung.

3. Umwandlung der staatlichen Unternehmen

Im Laufe der Abänderung des Unternehmensgesetzes in 1984 hat der Staat die überwiegende Mehrheit seiner Eigentümerberechtigung im Grunde genommen den selbstverwaltenden Unternehmen übertragen und in dieser Weise wurde dieser Unternehmenskreis in der täglichen Wirtschaftspraxis bzw. soziologisch tatsächlich Eigentümer des in seiner Verwaltung stehenden staatlichen Vermögens. Eben deshalb hätte jede Lösung, welche die Entscheidung über die Umwandlung aus der Hand des obersten Leitungskörpers dieser Unternehmen ausgenommen hätte, im wesentlichen einen Rücktritt im Verhältnis zu der Regelung in 1984 bedeutet. (Aus dieser Logik folgt natürlich unvermeidlich, dass wo die Ausübung dieser Eigentümerrechte nicht übertragen wurden, z.B. bei den unter staatlicher Aufsicht stehenden Unternehmen, das Recht

zur Entscheidung dem gründenden Organ zustehen musste.) Diese Verfügung bedeutet also eine grundlegende Garantie in der Hinsicht, dass es sich nicht um ein Umformungs- sondern ein Umwandlungsgesetz handelt und die Staatsverwaltung nicht mehr über dem Kopf der Unternehmen über Organisationsformen entscheiden kann.

Wenn die oberste Leitung des selbstverwaltenden staatlichen Unternehmens sich für die Umwandlung entschieden hat, soll im Verhältnis zum bestehenden Geschäftsvermögen wenigstens 20 Prozent äusseres aktives Kapital einbezogen werden, bzw. soll dieser Betrag bei Unternehmen mit grösserer Kapitalstärke 100 Millionen Forint ausmachen. Der Zweck dieser Verfügung liegt darin, dass wirtschaftlich tatsächlich tätigkeitsfähige Gesellschaften ins Leben gerufen sein können. Die Grundlage der Entscheidung des Unternehmens ist der sogenannte Umwandlungsplan, welcher unter anderen die Absichtserklärung der einzutreten wünschenden neuen Mitglieder, den Entwurf des Gesellschaftsvertrages (der Satzung) enthält.

Hinsichtlich der Kapitalstruktur geht das Gesetz davon aus, dass es das bei der Gründung vom Staat erhaltene Vermögen der Unternehmen einheitlich als 20 Prozent des Vermögens annimmt (das ist selbstverständlich eine künstliche Zahl, diese Lösung sollte aber deshalb gewählt werden, weil — infolge der Umorganisation in den letzteren Jahrzehnten des ungarischen Unternehmenskreises — die Erstellung der Grösse und besonders des heutigen Wertes vom damaligen Gründungsvermögen gegebenenfalls ausserordentliche Schwierigkeiten verursachen würde.)

20 Prozent des früheren Unternehmensvermögens geht in Besitz der den Staat vertretenden Vermögensverwaltungsorgane über (gegenwärtig besteht eine solche benannte Organisation im Wirkungskreis des Industrieministeriums, bis zum Inkrafttreten des Gesetzes über die staatliche Vermögensverwaltung über die Gründerorgane die Rechte dieser Organisationen aus), da aber — wie darauf früher schon hingewiesen wurde — das Einbeziehen eines 20-prozentigen äusseren Kapitals auch erforderlich ist, wird das Stimmungsverhältnis nur 17-prozentig. Das Unternehmen kann das übriggebliebene 80 Prozent drei Jahre lang bei sich behalten, währenddessen kann es diesen Teil realisieren. Gemäss der Verfügung des Gesellschaftsgesetzes steht der Gesellschaft kein Stimmungsrecht nach den in seinem Besitz befindlichen Aktien bzw. Geschäftsanteil zu. 80 Prozent des Kaufpreises der verkauften Aktien bzw. des Geschäftsanteils geht in Besitz des staatlichen Vermögensverwaltungsorgans über, während 20 Prozent den das Stammkapital (Grundkapital) der Gesellschaft übertreffenden Vermögensteil erhöht. Die prinzipielle Grundlage dieser Verfügung war, dass ein Kaufpreis von solchem Charakter eigentlich inflatorische Wirkung hat, da keine effektive Vermögensbewegung oder wirtschaftliche Wirkung dahinter steht, eben deshalb ist die Entziehung des grösseren Teils des Betrags gerechtfertigt. Das Gesetz über die Vermögensverwaltungsorgane wird befugt sein, über die Verwendung dieses Betrags nachgehends zu entscheiden.

Aus dem Grundsatz ausgehend, dass die speziellen Unternehmenseigenheiten weitgehend zur Geltung gebracht werden können, verfügt das Gesetz so, dass die oben beschriebene Regelung nur dann zur Geltung kommt, wenn das Unternehmen sich über sonstige

Bedingungen mit dem staatlichen Vermögensverwaltungsorgan nicht vereinbart hat. Praktisch bedeutet das, dass die Staatsverwaltung die Umwandlung selbst nicht verhindern kann, das Unternehmen aber vermutlich mit dem Vermögensverwaltungsorgan eine Vereinbarung nur dann schlisst, wenn die in der Vereinbarung enthaltenen ihm vorteilhafter sind. Mangels einer Vereinbarung sind nämlich die Regeln des Gesetzes anzuwenden. (Die Vereinbarung soll aber obligatorisch versucht werden, nach der Entscheidung des Unternehmens sollen diese Verfahren begonnen werden, und falls diese binnen 60 Tagen zu keinem Ergebnis führen, kann der Umwandlungsprozess unter den gesetzlichen Bedingungen fortgesetzt werden.)

Die Lage ist grundlegend anders gestaltet im Falle der nicht selbstverwaltenden, sondern unter der Aufsicht der Staatsverwaltung stehenden Unternehmen. Da die Ausübung des Eigentumsrechts in 1984 nicht in die Hände dieser Unternehmen geraten ist, trifft das Gründerorgan die Entscheidung über die Umwandlung, zusammen mit allen deren Bedingungen, nur die Meinung des Unternehmens soll eingeholt werden.

4. Umwandlung der Genossenschaften und wirtschaftlichen Gesellschaften

Obwohl die Genossenschaften nicht unter der Wirkung des Gesetzes über die wirtschaftlichen Gesellschaften fallen, ist es hinsichtlich ihrer rechtlichen Natur offensichtlich, dass es sich hier auch um Organisationen vom Wirtschaftstyp handelt. Eben deshalb konnte die Umwandlung technisch viel leichter durchgeführt werden, als bei den staatlichen Unternehmen, nur eine einzige — obwohl garnicht unterschätzbare — ideologisch-politische Schranke, undzwar die Dogma der Unteilbarkeit des genossenschaftlichen Eigentums sollte durchbrochen werden. Das Gesetz war in beiden Fällen weitgehend bestrebt, die Gläubigerschutzstandpunkte vor Augen zu halten; es stellte z.B. mit grundsätzlicher Schärfe fest, dass jeder Mitglied der sich umwandelnden Gesellschaft wenigstens 5 Jahre lang uneingeschränkt für die Schulden der Gesellschaft haftet, wenn eine offene Handelsgesellschaft oder eine Kommanditgeesellschaft sich in eine Gesellschaft mit beschränkter Haftung oder eine Aktiengesellschaft umwandelt. Abschnitt IX des Gesetzes regelt die Vereinigung und Trennung der wirtschaftlichen Gesellschaften und hat in dieser Hinsicht auch die Grundsätze der in Vorbereitung stehenden neuen ungarischen wettbewerbsrechtlichen Regelung in Betracht gezogen.

Zusammenfassend kann man feststellen, dass das Umwandlungsgesetz die augenblicklichen Ansprüche der ungarischen Wirtschaft entsprechend befriedigt; besondere praktische Erfahrungen stehen noch nicht zur Verfügung, da die Umwandlung einiger Organisationen erst jetzt beginnt, es bietet aber zweifelsohne aller Teilnehmer des Wirtschaftslebens solche Möglichkeit, welche, wenn gut ausgenützt, auch effektiven Gewinn ergeben kann.

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RECENSIONES

Lontai, E.: THE UNIFICATION OF LAW IN THE FIELD OF THE INTERNATIONAL PROTECTION OF INDUSTRIAL PROPERTY*

It is a special contradictions, giving food for meditation, that whereas the seven-leagued steps of technical and scentific progress and the strengthening of international co-operation offer ample factual and theoretical material for the reconsideration of the problems of the international and national protection of industrial property, there are only relatively few authors to undertake the brave action of appearing before the professional public with a comprehensive monography on these questions. The considerable complexity of technical economic and legal aspects of the theme, its internationality, plasticity, the labour intensity required and the quick changes of the subject matter, which result in a serious "author-trying" situation have evidently a part therein. Therefore, it is a special pleasure, that an authority, like Endre Lontai has undertaken the synthetization of the hitherto achieved theoretical results and the revelation of the tendencies, the compulsions and the possibilities of the progress in this field.

His "Unification of law in the field of the international protection of industrial property" offers and excellent view of the fundamental theoretical and practical points of tension of the field of law, as well, as of the activities and the institutional system, built thereupon, with an original attitude and in a delicious style, it treats and integrates engrossed and critically the results of the covered way, and flashes the possible byways and ramifications of the further progress.

After outlining the significance and the character of international economic and scientific-technical co-operation, the monography introduces the international institutional system of the protection of industrial property, the interests and the clashes of interests within the frameworks of the protection of industrial property, the actual tendencies taking shape in this field, as well, as the prospects of the unification of law, thereafter, the conclusions and proposals for the further development of the Hungarian Legal system are formulated.

The detailed introduction of such a comprehensive work, rich in ideas, cannot be undertaken, of course, in the framework of a brief review, therefore only the especially important elements, seeming more topical in the light of the present strive after modernization and a market economy, will be emphasized, approvingly or sometimes polemizing.

*Jogegységesítés a nemzetközi iparjogvédelem területén, Akadémiai Kiadó, Budapest, 1988. 242 p.

It is one of the most exciting groups of questions, treated by the work, connected with the theoretical problems of the protection of industrial property and especially, those of uniform theoretical basis of the institutions of the protection of industrial property. To formulate the question with other words: by what is the cohesion of these institutions created. The author correctly refers (p. 17 et seq.) to the fact that the hitherto accepted qualification of "law on intellectual property" is highly queryable and, in our opinion, the same relates to the theory, too, according to which "the pecuniary relations in connection with the intellectual creations, are, in fact, relations of distribution". These theories have been necessary consequences of the overstressing, on political-ideological bases, of the personality aspects in the past years, as well, as of the fact, that with the overshadowed interestedness of the enterprises, the individual motivation has become dominant, and the institution of patent has been degraded from an instrument of market competition to a voucher for payments of remuneration. This situation was expressed in an extreme form in the institution of the inventor's certificate, moreover, this appeared in the solution of Article 86 of the Civil Code, which derived the entire field of copyright and the protection of industrial property from the personal rights and from the civil law protection of privacy, respectively. It seems, that in the present age of the change of the economic model, the time is ripe for turning this relation upside up and not considering the legal field the expression of the interests of personal rights, also having pecuniary moments, but inversely: to be property relations with strong personal attractions. Therefore, the author has to be agreed with, that "the overstressing of pecuniary moments establishes at any rate much more the unity of the legal field in questions than the conceptions declaring the primariness of personal elements" (p. 18). It is, however, a further question, what the specificity of these "pecuniary moments" is to create the coherence of this field of law? On the basis of the concept of the law of intellectual property — as pointed out by the author — the internal coherence of the field of Law is not free of problems". It is prima facie evident that the partial fields of the protection of industrial property, mentioned above, are of highly divergent character and — as against the field of the copyright — they show a considerable heterogensity". (p. 17)

The unity of the heterogeneous partial fields of the protection of industrial property — which cannot be interpreted on the basis of the concept of "intellectual creations" — is brought about in our opinion by the fact that the institutions of the protection of industrial property protect essentially the intellectual value components of the market commodity. The protection of patent and know-how stand behind the invention and other technical-economic knowledge, the protection of design relates to the outer form of the commodity, whereas the trademarks and other designations of goods, as "market codes", protect the trust of the market, connected with the reputation and the goodwill, lend a hand against the unlawful appropriation and infringement by third persons. The essential reference point of the legal field is therefore the market commodity, its objects are, however, the intellectual value components settling

on its different structural levels, having definitive significance for the value and use-value of the commodity, the function of which provides for the economic guarantee for their independent negotiability as intellectual properties.

Those, mentioned above, can be extended analoguously, without an ideological "desacration" to the cultural-technical goods carrying the works under copyright protection as intellectual value components (book, casette, magnet plate, etc.), too. The adequate or inadequate character of the legal forms applied for the protection of the intellectual value components of the market commodity may be assessed by the fact to what extent they correspond — as market categories — to the legal structures evolved in the well-developed market economies and are accepted internationally as standards, and to what extent they give ground to the processes following from the logic of the market. In this connection we fully agree with the point of view of the author — running through the entire work — that the invetor's certificate, having developed in the spirit of the political-ideological doctrines and in accordance with the centralized plan directives in the Soviet Union and in some other socialist countries, does not correspond to the requirements of the technical development, of the internal stimulation of the innovation, and of the international co-operation.

We are worldwide witnesses today to the dramatic growth in the appreciation of the notion of the intellectual property and, within it, especially that of the protection of industrial property and patent law, respectively, the remarkable moments of which were in the recent years the developing of the patent system in China, the reform of Soviet patent law coming about today — by forgetting the inventor's certificate and being decisive also in respect of the formation of the new bases of the co-operation within the framework of CMEA — , the efforts to raise the level of protection of intellectual property in GATT, further, the refusal of the demands of the developing countries for preferences lowering the level of protection in the framework of the revision of the Paris Convention, the establishment of the sui generis form of protection, corresponding to the particularities of the integrated circuits, as intellectual value components at the diplomatic conference organized in Washington in May 1989, the international endeavours for finding the adequate forms of protection for the biotechnological results in the framework of the World Intellectual Property Organization. From all these, said above, the requirement running through the work follows that if a country does not want to fall behind the international development of law, to allow the formation of a legal "gap", moreover, if she wants to elaborate a competitive, attractive legal system effectively transmitting the international co-operation, she has to take, as a basis, the international model of mentality — with the words of the author the "mordel of the Paris Convention" — characterizing in this field the countries, having a well-developed market economy and the co-operation in the framework of the World Intellectual Property Organization; legal forms being the range of activity internationally accepted as safe, introduced, enjoying confidence of the intellectual capital. In this respect, however, the intellectual value components of the market commodity have two fun-

damental legal forms of motion, and legal stati, respectively: either they represent a "public domain" freely utilizable by everybody as "social heritage" or belonging to the "private domain" to enjoy legal protection. There are essentially two levels, two kinds of structure of this legal protection, to have developed: first the protection of the effective property situation attached to the intellectual value, second, the protection of the intellectual property based on the patent law, trademark law, design law or other laws granted by the state.

The protection of the property situation, attached to the intellectual value component appears practically in the protection of know-how, comprising the technical-economic knowledges, restrictedly accessible, and in the protection under competition law, respectively, enjoyed by the commodity against the "slavish imitation" of its characteristic appearances, or design, connected with the enterpreneur in the opinion of the market. This model of thinking — appearing also in the work of the author (p. 115) — clarifies that the protection of know-how is not a kind of an "exotic animal breed" but, together with the patent, they represent the two sides of the same coin of law and thus the alternative possibilities of legal protection. Whereas however, the patent protection, ensuring the absolute exclusivity may be utilized only for a relatively narrow range of intellectual values, the relatively exclusive know-how protection (protecting only against the unlawful appropriation of the intellectual result but not against its independent development) may be used in a wider range, as a legal form, to be understood to the analogy of the possessory protection of property.

In the framework of the know-how protection the special commodity character of the intellectual property is offered by the fact that, as a structured mass of economic-technical knowledges it represents a capital value utilizable in the production, yielding innovative excess-profit, which, due to the limitation of its accessibility, does not belong to the public property, to the free goods, and therefore, it may be legally acquired either by independent development or by a contract. In the system of legal protection of principles of market economy concerning intellectual values, the central figure is not the inventor, but the enterpreneur, just like in the original model of innovation, as formulated by Schumpeter, as the "intellectual fuel", necessary for the undertaking, supplied by the inventor. In this model of thinking, the recognition of the inventor, the technovator and other authors is the question of the agreement in the internal legal relations. As much, as the author criticizes, from the point of view of the hitherto developed socialist model of regulation, the lack of the reflection of the interests of personal character in the system of the Paris Convention with due stress, except for Article 4ter, relating to the indication of the name (p.69), it may be disapproved with the same good reason, from the other side, how the interests of the enterpreneur have been pushed into the background until now in the socialist model of regulation.

Another statement of the author deserves special emphasis: Hungary has always been an active participant in the international co-operation in the field of the protection of industrial property and, through the reflection of her policy in the nation-

al regulations, she has made efforts to the maintenance of a strong, solid, market-inspired patent system and, generally, a system of the protection of industrial property (p. 225 et seq.). The recodification of the Hungarian patent system at the end of the sixties made an attempt — under the effect of the just beginning reform of the economic management and in a CMEA-environment, engaged practically in a system of the inventor's certificate — at the regulation of the historically developed and internationally accepted principles of the patent system, under socialist conditions. This law, inspired by market economy, is regarded as of model value in the present socialist reforms — on the way especially in China and in the Soviet Union — in spite of the fact, that the practical enforcement of the law was not unimpeded and problem-free. In this connection one is to emphasize the significance of the author's investigation on the relation between innovation and the protection of industrial property (p. 194 et sec.), since also the example of the Hungarian patent system proves, that the legal regulation cannot be sufficiently effective without the suitable economic environment, without the background conditions of the market. The principles of market economy, namely, taken for basis by the Hungarian patent system at the end of the sixties — e.g. real independence in and interestedness for the enterprise, the possibility of the innovative extra-profit — were not realized, due to the tardiness of the progress of the reform process, due to its stopping short under outer and inner effects, therefore the economic regulation did not support, moreover, it impeded in several respects the success of the principles of the patent system. In this connection it may be considered characteristic, that in the countries, having a well-developed market economy, the centre of interests lays in the enterprise, realizing the invention as a market commodity, because the enterpreneur may achieve excess-profits by the exploitation of novelties at the higher price of the goods, sold on the market, as well, as in the form of tax allowances and other favours connected with innovation. This creates, by the expectation of a higher profit rate, a longing for innovation in the sphere of enterprise, a flow of capital there, a "suction" effect on intellectual products, i. e. a demand market of intellectual properties, combined with a supply market of material goods.

A contrasting situation has developed in Hungary. An adequate financial and interest system, taking into consideration the long-range character and the higher risk contents of innovations based on intellectual properties, a tolerant capital and a tolerant financial regulation have not been created in the economic regulation. Because of the not suitable intensity of profit-interest on innovations and to the deprival of the excess-profits by the state budget to maintain deficit-producing enterprises, respectively, i.e. due to the transfer of capital to the inefficient sphere, the structure of the market of intellectual products became deformed as compared to the countries, having a well-developed market economy: the sphere of production, that of the enterpreneurs has no real need to a proper extent for intellectual creations, inventions, it shows signs of a supply market, i.e. it is the inventor, who tries to "introduce" them in the production. So, it is not the manager of

the enterprise to "run" after the inventor, but conversely, with all the drawbacks of the bargain position of the supply side economy.

Hence, the intellectual products have flown in the direction of the production from the inventors, i.e. from the sphere of research and development, respectively, and not under the effect of the market-directed "suction" of the medium of enterpreneurs but rather under the effect of the informal, managerial movement, a mass media "pressure" in the recent years. Some intellectual products, not being able to succeed on the market, began to lead a "social life" in the press.

In spite of the "ordination under the personal right", following from the civil-law dogmatics concerning inventors, the pro-inventor political declarations and the practice of the Netional Office of Inventions and of the courts, protecting the inventor, this situation prevailed.

This contradiction may be released today, if, as a result of the reform, the normal structure of the market – characteristic for countries with a well-developed market economy – will be re-established: the market of demand for the intellectual products and the market of supply for the material products. The fundamental condition thereof is, however, that the market be controlled by a more strikingly marked interest for the innovation excess-profit – better expressed, extra profit – of the enterpreneurs which then creates a higher demand for the intellectual product and involves the supply competition of the material goods produces in this way.

The importance of innovation excess-profit is theoretically, even today given i.e. there are no financial or price regulation bars in the way thereof. However, the intensity of the interest for it is low, in comparison to the other possibilities of the acquisition of extra profit resulting from the economy of shortages. This is the least attractive money-making possibility, due to its long run, to the considerable risk and labour intensity, being not counterbalanced in Hungary – as compared to the countries having well-developed market economies – by financial means of suitable efficiency (risk stock, provisional tax allowances for the enterpreneur, etc.), moreover, several factors act against it (e.g. the investments becoming more expensive due to the general turnover tax and to the high interest rate, the ranging of innovation banking houses into the normal bank system). It has to be noted, however, that the establishment of surroundings of market economy is only a necessary, but not satisfactory condition of the efficient functioning of the patent system, and, in general, of the innovation process. The suitable extent of the role taken by the state, the development of the "constitutional structure" of the innovation are at least as important, as that. An example thereof is the innovation act of the USA, the "Stevenson-Wydler Act" enacted in 1980 and further developed in 1986. The most significant lesson of the Act is that in an industrially-technically highly deeveloped market economy, based on the principle of competition – going beyond the romantic market picture of the 19th century –, in addition to the market powers, there is an outstanding role intended for the organizing activity, displayed by a complete network of state organs.

At the end of the work the author summarizes his conclusions and his de lege ferenda proposals (p. 232 et seq.). These valuable proposals can be essentially agreed with, in some respects, however, they should be further considered.

In our opinion, the requirements of the international co-operation would justify in the near future not only the introduction of the criterion of non-obviousness but also the adaptation of the entire criterion system of the patentable invention to the criteria of patentability developed in the framwork of the European Patent and of the PCT system, the product patent for products manufactured in chemical way, pharmaceuticals, foodstuffs, as well, as the direct "per se" protection of microorganisms included. In the longer run it seems still to be reasonable to adopt the results of the patent-law harmonization, done at present in the framework of WIPO to our patent law. This necessitates e.g. the exclusion of the prejudicial effect of the publication of the inventor as to novelty within a definite time of grace, further on the more consequent enforcement of the current "half-way" principle of equivalence in order to render the protection more efficient.

As for the enrichment of the forms of protection, by virtue of the respective international agreement, the introduction of the sui generis protection of integrated circuits will be indispensable just in the near future and — in our opinion, agreeing with the author — the creation of the protection of the utility model is also justified.

The amplification of the legal protection of employee's inventions, as suggested by the author, does not seem, however, reasonable (p. 234), especially the intended claim for damages of the inventors, replacing the claim for remuneration in certain cases of the neglect of exploitation. It seems to us, that the strengthening of the legal protection of inventors may rather be achieved under market conditions, if the interest of the enterpreneurs grows in the exploitation of inventions and thereby the the economic coverage of the remuneration are ensured.

As regards the further development of the law on technovations it is already evident, that under conditions of economy, market not only Article 9 para (2) of the decree, but the entire regulation itself is problematic. The technovation shall become under the new circumstances a spontaneous and self-controlled internal category directed by the interests of the enterprise, belonging to the enterpreneurial sovereignity and autonomy.

My remarks, required by the professional "responsibility for the reading capacity", to be expected of the reviewer do not reduce the value of the work, but they praise and prove its comprehensive and original character, the reality of the questions treated by the work and the accuracy of the overwhelming majority of the founded answers, their prevalent character also in a long run. The great number of exciting questions and answers switch on also an association chain, serving for the further consideration of the problems and they enrich in this way the reader not only professionally but they reward everybody reading this outstanding professional work by a real intellectual excitement.

J. Bobrovszky

Kilényi, G.:

PARLIAMENTARISM AND GOVERNMENT IN A ONE-PARTY SYSTEM.
STUDIES ON HUNGARIAN STATE AND LAW.
/Парламентаризм и управление
при однопартийной системе/
Akadémiai Kiadó, Budapest, 1988. 237 p.

The Public Law Research Center of the Hungarian Academy of Sciences headed by Prof. Géza Kilényi has started a new venture: it issued its first English-language volume devoted to the Hungarian system of governance.

In many respects it is an interesting and provocative book. Its direct aim is to present a general and up-to-date picture about the system and practical functioning of the highest Hungarian state and administrative organs on a language which can reach a wide audience. All of the papers published in it have been written specifically for this purpose. They are not translations of studies which had appeared earlier in Hungarian. The editor-in-chief himself acknowledges that the volume is designated for consumption outside Hungary. This fact itself may generate some suspicion because such publications usually bear the mark of vigilant ideological polishing. However, this is not the case.

The volume is a professional and well-informed presentation of the system and problems of the related Hungarian legislation and practice. Its content is strictly restricted to professional matters, it lacks any kind of references to the classics of marxism-leninism. The editor-in-chief points out in the Preface that the volume is devoted to the examination of modern legislative and practical aspects. At the same time he acknowledges frankly that the special literature of socialist countries very often "contains a relatively large number of generalizations, including quotations from the classics of marxism-leninism and from political leaders in office at the time of publication" which according to him "offers a comparatively small stock of concrete and useful information".

The volume contains seven chapters from different authors, an updating note and a short glossary of political institutions and legal expressions. Chapter I deals with the Hungarian constitutional development in historical perspective. Chapter II describes the legislation on elections and procedural questions of holding elections. Chapter III is devoted to the place, role and functioning of the Parliament in the Hungarian political system. Chapter IV examines the constitutional powers of the Hungarian Presidential Council, and chapter V presents the status, formation, structure and powers of the Council of Ministers and its committees. Chapter VI deals with the system of ministers and central state agencies subordinated to the Council of Ministers. Chapter VII sets out the questions about the role of social organizations and their relationship with governmental

institutions.

Indeed, the volume provides a lot of useful information not only on the Hungarian legislation but also on the actual political practice of different state organs. One can find in it, for example an interesting statistical account on the results of the 1985 elections held according to the rules of games of the 1983 Election Law which sanctions the nomination of two or more candidates (48-51 p.). Chapter III gives a very detailed account about the activity of the Constitutional Council and on the unresolved problems of constitutional control over legislation and law enforcement (76-96. p.). Chapter IV gives a useful insight into the practice of establishing by socialist states presidium-type supreme state organs (so-called collective heads of states). The last chapter ought to be of particular interest to those who are concerned with the questions of trade union movements in socialist countries.

One might continue listing other good points of the essays, however, a short review has no space for them. One additional positive remark seems necessary. In addition to the higly professional nature of the papers one may find in the volume many frank and thoughtful admissions. Here we refer to just one of them which relates to the role of parliaments in socialist countries: "For decades, neither the Soviet Union nor any other of the socialist countries which embarked on the road of socialist development after World War Two actually knew what to do with their parliaments. The state needed such an organ in order to secure and maintain international "acceptability", but its political mechanism neither left room for, nor tolerated a parliament's wielding of real political power" (57. p.).

It is usual that in every collection of articles there are good ones and those ones which deserve less praise. It is true for this collection too. Some studies hardly rise above descriptive. There are some chapters which lack footnotes at all. The placement of footnotes after chapters is rather annoying because it takes a lot of time to look after the necessary reference. More annoying of course the unevenness of the English translation. The quality of the volume would have been considerably improved had the editor arranged the proof-reading by an English-language specialist.

As its title suggests, the volume deals with questions of parliamentarism in a one-party political system. However, it does not contain materials related to the role of the party. It would be quite interesting for the reader to receive a fairly documented account about the written and unwritten rules concerning the position of the party in the political system, its relationship with the highest organs of state power and administration.

These remarks by no means aimed at the depreciation of the value of the collection. On the whole, it is a higly informative and challenging edition.

V. Mavi

E.F. Kiss
DIE UNGARISCHEN MINISTERIEN VON 1848-1849
Akadémiai Kiadó, Budapest, 1987. 650 p.

Ende des Jahres 1987 veröffentlichte der Varlag unserer wissenschaftlichen Gesellschaft ein seit langem erwartetes Werk: das Buch von Erzsébet Kiss Fábián, Oberarchivar im Ungarischen Landesarchiv, über die im Laufe der Revolution 1848-1849 in Ungarn aufgestellten zentralen Verwaltungsorgane, die ersten Ministerien. Dieses Buch ist das neuartigste und beste Werk der ungarischen Verwaltungs- und Behördengeschichte, was in den vergangenen Jahrzehnten in Ungarn erschienen ist. Auch die Arbeitsmethode des Autors ist beispielhaft: unter Befolgung einer zeitlichen und logischen Ordnung wird das Thema in 15 Kapiteln abgehandelt, in den ersten sechs zum Beispiel wird gezeigt, wie sich Kompetenzbereich und Organisation des Ministerpräsidiums vom März bis zu den Ereignissen der Krisenwochen im September entwickelten, die Arbeit der Landesverteidigungskommission, über die Monate des Reichsverweseramtes und der Ministerpräsidentschaft von Szemere bis zum Zusammenbruch. Danach beschäftigt sich die Autorin gesondert mit den Problemen, die mit der Schaffung des Verwaltungsapparates zusammenhängen sowie mit den speziellen Problemen der siebenbürgischen und kroatisch-slawonischen Verwaltung und Gerichtsbakeit. Anschliessend — ebenfalls in gesonderten Kapiteln — werden Kompetenzbereich und Organisation der einzelnen Ministerien analysiert, die Ausbildung ihres Personalbestandes sowie die mit ihrer Arbeit zusammenhängenden Sorgen und Probleme, angefangen vom Ministerium um die Person des Königs (Aussenministerium) über das Innen-, Verteidigungs-, Finanz-, Justiz-, Landwirtschafts-, Industrie- und Handels-, Religions- und Bildungs- bis zum Arbeits- und Verkehrsministerium, es werden also sämtliche Gebiete der zentralen Staatsverwaltung umfasst. Diese Kapitel haben in Abhängigkeit von der relativen Einfachheit oder Vielschichtigkeit und Kompliziertheit der zum Ministerium gehörenden Aufgaben einen Umfang von 20 bzw. 75 Seiten und geben Antwort auf sämtliche Fragen, die mit dem gegebenen zentralen Verwaltungsorgan zusammenhängen. Ein besonders wertvoller Teil der Monographie ist das Verzeichnis der Beamten der Ministerien von 1848/49 (Seiten 480-619), in dem vom Autor die Angaben von mehr als 600 Ministerialbeamten angegeben werden, neben ihrer Stellung, dem Datum ihrer Ernennung und der Summe ihres Gehaltes wird auch angeführt (wenn es dazu Angaben gab), wie sich ihr weiterer Lebensweg gestaltete. Eine imposante Namensreihe, in der ausser den Namen von drei späteren Ministerpräsidenten (Menyhárt Lónyay, Staatssekretär im Finanzministerium, József Szlávy, Sekretär im Finanzministerium und der 19 jährig als Referent im Religions- und Bildungsministerium für ein Jahresgehalt von 800 Forint angestellte Kálmán Tisza) auch die Angaben des Referenten im Innenministerium, János Arany aus Nagyszalonta zu lesen sind.

Es muss auch gutgeheissen werden, dass der Autor nicht nur die Tätigkeit der Ministerien von 1848/49 vorstellt, sondern auch deren Vorereignisse, wie das Verwaltungssystem vor der Aufstellung des ersten verantwortlichen ungarischen Minis-

teriums aussah, wie die Entscheidungen des Herrschers in den Angelegenheiten Ungarns in der ersten Hälfte des Jahrhunderts geboren wurden (zum Teil Stellungnahmen von Reichsorganen, zum Teil aufgrund der Vorschläge der Kanzlei),und wie diese von den Landesregierungsstühlen (Reichsverweserrat, Kammer) durchgeführt wurden. Es wird auch gezeigt, dass sich die Zuständigkeit der ungarischen Dikasterien auf beträchtliche Landesteile des historischen Ungarn nicht erstreckten (auf Siebenbürgen, die Grenzgebiete und in vieler Hinsicht auf Kroatien und Slawonien) und dass sich 1848 daraus sehr viel Probleme ergaben. Batthyány hat zwar vor seiner Ernennung zum Ministerpräsidenten einen jahrzehntelangen Kampf für die Reformen gekämft, dessen Ziel in der Abschaffung der feudalen Eigentumsverhältnisse, der Schaffung der Volksvertretung und der öffentlichen Lastentragung, dem Ausbau der bürgerlichen Rechtsordnung usw. bestand. Jedoch war das Lager der Reformer nie einheitlich, die Kämpfer des Dienstes für die Heimat und den Fortschritt haben bis 1848 nicht einmal sämtliche Aufgaben überblickt, haben kein Programm ausgearbeitet, das sich auf alle wesentlichen Fragen erstreckt hat und was als Kompass für die Handlungen gedient hätte. Das zeigt sich nicht nur in den Ereignissen der Tage nach dem 15. März, sondern auch in den Aprilgesetzen. E. Kiss stellt auch gut das Hin- und Her vor, was das Hauptkampfmittel der Wiener Hoforgane und der österreichischen bürgerlichen Regierung 1848 darstellte. Ihr Grundsatz bestand darin, dass das österreichische Ministerium ein Reichsorgan darstellt, dessen Pflicht auch in der Lenkung der Regierungen der einzelnen Länder besteht.

Auf diese Gründe ist zurückzuführen, dass die Aprilgesetze lückenhaft und widerspruchsvoll wurden, sie regten zwar die Schaffung eines Staatsrates an (über dessen Aufgaben sich niemand im Klaren war), liessen jedoch zahlreiche grundlegende Fragen unbeantwortet, darunter auch diese, wie die Erledigung der mit Österreich gemeinsamen Angelegenheiten (Aussenpolitik, Finanz- und Verteidigungswesen) in Zukunft erfolgen soll. Eine der beliebtesten Methoden der österreichischen Organe bestand darin, dass sie – nach grossen Schlachten – gewissen Fragen nachgaben, doch nur deshalb, damit sie nach Veränderung der Umstände und dem günstigeren Stand der Kräfteverhälthisse die erkämpften Ergebnisse zurückziehen konnten und – wenn es sein musste, auch mit Waffengewalt – ihre volle Macht wiederherstellten.

Dadurch konnte es geschehen, dass die Ernennung von Lajos Batthyány zum Ministerpräsidenten bereits am 17. März erfolgte, doch die Minister erst Mitte April die Arbeit aufnehmen konnten und der Ausbau des Apparates noch später einsetzte. Auch diese Arbeit musste so durchgeführt werden, indem damals bereits alle Probleme der Zukunft ihre Schatten vorauswarfen: die Serben, Kroaten, Slowaken und andere Minderheiten waren mit ihren Forderungen bereits am Hof aufgetreten; die Wiener Regierung bat das Ministerium um Übernahme eines Teiles der Staatsschulden und auch darum, dass das Land Soldaten zur Niederwerfung der italienischen Revolution bzw. der Unabhängigkeitskämpfe stellen sollte. Die Umstände waren also nicht sehr günstig, trotzdem sind die Ministerien entstanden, bis Ende April stellten die Hof- bzw. die Landesdikasterien ihre Tätigkeit ein (ihre Aufgaben wurden von der Regierung bzw. den einzelnen Ministerien

übernommen) und das erste verantwortliche ungarische Ministerium konnte seine Aufgabe aufnehmen, die Organisation der Durchführung der bürgerlichen Umgestaltung. Dies war eine schwere Aufgabe, weil sich die Regierung zwischen zwei Mühlsteinen befand: Wien kennzeichnete einzelne Massnahmen der Regierung als revolutionär, ja sogar als majestätsbeleidigend — die Radikalen dagegen betrachteten diese Körperschaft als Exekutive der Politik des Königs, als weich und gesichtslos. Dies geschah aber grundlos, weil die von Lajos Batthyány gelenkte Regierung die der Zukunft dienenden Massnahmen ergriffen hatte — zum Beispiel mit der Schaffung der Nationalwache.

Ende August 1848 ist dann die Wende gesetzmässig (da das österreichische Heer in Italien das sardinische Königreich zum Friedenschluss zwang und auch der Prager Aufstand niedergeschlagen wurde): die Wiener Regierung fordert in einem "Memorandum" die Schaffung der gemeinsamen Reichsverwaltung hinsichtlich Verteidigungs- und Finanzwesen sowie Aussere Angelegenheiten (was die Aprilgesetze verletzt), die Befehlshaber des im Lande stationierten Heeres befolgen zu dieser Zeit die Anweisungen der ungarischen Regierung nicht mehr, Jellasics ist sprungbereit, um die Befehle seiner Wiener Herren auszuführen und die Versuche des Parlamentes und der Batthyány-Regierung in Wien haben keine Ergebnisse. Infolge der Krise im September tritt die Regierung zurück, der Palatin flieht und nach einer paarwöchigen — an Wenden reichen — Reihe von Ereignissen gerät für ein halbes Jahr der Selbstverteidigungskampf und die Lenkung des Landes in die Hände der Landesverteidigungskommission (OHB). Die Authorin analysiert ausgezeichnet alle Momente, die in diesen Septembertagen (und später) Wirkung auf die Arbeit der Regierung hatten, doch stellt sie auch dar, was der Kompetenzbereich der OHB war, wie die Anstrengungen zur Regierungsbildung an persönlichen Widersprüchen scheiterten und schliesslich, wie sich eine Art von Arbeitsteilung herausbildete, welche eine Fortsetzung der Lenkungstätigkeit des Landes gestattete. Probleme ergaben sich natürlich zahlreiche, unter anderem deshalb, weil die OHB ständig über den Kopf des Verteidigungsministers hinweg Massnahmen traf, so haben die militärischen Befehlshaber und die Regierungsbeauftragten gleichermassen das Ministerium nicht beachtet und ihre Meldungen oft geradewegs der OHB erstattet.

Das jedoch kann in Kenntnis der Umstände als natürlich betrachtet werden: es gab keine Regierung und sowohl die Landesverteidigung als auch die Förderung der bürgerlichen Umgestaltung erforderten eine entschlossene Führung, und diese Aufgabe musste die von Kossuth gelenkte Kommission versehen. Die Lage wurde durch den Rücktritt von Ferdinand V. am 2. Dezember erschwert, dass nämlich die Macht — unter Verletzung der Pragmatica Sanctio und anderer Gesetze — von Franz Joseph übernommen wurde. In eine noch schwierigere Lage wurden die Landesverwaltungsorgane durch das Vordringen des kaiserlichen Heeres versetzt, dadurch, dass die Regierung ihren Sitz aus der Hauptstadt nach Debrecen verlegte, die oberen Gerichte aber in Pest blieben und nur ein Bruchteil der Beamten am neuen Sitz der Regierung ankam. Viele Ministerien liessen sogar ihre Akten in Pest, wodurch die Arbeit der Ministerien ausserordentlich erschwert wurde.

Diese Ministerien erhielten im Grunde genommen erst nach der Unabhängigkeitserklärung, nach der Dethronisation neue Minister, als das Parlament die Antwort auf die Verfassung von Olmütz erteilte und Kossuth zum Gouverneur des Landes wählte. Es mussten die Kompetenzbereiche von Gouverneur und Regierung (Ministerien) voneinander getrennt werden und auch geregelt werden, wer und wie die bisherigen Rechte des Herrschers ausübt (Billigung der Gesetze, Begnadigung, Ernennung von höheren Offizieren und Geistlichen usw.). Diese Aufgaben konnten kaum in Debrecen erfüllt werden — und als Ergebnis des Frühjahrfeldzuges begann die Rücksiedlung nach Pest, als der Nachweis der "Zurückgebliebenen" beendet war — der ziemlich grosszügig erfolgte — musste das Aktenmaterial erneut zusammengesucht und erneut umgezogen werden, und zwar so, dass die Rückkehr nie mehr erfolgen konnte. Zuerst Szeged, dann Arad, schliesslich Verlassen des Landes, Versteck und sogar Hinrichtung (wie im Falle von László Csány) waren das Ende. Mit der Verschlechterung der militärischen Lage verstärkten sich die Zwiste in der Führung, die finanziellen und wirtschaftlichen Probleme nahmen ständig zu, die den Hintergrund für die Bildung und das Wirken der Szemere-Regierung gaben. E.F. Kiss zeigt auch, wie sich die Arbeit der Regierung in allen drei Etappen gestaltete, wo und wie die einzelnen Regierungsorgane untergebracht waren. Die Authorin analysiert auch schön in einem gesonderten Kapital, wann und von welchen Gesichtspunkten die Regierung bei der Auswahl des Personalbestandes geleitet wurde, wie für die Beamten der alten Dikasterien gesorgt wurde (auch für die, die nicht weiter angestellt wurden): wie sich die Personenanzahl- und Gehaltsverhältnisse gestalteten, wie bei der Festsetzung des Gehaltes eine höhere Bildung (Adam Clark) oder grössere fachliche Erfahrungen gewürdigt wurden, wie man danach bestrebt war, in den Ministerien solche Beamten anzustellen, die den Minderheiten oder den unterschiedlichen Glaubensbekenntnissen angehörten, welche Tagesdiäten die Beamten erhielten und so weiter.

Im Zeitraum von revolutionären Umgestaltungen erfolgt es oft, dass das neue System mit einer grösseren Anzahl von Beamten weiter funktioniert, als das alte, weil die alten Beamten "geschont" werden müssen und es sich die neue Ordnung sich nicht erlauben kann, sich ihnen entgegenzusetzen; gleichzeitig müssen die festen Anhänger auf leitende Posten gesetzt werden — die Durchsetzung dieser Gesichtspunkte also geht mit einer beträchtlichen Erhöhung der Personalzahl des Apparates einher. Nach den Angaben von E. F. Kiss war die Anzahl der Beamten und Angestellten der Ministerien von 1848/49 im wesentlich nicht höher wie die derjenigen, die vor 1848 in den Dikasterien gearbeitet hatten, ja es kam sogar oft vor (hauptsächlich während der Monate in Debrecen), dass die Anzahl kaum ein Drittel bis die Hälfte des Bestandes erreichte, einfach deshalb, weil die kleinen Beamten aus existentiellen Gründen gezwungen waren, in Pest zu bleiben, andererseits deshalb, weil sie Dienst in der Nationalwache oder militärischen Dienst ableisteten.

Nach einer breiten und gründlichen Analyse der Umstände, die die Regierungstätigkeit der gesamten Epoche beeinflussten, stellt der Autor die anderhalbjährige Tätigkeit der einzelnen Ministerien vor, unter Befolgung der gleichen Methode, wie sie bereits oben beschrieben wurde. Als Beispiel sei hier das Innen-

ministerium angeführt: hier wird zuerst untersucht, wie sich Kompetenzbereich, Organisation, Personal und Haushalt im Zeitraum des ersten Ministers (Szemere) gestalteten. Seine Kompetenz erstreckte sich von den Aufgaben in Verbindung mit dem Parlament (Wahlen, Unterbringung der Abgeordneten, Organisation von Beratungen usw.) über die Kontrolle der unterschiedlichen Selbstverwaltungen hinweg bis zur Vervollkommnung des Landes (Wiederanschluss von Siebenbürgen und dem Partium usw.); von der Organisation der politischen und der Kriminalpolizei bis zur Aufsicht über Theater und Druckereien. Der Minister wurde bei seiner Tätigkeit von zwei Staatssekretären unterstützt, eine bedeutende Rolle wartete auf die "Landesabteilung", daneben auch auf die "Verwaltungs-" und die "Polizeiabteilung" bzw. deren Beamte. An der Verwaltungsabteilung war auch eine aus 8 Mitgliedern bestehende Übersetzergruppe tätig (und die Atmosphäre der Zeit wird ausgezeichnet dadurch charakterisiert, dass sich um die 8 Übersetzerstellen 110 Personen bewarben, darunter 37 Rechtsanwälte und 11 Lehrer). Wegen der Personalsorgen funktionierten im Ministerium anstelle der klassischen drei Hilfsämter nur zwei, die Registratur und Ausgabe wurde zusammengezogen, doch im wesentlichen bestand die gleiche Lage auch bei den anderen Ministerien. Das Innenministerium verfügte auch über eine Finanzverwaltung, welche in erster Linie — neben der Behandlung der verschiedenen Fonds — die unterschiedenen Rechenschaftslegungen hätte kontrollieren müssen. Ebenfalls diesem Ministerium untergeordnet funktionierte das Landesarchiv und das Statistische Amt. Die Arbeit von ersterem erweiterte sich wesentlich, weil es nicht nur das Archivmaterial der Landesdikasterien übernahm, sondern ab 20. August auch hein 2000 Zentner ausmachendes Aktenmaterial der Wiener Hofkanzlei, damit dann nach Niederwerfung des Freiheitskampfes diese Akten erneut nach Wien "zurückkehren" konnten. Hauptaufgabe des Statistischen Amtes war, was von Szemere folgendermassen formuliert wurde: es soll uns mit uns bekannt machen. Hierzu gehörte auch das offizielle Blatt, der Anzeiger.

Diese Organisation änderte sich natürlich nach Schaffung der OHB: die Polizeiangelegenheiten gerieten ausserhalb der Kompetenz des Ministeriums unter unmittelbare Lenkung der Kommission, und in Debrecen war die Anzahl der Beamten so klein, dass es praktisch keine Abteilungen und Hilfsämter gab, einige Angestellte des Ministeriums beschäftigen sich mit all den Angelegenheiten, deren Durchführung unaufschiebbar geworden war. Ab April 1849 kam dann die Polizeiabteilung wieder zum Ministerium zurück, es wurde auch ein lenkendes Organ der Gesundheitspolizei aufgestellt, doch als die Nachweise abgeschlossen waren und die Ernennungen erfolgten, kam es wieder zu einem Umzug. (Die Veränderungen des Kompetenzbereiches, der Organisation und des Personalbestandes des Innenministeriums werden von E. F. Kiss auf insgesamt 50 Seiten analysiert.)

Mit ähnlicher Sorgfalt und Gründlichkeit werden auch die übrigen Ministerien vorgestellt: aus den Zeilen lernt der Leser (ganz gleich, welche fachliche Bildung er hinter sich hat oder was das Ziel beim Lesen des Werkes war) die zeitgenössischen Probleme kennen, unter dem Druck welcher Realitäten sich die Kompetenzbereiche oder die Elemente der Organisation verändert haben, doch er kann auch viel besser als bisher den heldenhaften

Kampf einer grossen Generation einschätzen, wie opferbereit das Heer von abertausend Beamten der Ministerien von 1848/49 dem Aufbau eines neuen Ungarn dienten. Die Arbeit von E. F. Kiss ist gleichzeitig ein Etalon dafür, wie man aus tausendfachem Archivmaterial, Büchern und Angaben von Studien ein genaues Bild der Realität der Vergangenheit herstellen kann, was auch viele Lehren für das Heute beinhaltet. Mit Freude würden die Leser ähnliche Werke über den Ausbau der Verwaltung nach 1867 oder nach 1944 zur Hand nehmen.

L. Hajdú

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VARIA

SWISS-HUNGARIAN JURISTS' CONFERENCE

1. The 2nd meeting of the representatives of Swiss and Hungarian jurisprudence took place between October 31 and November 4, 1988 in Lausanne. On behalf of the Swiss partners the Swiss Institute of Comparative Law took charge of the organisational tasks but, as a matter of course, — in addition to the representatives of the Institute — professors of several Swiss universities joined in the activity of the jurists' conference.

As members of the Hungarian delegation, teachers and research workers of the Institute of Political and Legal Sciences of the Hungarian Academy of Sciences and of the Eötvös Lóránd University represented Hungarian jurisprudence, namely F. Mádl, A. Harmathy, L. Vékás, E. Lontai, Z. Péteri, T. Sárközy, T. Sándor and G. Török.

Following the traditions of the 1st Swiss-Hungarian jurists' conference, the subjects on the agenda of the meeting fell into the domain of the civil-law sciences in a broader sense, more particularly into the domain of private international law, but general questions of the comparison of law were also discussed.

2. The conceptual-theoretical questions relating to the comparison of laws of states of different social systems were discussed on the basis of two reports.

Z.Péteri indicated in his report, that the comparative method has been usual in the field of the law from the oldest times, whereas the theoretical questions relating to its application came to the front of the attention of the research workers relatively late. The previous comparative analyses assumed the homogeneity of the compared legal systems, they regarded practically the laws of the well-developed capitalist countries as a model, and as a theoretical basis one may consider the efforts for the unification of law followed by great expectations at the turn of the century. The conceptual problems of comparability were brought up with the appearance of the socialist type of law. The initial attitudes — being negative on both sides — changed later considerably. The most distinguished representatives of the western comparative science were more and more inclined to recognize the new character of the socialist law, whereas the legal scientists of the socialist countries joined more intensively in the world movement of comparison of law, from the sixties on. Further, the report analyzed the question of "tertium comparationis". Refusing the superficiality of the normative comparison, the speaker attempted to define the essential features, serving for the basis of the comparison, as follows: the general legal principles characteristic for the given legal system, the fundamental principles of economy, politics and ideology definitive for the law. It follows, that

for the concept of socialist law also the constitutional law — containing these principles — is essential in respect of the comparability, which means also the modification of the traditional range of interest of droit comparé.

H.von Senger illustrated his thesis by the introduction of the development of Chinese law; in his opinion the different ideologies, religious, moral and other traditions may have a decisive part in the estimation of a legal system; therefore, their taking into consideration is indispensable for the jurists of comparative law. At the same time, the speaker called the attention to the difficulties of the related work, to the difficult accessibility of sources. as well as to the importance of knowledges acquired on the site.

The exchange of views following the reports put forth especially the common and diverse features of socialist legal systems. The speakers raised questions primarily in connection with the various models of the socialist development, and pointed out the ideological restriction of the socialist law, as well as the modification taking place in our days, with the differentiation of the various socialist legal systems.

3. The next subject of the meeting was the Vienna Convention on the international sale of goods. The Hungarian lecture was delivered by L.Vékás university professor (Budapest), the Swiss one by W.A. Stoffel, university professor (Fribourg).

In his lecture, L.Vékás started from the fact that the Convention came into force by January 1, 1988 for 11 countries; the number of the participating countries went beyond the ranges of force of the 1964 conventions. It is especially noteworthy that there are among the member countries of the Vienna Convention ones with significant foreign trade, such as the United States of America and the People's Republic of China; and countries of the European Economic Community (France, Italy) and member countries of CMEA (Hungary) are also represented. On January 1, 1989 the membership of further countries will become effective, among them such significant foreign trade partners of Switzerland, as Sweden and Austria.

The short period, which elapsed since the coming into force of the Convention does not render possible, of course, to give an account of the practical experiences of the application. Therefore, the lecture dealt with the conditions of effectiveness of the Vienna Convention, taking especially into consideration the possibilities, on the strength of which the application of the Convention might take place before the fori of such states which — as e.g. Switzerland — were not yet participants of the international agreement for sale. The Vienna Convention namely — in addition to its autonomous possibility of application (without the intervention of the conflicts law) — may also be applied by the means of the rules of private international law (Art. 1, para /1/ b).

With the determination of the territorial and personal conditions of the application the trouble is just the fact that not all countries are ready to open up this way of the conflicts of law. Thus, from among the countries having ratified the Convention so far and having adhered thereto, respectively, the USA and China excluded the private international law applicability of the Vienna Convention, making use of the

possibility of reservation, as regulated in Article 95 of the Convention. L. Vékás demonstrated in his lecture by means of the grouping of model-like cases, how the above mentioned reservation in fact complicated the practical success of the conditions of application of the Convention. In his opinion however, the reservation has to be interpreted so that it could be applied – corresponding to the requirements for the international harmony of decisions – uniformly before the fori of states declaring the reservation and of those not availing themselves thereof.

The lecture of professor Stoffel laid the stress on the question which effect of the unification of law was to be expected from the Vienna Convention. Analysing this subject, he compared the principles and the main institutions of the Vienna Convention and the Hague Sales Laws, then, he followed up the most important lessons of the substantive-law solutions of the Vienna Convention by the means of presumed examples. In his analysis he compared the institutions of the Convention with the provisions of the Swiss Contract Law. He treated in details the legal problems of the international sales contracts concluded by the application of general conditions of contract. He touched in his lecture also upon the fundamental institutions not settled – admittedly, moreover, deliberately – by the Vienna Convention. Thus, he dealt with the judgement of the validity of the contract of sale, with special respect to cases where the invalidity – due to mistake or misrepresentation – might by interpreted as a breach of contract – primarily of deficient performance. Professor Stoffel touched finally upon the problem of limitation, intended to be regulated by the modified New York Convention.

4. Professor P. Volken (Friboug) and F. Mádl (Budapest) analysed the Swiss and the Hungarian ratification, respectively, of the Conventions concluded in the framework of the Hague Conference, as well, as the Swiss and the Hungarian practice, respectively, of the valid conventions.

Both reports emphasized the importance of the Hague Conventions both in respect of the practice of international co-operation, of their effect on the national legislation, as well as of the science of private international law. In this respect the Hague Conference is the most significant international laboratory of the world.

In his report, professor Volken outlined the intensive participation of Switzerland in this co-operation for the unification of law (Switzerland is participant in 12 conventions) and analysed the practice of Switzerland with regard to the four conventions, the members of which are both Switzerland and Hungary (civil procedure, affiliation order, taking along of children, recognition of official documents), in respect of which accordingly the common law is effective.

F.Mádl introduced the significant national practice of the above mentioned four conventions, being subjects of Hungarian ratification, among others, a Hungarian judicial decision, made on the taking along of children, which was positively accepted in the partner countries, documentating that Hungary met her international obligations (under the effective Convention on the taking along of children, the Metropolitan Court

of Budapest ruled that the child of a French-Hungarian couple who was brought to Hungary by the Hungarian mother without the knowledge of the husband during the continuance of the marriage should be given back to France).

Further on, the report outlined the highly incidental motives of the low Hungarian level of ratifications and the conceptions, according to which a considerable acceleration of the Hungarian accession process may be expected.

5. On the next subject matter of the meeting, arbitration, A.Harmathy and E. Bucher delivered lectures.

A.Harmathy summarized in his lecture the historical development of arbitration in Hungary. He pointed out, that the interpretation of the essence of arbitration was discussed in the Hungarian legal literature. Although, in the 19th century, the interpretation of the basis of arbitration as a civil-law agreement did appear by Austrian intervention, in the practice, the attitude of the rules of procedure has always been dominant.

The lecture outlined, how the position of arbitration courts developed after the second world war, as a result of the socializations and of the introduction of the planned economy. It described the effect of changes, set in after the introduction of the reform of economic management on the position of arbitration courts.

The lecture dealt with the question, when an arbitration procedure was possible under the currently effective legal rules, treating separately the rules concerning ad hoc arbitration courts and those of the institutional, permanent arbitration courts. The speaker emphasized the role of the arbitration courts of the chamber of commerces of socialist countries in the trade of CMEA countries, as well as the arbitration in the non-socialist relation. Finally, the lecture expounded some practical cases from the practice of the Hungarian arbitration.

E. Bucher pointed out in his lecture, that the Hungarian and Swiss regulation and practice had several analogies. He mentioned, that the Swiss conception reflected also the attitude of the rules of procedure. The speaker treated in details the rules on the arbitration courts of the Swiss law on the private international law and compared them with the previous regulation. The lecture elucidated the emerged problems by introducing several practical cases.

6. In addition to the deliberation of questions on the agenda in the strict sense, the Hungarian delegation had the opportunity to investigate the activity of the hospitable Institute, first of all its excellent library, as well as to have a talk with the representatives of several Swiss universities on the possibility of the intensification of co-operation.

We cannot but agree with professor Overbeck, who had a lion's share in the organization of the meeting and in whose opinion the hitherto achieved results of the bilateral co-operation entitle us to be hopeful of the turning into "tradition" of the meetings.

E. Lontai

Acta Juridica Academiae Scientiarum Hungaricae,
31(3-4) pp. 403-422 (1989)

INTERNATIONALIA

Kampf, U. - Uppendahl, H.:
EIN DEUTSCHER OMBUDSMAN
Leske Verlag und Budrich GmbH,
Opladen, 1986. 267 p.

The ombudsman (according to the German terminology: Bürgerauftragte), functioning in the territory of Rhein-Pfalz could look back to ten successful years of service in May, 1984. The interest for the institution, having been active till then only in this territory of the GFR, in order to protect the rights and the lawful interests of citizens, was arisen in the western societies actually only in the early sixties and prospered first of all in the countries where a powerful system of administrative courts existed.

To the world-wide propagation of the institution, having been established in Sweden in 1809, the following factors have contributed:

— The increasing participation of the state in all fields of the social care, the widening of the administrative apparatus pertinent to it, as well, as the extension of the range of conflicts between citizens and the state;

— the increasing helplessness and anxiety of the citizen in the jungle of the prescriptions of public administration;

— extensive foundations set by legal norms to activities of the state and the public administration;

— the demand to strenghten control rights from the side of the people's representation, due to the particular development of parliamentarism;

— the intention to develop the self-renewing abilities of the parliamentary decision-making process and the parliamentary government.

It is doubtless that the ombudsman provides for the continuity of the control, since neither his activities nor his function are bound to the legislative periods. Moreover, the ombudsman can disclose the structural weaknesses and imbalances of administrative activities, the deficiencies of the information, provided by it. For this purpose specially educated an qualified co-workers are required.

The book deals also with the West European and North American experiences, but the famous authors of the volume, among whom e. g. the Federal Chancellor Helmuth Kohl and other known German statesmen are to be found, discuss primarily the German observations.

The activities of the spokesmen for citizens in the territory Rhein-Pfalz has given rise to interest also beyond the borders of the GFR. Home and foreign specialists of theory and practice investigated the socio-psychological elements and the economic-financial background of the activity of ombudsman. They were especially eager to know, which social strate and

groups have made use primarily of the assistance of the ombudsman, because this fact could obviously point to the anomalies to be remedied of the society and within it of the state administration both in respect of the territory and of the institution.

The tables, frequently enriching the volume, contain informative data on the remedies the citizens had recourse to, the fields, where such demands appeared, the efficiency, achieved by the remedies, the institutions, which were able and willing to co-operate, and the institutions, having hindered successfully the activities of the ombudsman in advocating civil rights and interests, respectively.

The voluem gives a comprehensive picture of the personified method of the control on state administration, of the consistency of the controlling activities, and, occasionally, of their lack, respectively.

The description of the activity of the ombudsman functioning at the military forces, the organizational and functional picture of the military ombudsman, as well, as the endeavour that the Bundestag should continuously have information on the legal protection of the members of the military forces, are especially remarkable.

The volume deals also with the foreign (Austrian, Dutch, etc.) experiences. In Austria, the institution of the Volksanwaltschaft has existed since 1971, the rules of which were summarized in 1981 by the amendment of the Federal Constitution. In fact, the definite description of the activities and the working order of the Austrian ombudsman was formulated on July 1, 1977 and its relation to other sources of legal remedies and information, to the responsible elements has recently been regulated. The Dutch ombudsman is rather a "social administrator of justice" than an investigating judge, his activity aims, however, more or less similarly at the stopping of the anomalies of state administration, at the rehabilitation of civil rights.

The book deals also with the ombudsman systems of the United States and of the United Kingdom. Here, the special ombudsman system of the specialized social safeguarding of interests is worth emphasizing, namely that in some American federal states there are specialized ombudsmen, functioning in the penal institutes and hospitals.

The interest of the socialist countries shows itself more and more intensively in the theme of the ombudsman and this book helps to clarify to a considerable extent the nature and the particularities of the functioning of this essential institution of the social democracy. The volume is completed by the authors "who is who".

M. Udvaros

Bydlinsky, F.:
JURISTISCHE METHODENLEHRE UND RECHTSBEGRIFF. Springer, Wien-New York, 1982. XV. + 667 p.
FUNDAMENTALE RECHTSGRUNDSATZE, ZUR RECHTSETISCHEN VERFASSUNG DER SOCIETAT
Springer, Wien-New York, 1988. XVI. + 327 p.

Today, when we try to reform our legal system, at the same time we try to enforce the rules in our everyday life; when we are confused by that the absolute values of the law are mixed up with the relative values of the political spheres; when we must nearly discover again, prove but first of all enforce the dogmatical system of the law and we have to prove its being bearer of values, too — in our days these two books of professor Bydlinsky can be especially interesting for us. The second book has just been published, the first one may be known in expert circles of legal theory. In my opinion the two volumes read together make a whole.

In the preface of the first book the author says that his book is written for the lawyers working in the practice, in the legislation or jurisdiction. First of all he counts on the young, even the students — as he says they don't need to learn his work like a textbook, it is enough to read it attentively. Perhaps the book is too long, says Bydlinsky, but today, when the society needs law and rules more than ever to avoid chaos, corruption and violence, the lawyers can make a little effort to realize the positive purposes.

In the second book the author tries to prove that the legal order carries certain values and is orientated by them; at the same time it is a value itself. It helps the long-distance social movements against the momentary motions; it supports the unselfishness and not the selfishness — it is an instrument of social humanization. But it can be used contrariously, too, when — for example — the authority creates and uses legal rules to reach and support its own purposes, negliging the eternal legal values. We can prevent this process only if we know the inner principles of the legal system and if the lawyers loving their profession aren't willing to use the law for reaching unjust and unlawful purposes.

Both books can be interesting for every Hungarian lawyer and not only for the legal theoreticians as we all have problems in defining what kind of influence the inner principles of the legal system have on the life of the society; how much we can manipulate them politically; when the law realizes its purposes. The first book explains the concept of law through the legal methodology — according to the author the legal dogmatics is equal with the jurisprudence as it is the phenomenon the lawyers of the practice, the legislators, jurisprudents and administrators use. The task of jurisprudence is to help the lawyers in the everyday practice — the dogmatics mean a method of work, too.

The author analyses of this role can be played by the theory of law (Rechtstheorie) or legal sociology and he says no. It is obvious they have some really valuable points of view but they cannot help the everyday work effectively. From

this aspect the scientifical character of the legal dogmatics may seem dubious, too — but it is a branch of science as well: the researches lead to scientifical results and they can be framed into a theoretical system.

Analysing the three main schools, the (concept-analysing) Begriffsjurisprudenz, the (interest-analysing) Interessen jurisprudenz and the (value-analysing) Wertungsjurisprudenz, we have to develop the legal methodology and approach, accepting the justness and legal safety as eternal values, just to help it to realize its social function.

Then the author describes the anti-dogmatical theories: first the less radical ones, then the more particular ideas — the casuistical approach, the pre-interpretation and the ideas about the political legal sciences.

The second part of the first book is devoted to the methodological approach of the concept of law. First the author analyses the ideas of the positivism and the natural theory of law. Then we can read about the value-bearing creation of concepts — while analysing the importance of the legal values, the security, the justfulness (equality before the law and equity as well), purposefulness and the obeyance to the legal norms. All these values can be interpreted in connection with the interpretation, the different ways of developing the law, the filling of legal gaps, the jurisdiction and the realization of the public order, possibly exclusing all the possible prejudices.

The third chapter is about the methods, where we can read the description of the deduction, induction, casaanalysis and interpretation, through examples of the everyday practice. Then the author tries to mark out the methodological limits of interpretation and explanation of legal norms. In the next unit he describes the ways of developing the law through interpretation; the questions of legal gaps, analogy, deductive and teleological interpretation, the use of the natural norms of law and the possibility of "contra legem" jurisdiction.

In the fourth chapter professor Bydlinsky analyses the methodology of courts, too, together with the presumptions; in the fifth part we can read about the hierarchy of methods while the sixth one analyses the problems created by the legal development. The last part discusses if the different branches of law have their own methods or not.

In the appendix the author surveys the legal methodology de lege ferenda. First of all he analyses the relations between the concept of law and the casual law, then the technical questions of legislation. The legal concepts and principles have an important role in the legislation, too, and the new rules have to be coherent with them. According to the author the most important factor of legislation is the citizen — so the methods must be flexible to be able to follow the needs and avoid both the too rigid and the too liquid ways of regulation.

The author emphasizes the adaptation of a certain hierarchy, the order of importance. Though from the aspect of justfulness it is equal if a legal rule has the form of a statute or a decree or something else, the practice shows that the statutes are the most important legal sources for the public, so the questions of public interest and only these must have

the form of a statute.

Another important principle is that it is disadvantageous for the legal system to create too many legal rules, especially if these problems can be solved by casual decisions of the courts.

In the end professor Bydlinsky asks why it is so important to leave the drafting of norms and the interpretation to the specialists. First he describes the process of "antiabstraction" when the expert, knowing the cases of the everyday practice, tries to abstract the legally relevant elements to create a new rule — and this rule, functioning in the everyday practice, can produce positive results, too. The other way is the comparative concretization when the expert finds the common elements of the different cases. According to the author, these two methods are the most effective ones in the legislation.

On the other hand, the defining of the political guidelines doesn't belong to the legal profession. The lawyers have to help the law to realize its special purposes only. Those who want the lawyers to be active politicians de lege ferenda, don't understand the essence of being a lawyer.

The opening phrase of the second book is that we need a consistent legal-moral philosophy instead of masses of legal norms; we should teach these principles to the citizens, too. The first part of the book is about if the ethical principles are needed in the law or not. The author explains this need by analysing the concept of law, proving that the present points of view don't help us in the realm of private law, but we miss certain principles in the constitutional law, too, and there is a gap in analysing the different types of law and in the legal politics as well. It is impossible to create a normatic basement without ethical principles.

The second part analyses the methods of defining the legal ethical principles. The author writes about the possible contradiction and tension between different principles. The part is finished with the comparison of law, morals and legal ethics.

The third part is about the reasons and bases of the principles. First of all the author chooses the positivist method. Then he applies other complementary methods of reason and analyses the heterogeneous features. The principles can be divided into positive legal and natural legal ones, or we can divide them from the point of view of the state and the different human rights. The freedom and justice are fundamental in every group. The principle of justfulness may contradict the right of property; this leads us to the problem of differences in the law: we must be careful not to become too particular while accepting the existence of differences. In the end the author analyses the principles of practicability, usefulness and effectiveness.

The last chapter sums up the ethical principles of law — according to the author, a legal order based on these principles is still a dream; a program for the future lawyers. And this statement means a lesson for us, too.

J. Zlinszky

PRAXISKOMMENTAR ZUM ALLGEMEINEN BÜRGERLICHEN GESETZBUCH SAMT NEBENGESETZEN
(hrg. Schwimann, M., Verlag Orac, Wien)
Band 2. Sachenrecht, 1987. 360 p.
Band 5. Schadenersatz, Gemeinsame Bestimmungen, 1987. 571 p.

The intensification of the international economic relations results, as a natural consequence, in the increasing interest in the laws of other countries. The investigation of foreign legal solutions on theoretical and practical bases became an important phase of the legal activity. To this, an especially significant support is rendered by the works, which want to give a general and detailed survey of a legal field, introducing both the tendencies of the legal practice and the most important attitudes of the legal literature. The Commentary on the Austrian Civil Code, edited by professor M. Schwimann, belongs to this range, to the works reckoning with interest beyond the national frontiers. Completing those, said above, it should be noted, that the interest in the work is even bigger in Middle Europe, in addition to the demands for the existing and the developing economic relations, as the Allgemeines Bürgerliches Gesetzbuch has an influence on the development of the law of several countries in the area and therefore, the knowledge about the present of Austrian civil law is not indifferent in these countries either from the point of view of the analysis of the present situation.

The editor of the Commentary, consisting of five volumes, built primarily upon the assistance of the professors of Salzburg university and of practising lawyers, but he also called to help the authorities of other legal centres of Austria (Vienna, Graz, Innsbruck, Linz), as it may be stated from the available list of authors, indicated in the two volumes to be briefly reviewed.

The second volume of the Commentary treats Articles 285 to 530 of the Civil Code. Its author is judge Dr. Herbert Pimmer from Vienna. The treatment follows the method according to which after the description of the text of the Code, first the bibliographical data of the most important respective literary material are enumerated, then the single concepts belonging to the range of the discussed rules, and their explications, respectively, follow according to the traditional commenting method, provided with independent numeration. The Commentary refers everywhere abundantly to the judicial decisons to be taken into consideration.

The author of the volume devotes mostly identical, at least proportional size to the interpretation of the individual rules. This does not mean, however, that the rules especially important in the practice and on which especially many questions are raised would not be treated in a more detailed manner. For the foreign reader, it is in itself remarkable which are the rules, the legal institutions, in respect of which the author feels necessary a considerably more abundant elucidation than the average. A detailed treatment is to be found, where claims resulting from the infringement of law are dealt

with (such as protection of possession, ownership claim, claims existing on the basis of easement), where the probability of the infringement of law is high (neighbouring rights), where a question highly significant with a view to the trade is treated (e.g. transfer of ownership, right of pledge ensuring the claim, the law of mortgage), with the easements on living quarters to be explained by the modern living conditions, as well as with the expropriations to be enforced to the interest of the public as against the real rights.

The fifth volume of the Commentary gives the annotation of Articles 1293 to 1502. The author of the part dealing with the rules on damages is Dr. Friedrich Harrer, whereas the other rules are commented in succession by the mentioned author, professor Dr. Heinrich Honsell and Dr. Peter Mader. The method of treatment is the same, as in the case of the second volume. The character of the treated material requires a departure from the second volume in its sizes. The rules on damages require a detailed elucidation by virtue of their nature in the majority of the cases, and the established judicial practice is also abundant. Consequently, not only the size of the volume is larger, than that of the second volume, but within the fifth volume the questions of damages appear with great emphasis (the rules on damages make out only about a quarter of the treated rules, but within the volume, however, they take up about 50 per cent). It is also worth mentioning, that in the range of damages the author renders easier to survey the treatment by stressing some groups of cases.

With this volume, too, the detailed elucidation of the questions, having been deemed necessary by the authors deserves attention (taking into consideration the proportions within the volume). It is more difficult to find the main points in the material on damages since the detailed explication is all the while characteristic. Notwithstanding, it seems to us, that the author pays especially a great attention to the general rules of the obligation to damages, to the common injury of several people, to the contribution of the injured person, to the responsibility for other person, to the mode of remuneration for injury suffered, to the personal lesions. From the material of the second part of the volume the unjust enrichment, the compensation and the lapse seem to be more stressed.

On the whole, both volumes of the Commentary are interesting, useful and illuminating even for a foreign reader.

A. Harmathy

Bothe, M.:
VERWALTUNGSORGANISATION IM UMWELTSCHUTZ
Institut für Kommunalwissenschaften und Umweltschutz,
Linz, 1986. Volume 78, 80 p.

The protection of environment as a task of the state is one of the most important challanges of the political system of our days – may be read in the introduction of the book. Its practical realization comes up, however, still against consider-

able difficulties. Most of the industrialized states made arrangements for fighting down the difficulties, nevertheless it was not possible to get rid of the impression that more or less we were still in the phase of experiment. The organizational forms are looked for which could provide for the greatest efficiency both as for the content and in due time even in Austria.

Just therefore, the outlook beyond the frontiers is of great significance because the experience and the mistakes of other countries may serve as lessons. Thus, the comparison of law has a considerable legal-political significance in this field. This book serves also for this purpose. It takes the organization for the protection of environment of such countries under examination which are federal states i.e. have an organizational structure, like that of Austria. Upon this consideration, the book introduces the legislation on the protection of environment of the German Federal Republic, of Switzerland and of the United States of America.

The protection of the environment is a comprehensive, complex professional task — may be read in the introduction of the book. The organizational collection of means of this task is bound to historically different organizational fields. Five kinds of legal-rule antecedents of the law on the protection of environment are identifiable, they are the neighbouring law, the industrial law, i.e. the trade regulations from the early period of the industrialization, the legal rules on the public health frequently in the framework of the communal law, the water laws and the law on the care for the maintenance of natural sources. From these roots the five main fields of the law on environment became crystallized, forming frequently independent regulational complex. Such are: the law on the protection of immission, the water law, the law on wastage, the law on dangerous materials and the law on the protection of nature. In respect of the environment the measures for planning of area, for country planning are also relevant.

It follows from the foregoing that the protection of environment is a task of cross-sectional character. It is significant in several fields of the state activity, especially in the development of the state infra-structure (e.g. construction of highways), in the regulation of military activity (e.g. compensation for natural damages caused during military exercises, protection against the noise of aeroplanes), in the energy policy, in the field of the foreign trade (product standards for the protection of environment). The state task of the protection of environment, as a complex professional task and as a task of cross-sectional character can be separated from each other sometimes difficultly, since it may be often hardly decided whether in the given case the primary aim of a measure is the formation of the environment or even a measure relating to another field is faced, in connection with which the requirements of the environment shall be also taken into consideration. This circumstance has regulation-technical and administration-organizational consequences. The book concentrates the attention to these latter aspects.

Further on, the author states that on ministry level the historically developed pillar of the law on the protection of

environment is attended sometimes not by one department. If the cross-sectional character of the protection of environment is taken into consideration, it is obvious that the competences relevant to the environment could not be entrusted often to one ministry. On the other hand, however, the ecological relations require a common attitude. Thus, the author mentions by way of example that the two main causes of the damages done to the forest are the flue gases of large-scale works, especially of power-producing works and the exhaust gases of the motor vehicles, from which fact the following ministerial competences result: the power-producing works fall within the competence of the ministry of economy, the protection of immission within that of the ministry of interior or of the "ministry of environment", the motor vehicles within the competence of the ministry of transport, whereas the damaged vegetation within the competence of the ministry of agriculture. The uniform management of the problem is indispensable either by the concentration of spheres of activity or by the establishment of a mechanism of decision over the ministries.

The horizontal division of spheres of activity is continued partly with the administrative organs of lower grade, too. Here, however, the question of the concentration of authorization to decision is brought up in a somewhat different way. The concentration is attained here partly in such a manner that the tasks of different ministries are entrusted to some organs having territorial and not functional competence, being the administrative authorities of general line. For the performance of definite tasks, however, authorities of special line are functioning, the existence of which can be traced back also to the historical development. Thus, in the GFR the authorities in control of industry and the offices for the management of water-supplies are of great significance in respect of the protection of environment. The modern public administration has to perform frequently technical professional tasks, for the management of which only offices having specially qualified experts are able.

After this introduction, the author treats in detail the administrative structure of the protection of environment in the GFR and then, in a briefer way, the organizational structures of Switzerland and of the United States of America.

In respect of the GFR, first of all the federal level is introduced (ministerial competences, the co-ordination of tasks, advisory councils, Federal Environmental Protection Office), then, the organization for the protection of environment of the territories is treated in the same proportioning. In relation of Switzerland, the author introduces first the main features of the organization of the federal administration, then he comes to the description of the tasks of the Federal Office for the Protection of Environment. In respect of the United States of America, he gives special attention to the organizational structure and to the tasks of the Environmental Protection Agency and of the Council on Environmental Quality. Finally, he compares the solutions for the protection of environment of the three states and deliberates the possibilities of the further development.

With regard to some topical tasks of the protection of

environment, the author renders a valuable service with the introduction and analysis of the various organizational solutions.

L. Trócsányi

Lacey, N.:
STATE PUNISHMENT. POLITICAL PRINCIPLES AND COMMUNITY VALUES. Routledge.
London-New York, 1988. 222 p.

Ms. Nicola Lacey of New College, Oxford undertakes to offer a justification of state punishment which is consistent with a political philosophy. She is interested in those circumstances and qualifications which justify state control over individuals and groups, if and when that control is called sanction or punishment. A further major problem she is interested in concerns the amount of justified state coercion.

Of course, everyday and scholarly uses of the word punishment are different enough to make the whole problem extremely complicated. As Lacey correctly points it: "The widespread and well known disagreement as to whether punishment of the innocent is a moral or merely a logical impropriety should be a sufficient pointer to the limitations of usage as a guide to definition". (p.6.) Lacey's final formulation of the definition of punishment is the following: "legal punishment is the principled infliction by a state-constituted institution of what are generally regarded as unpleasant consequences upon individuals or groups adjudicated, to have breached the law... as a response to that breach" (p.12.)

Given the enormous difficulties associated with the author's venture one may be tempted to raise the question: why do we need a justification of punishment. Ms. Lacey is one among those who are ready to ask that question. In her answer justification satisfies a moral need. Of course, this not a full answer, as we still don't know whether the use of moral arguments is aimed to produce moral standards which have truth-value, or simply one is offering arguments for human opinions. A lawyer may have a further problem, namely: why is it exactly the state to have the right to punish instead of more directly concerned actors like the victim? The problem takes us to the relations between state and the citizen.

After stating these problems. Ms Lacey reviews traditional justifications. Among backward-looking justifications she lists talio, culpability. forfeiture of rights, unfair advantages and the restoration of a moral equilibrium, and retributive theory. A recurrent problem with these principles is the one the author explains in relation with the retributive tradition which in her opinion "fails to tell us why we should punish any persons, and in what sorts of circumstances". (p.27.)

Most, or at least the best known forward-looking justifications of punishment stem from utilitarian philosophy. Lacey reviews general deterrence, rehabilitation, individual deter-

rence, social protection, grievance-satisfaction and the maintenance of respect for the legal system, reparation and restitution approaches. Unfortunately for utilitarian theory, some of its basic factual assumptions (e.g. deterrence) seem to be wrong. Many variants of that justification are vulnerable to the Kantian criticism as persons are or might be used as the means to an end. Lacey's position is, in that respect, intermediary as she thinks that the integrity of autonomous moral agents cannot be totally preserved in political society. Some actions can be justified sometimes by their generally good effects. But "utilitarian theories are incapable in principle of generating a limitation which most people strongly feel to be necessary in answering the question of who may properly be punished" (p. 37.), nor is it clear why exactly the chosen few are to be punished among so many other potential victims of the justice system. It is obvious that a penal law based on utilitarian principles may, and in fact did, result in extremely oppressive criminal law. Some recent theories may offer more satisfactory answers than the one developed by Bentham, nonetheless current theories of punishment still rely on 19th century utilitarianism. (This seems to be limited to most English speaking countries.)

Lacey seems to be unhappy with mixed theories of punishment, though she expressly highly esteems Professor Hart's combination of utilitarianism with desert.

As promised in the beginning, Lacey's own theory is based on a concept of responsibility rooted in Hume's political philosophy. According to this conception, ascriptions of responsibility are based upon judgments about the character of the agent. Only those acts are relevant in which the habitual character of the agent is expressed. The danger of that approach seems to me to be in its inherent paternalism.

A justification of punishment cannot be elaborated without a more general explanation of law's moral limits. On the other hand, "any justification for the law itself must include a justification of punishment" (p. 79.). Lacey finds herself at no ease with Rawls' rule-utilitarian theory because his argument comes "perilously close" to asserting that legal obligation may dictate the justification of punishment at the individual level by the simple fact of a rule of law haging been broken. The punishment for a simple breach of a rule would amount in a moral sense to the equal defense of the fundamental interests of all citizens. Sanctions may be unavoidable or necessary for a legal system to realise its purposes but it does not follow that all rule-breakings require sanction. Lacey finds that incompatible with her concept of political obligation as well as incompatible with Rawls' own concept. The criticism concerns positive English penal law too.

Following her political philosphy approach, Lacey has to answer one of the eldest and most intricate questions of political organisation: the nature and limits of obedience. The problem is absolutely practical in criminal law if one looks at the many different forms of injustice that can be perpetraded by means of criminal law. If there is no general duty to obey laws one can be justified to disobey. There is no general political obligation (i.e. it cannot be justified) to obey all

laws of an otherwise generally just system (one may be tempted to call a whole system just to be a matter of feeling and nothing more). A just law is, in Lacey's view, one "aimed at protecting evenhandedly some fundamental collective social or personal interests, and would have a reasonable chance of achieving that aim without undue prejudice to the interests of any particular group, leaving room for the exercise of residual autonomy..." (p.126.).

Unjust laws in a just system cannot be separated from the whole system. Lacey offers a catalogue of different types of unjust laws and she considers civil disobedience differently justified for each category. Civil disobedience cannot be left unpunished as the community interest in criminal law is too important. The punishment for disobedience depends ultimately on the consequences of the disobedient act. Disobedience cannot be justified if third parties fall victim of the act or the whole legal system becomes unjust in consequence of that act. One should rely on lawful tactics of opposition which should be present in a just system — per definitionem. My problem concerns the justness of the system.Who is entitled to decide on that? In Lacey's view there is a body capable to take that justified decision. Actually she believes that the traditional solution is the best available: leave the matter to the courts.

Before presenting her own theory, the author summarizes once again the shortcomings and advantages of the punishment theory as elaborated in liberal political philosophy. Liberalism is interested enough in the defence of autonomy, but it is not responsive enough to collective values. It is individualistic and it has a pre-social concept of man's rights. Punishment inevitably conflicts with these pre-social rights and thereforeit is nearly impossible to justify state punishment. Another criticism of Ms. Lacey concerns the rational discourse nature of criminal justice. Her criticism is based on "what might be called the argument from real life" (p. 165.). Her criticism might be quite pertinent but to this point she never raised the "real life" argument as an acceptable moral point.

Lacey's own justification is aimed to reestablish the primacy of the social. At the level of words and expressions used one cannot get rid of a deja vue feeling: most of that has been told in the criminal law debates in the twenties in the Soviet Union. Now, it is well known what where the consequences of that approach. It would be unfair to assume that Ms. Lacey has anything similar in mind but words are too dangerous, as usual. Lacey believes that a justification of punishment should depart from a community where law safeguards that all members of that community develop freely their capatities. In order to protect that development criminal law should be applied. "...(Punishment in a community would be restricted to those who had been judged to have actually perpetrated criminal acts... Any other solution would unjustifiably violate important aspects of the very values which the general functions seek to realise..." (p. 188.).

Lacey hopes to have satisfied an until unsatisfied requirement: the purposes of punishment are controlled by the same principles as those of the limits to punish. I think that she is correct in that respect, but at this point we have to come

back to her "real life" argument. History in this part of the world proves that theories like the one advocated by Lacey turn to be fatal if the ideal community does not function. It would require another interesting book, as the present one, to state whether a theory of justification is justified if it uses a hypothesis which is so far away from reality in some parts of the world. But, of course, Ms. Lacey's interest was in English theories of punishment and in that context her contribution seems to be highly valuable.

A. Sajó

David, V. - Vasilenko, V.:
МЕХАНИЗМ ОХРАНЫ МЕЖДУНАРОДНОГО ПРАВОПОРЯДКА.
/THE MECHANISM FOR THE PROTECTION OF THE INTERNATIONAL LEGAL ORDER/
J.E. PURKYNE V BRNO. 1986. 257 p.

To the relevance for legal research of the topic of State responsibility for the breach of international obligations has been added a very useful edition. The authors of the book who are well-known figures of the related topic in their countries (David, V. in Czechoslovakia and Vasilenko, V. in the USSR) have jointly prepared a highly professional and clear-cut manual on this really complicated and rather disputed institution of modern international law.

The book contains five chapters each of which is divided into several sub-chapters. The general impression of the study under review is very positive.

Chapter I examines the development of the institution of State responsibility in historical perspective. It is basically the only chapter of the study in which the reader can find a lot of ideologically-motivated, to some extent non-professional arguments (such as the familiar division of international legal development into pre-socialist and post-socialist period, the castigation of imperialism and the hail of socialist revolution in the formation of a new international legal order). But such generalities are not characteristic to the other chapters.

Chapter II deals with the principles applied within the institution of State responsibility, namely: the required grounds for submitting a claim involving the responsibility of the State, indivisibility of State responsibility, several responsibility of the State and its nationals and legal persons, proportionality (responsibility corresponding to the nature, form and gravity of the offense), the realization of State responsibility within the procedural framework established by international law. This chapter of the study is one of the most valuable since it offers stimulating thoughts for further discussion on a wide variety of problems. Here we mention just a few of them: the legal and factual grounds of imputing an

unlawful act to the State, the notion and types of legal sourrees on the basis of which the imputation may take place, the requirement of fault, essential elements of an unlawful act, the concept of damage, forms of unlawful conduct, unfriendly acts and the abuse of rights, unauthorized and ultra vires acts of State officials.

Chapter III is devoted to the question of definition of circumstances which release the State from responsibility. The authors point out to the difficulties related to the problem of specification and classification of these circumstances, examine in detail the relevant doctrinal suggestions and the provisions of the existing international legal instruments. They give their own classification of these circumstances. According to them, there are two main groups of these circumstances. The first one they designate as "circumstances precluding State responsibility" which includes a) state of unavoidableness, b) state of extreme necessity, c) unavoidable distress, d) unforseen events, e) ad facto consent, f) irrefutable fault of the injured State. To the second group of circumstances, which is characterized by the authors as " circumstances precluding the realization of State responsibility", belong the mutually faulty conduct of both of the States involved and the post facto consent.

Chapter IV is entitled as "régimes of State responsibility" and provides a very well-documented review of the extent, types and forms of State responsibility. One can find in it a detailed account on the problem of delimitation of international crimes and international delicts, on the difference in consequences of a breach of international obligation which relates to particular interests and obligation essential for the protection of fundamental interests of the modern international community. The authors here examine the practical questions of the notion of damage; specify the distinction between direct and indirect, material and non-material damages, the method of calculating positive actual damages and profits lost, the procedural aspects of presenting claims (limitation of claim) by the State which suffered material loss due to the unlawful act. They argue that sometimes it is necessary to take into account mitigating and aggravating circumstances, and in principle do not rule out the possibility of punitive damages. Different forms of reparation and satisfaction are also being considered by the authors, and they insist that there is a substantial difference between the forms of responsibility and forms of sanctions.

In chapter V the authors analyze the procedural means of effectuating State responsibility. They first of all clarify the meaning and role of procedural norms in international law. According to them there are two groups of procedural means used in the sphere of international law-making and law-application. The first group consists of so-called "conciliatory procedural means" such as negotiations, consultations, good offices, mediation, investigative commissions, international courts. The second group of procedural means is being characterized by them as "compulsory procedural means" which include reprisals, retortions,suspension of rights and priviligies stemming from membership in international organisations, refus-

al of admission and expulsion from membership of an international organization, collective application of military measures.

On the whole, the authors have done an excellent job, the main chapters are more than mere doctrinal gloss. Their discussion is lucid and the footnoting is ample. When appropriate, they depict also the historical antecedents of the relevent rules. The study should be of great interest to everybody dealing with this particular topic.

V.Mavi

Müller, M. - Schönfeld, G.:
WISSENSCHAFT UND TECHNIK.
ZUSAMMENARBEIT IM RGW, RECHTLICHE REGELUNG.
Staatsverlag der DDR, Berlin, 1987. 170 p.

The emphasis of technical development, in more broader sense, of the innovative approach is one of the common features of the reform efforts, perceptible in the socialist countries. It goes without saying that this aspect has a stressed importance also in the further development and the modernization of the integrational community of the socialist countries. In the CMEA system of institutions and norms there were efforts, not negligible, to have been taken, tending towards the enrichment to the perfection of the legal means of the scientific-technical co-oparation, and novel conceptions, endeavours have become also known. The further development of the regulation is hardly conceivable without firm theoretical foundations.It is therefore not a matter of a mere chance, that in the jurisprudence of socialist countries several publications appear, which analyse this subject matter, moreover, in the research co-operation of the institute of legal sciences of the Academies the subjects, relating thereto, take a distinguished position. The legal literature of the GDR is especially abundant in publications dealing with such questions and the reviewed work of the well-known authors also belong to this serial.

The first chapter of the book provides a general survey of the role of the scientific-technical co-operation in the socialist economic integration. The authors point to the importance of these relations, as they comprehend the entire innovation chain and make up the most dynamic, determinant field of the co-operation. The authors briefly survey the history of the development of the scientific-technical co-operation in the framework of CMEA, introducing and evaluating some of the most important steps, e.g. the declaration of the so-called Sophia principle of 1949, the Complex Programme of 1971, the scientific-technical Complex Programme of 1985 (including the resolutions of the sessions Nos. 118 and 119 of the CMEA Executive Committee, connected therewith).At the same time, they elucidate the formation of the organizational bases of the co-operation, the activity of the Scientific-Technical Permanent Committee and of other CMEA organs.

The second — and the most comprehensive (pp. 28-125) — chapter undertakes the introduction and the evaluative analysis of the existing legal and organizational means of scientific--technical development. In this connection, the authors offer a general characterization of the system of the legal regulation, laying emphasis on the specifica of this field, such as the immaterial nature of the results achieved in the course of the co-operation, the particularities of the creation of values. They introduce and classify the rules of the agreements in this field, elucidating their legal character (with interesting comments on the qualification of their normative and recommending characters respectively. In their opinion the present regulation is typically of an orienting character and therefore not properly efficient, the desirable solution would be an internationally unified regulation. Whereas the reviewer does not fully agree with this attitude, he does so with the view, that the solution of economically unsolved problems must obviously not be expected from legal means (p.39). The authors survey the institutional-organizational forms, the permanent committees, conferences, the scientific institutional background, etc.

Thereafter, the authors analyse the inter-state relations. They describe and characterize therein the international agreements, their various types, the model agreements, elaborated in the framework of CMEA. They deal especially with the inter--state scientific-technical agreements to concrete subjects (objektbezogene), as the fundamental organizational-legal forms of the co-operation, analyzing their contents in details, with special emphasis on the role of the organizations responsible for the co-operation. As for the contents of the agreements, the authors rely upon documents, presenting rather than evaluating them. (The reviewer would willingly have read about critical opinions, pointing out, that some conditions of the agreements, e.g. the confidential treatment or the conditions relating to industrial property relations are "alien" to the nature of the inter-state relations, they are the consequences of a not consistent delimitation of functions of macro- and micro-level.) The authors touch also briefly upon the unsolved conceptual-theoretical and practical problems of the liabilities of the parties.

The rules of the inter-enterprise (micro-level) relations, the model agreements, model conditions are treated the most circumstantially. Briefly surveying the hitherto made model rules and the sources of law of the individual member states, making up their background the authors deal with four types of contracts in details, namely those of the research commission, the co-operation contract for research, the common research upon working plans and licensing. I shall pick up only at random some interesting statements and conclusions from the detailed and ample analysis. The discussions relating to the types of research contracts, to the right of disposal, concerning the research results (pp. 75-78), the questions of breach of contract and, in this connection, the intricate relations between responsibility and risk. In connection with the licence agreements, the authors acknowledge to their broader notion — as approved also by the reviewer — , including the contracts for the transfer of know-how, too.

The authors give a highly remarkable analysis of the problems of the contracts of complex character, comprehending the entire innovation cycle (pp. 116-125). This is significant so much the more as these agreements of, in fact, frame character are rather rare, and thus not much of experience is available.

The third chapter treats the questions relating to the legal protection of the results of scientific-technical co-operation. The orienting, incentive and informative functions based on the suitable protection of inventions are of outstanding importance in the co-operation. The authors touch upon the protection of the results of a know-how character, too, (unfortunately, neglecting the questions of some kinds of creations protected under the norms of copyright, having similarly a significant role in the co-operation, e.g. of software). They offer a survey of the institutions of the protection of industrial property both in respect of the individual member states and of the norms of CMEA level (especially on the Moscow and the Havana agreements).

Finally, in the fourth chapter, the authors briefly outline their conceptions and proposals relating to the further development of the legal means, serving the scientific-technical co-operation. In the course thereof, they survey the theoretical polemics relating to the place of the legal field under discussion in the legal system, also in connection with the so-called conception of international economic law. They briefly summarize their conception — elucidated already in details elsewhere — on a uniform general part of the law of contract, and on the General Conditions for scientific-technical contracts, respectively. In connection with this latter, they categorically point out (agreed fully with by the reviewer) that it has to be a regulation of an essentially permissive character (p. 166).

The well edited work, giving explicit definitions and conclusions, based on abundant literary sources, combining well the theoretical analyses with the practice-oriented information, means a valuable contribution to the literary treatment of the legal field, offering useful information of foreign specialists, enhancing thereby the reputation of the authors.

E. Lontai

Iglesias-Redondo, J.:
LA TECNICA DE LOS JURISTAS ROMANOS
Universidad Complutense- Facultad de Derecho.
Seccion de publicaciones.
Madrid, 1987. 117 p.

The author of the monography has undertaken the elaboration of a subject, being in the centre of the interest of the scientists of the philology of Roman law even today. Without a complete survey, reference should be made to Schulz, Pernice, Schiavone, Carcaterra, Lieba, Raggi, Casavola, Cannata, Behrenda, who have analysed, partly comprehensively, partly confined

to a narrower field, the activity of the Roman jurisperiti. The novelty of the investigation, of the examining method of Juan Iglesias-Redondo consists primarily in the effort to appreciate comprehensively, to synthetize the partial research works, related to the jurisconsult's activity. Therefore, he studies first of all the notion of jurisprudentia from the point of view of the legal sciences and the philosphy of law, then he surveys the various forms of the jurisconsult's activity. In the last part of the book, however, he analyzes methods, means and purposes of jurisprudentia.

In the first chapter of his book, Iglesias-Redondo emphasizes the outstanding role of jurisprudence in the development of Roman Law. In his opinion, modern jurisprudence, the modern philology of Roman law, does not investigate iurisprudentia in an adequate manner, from a methodological point of view. Some scientists try to analyze the notion of jurisprudence by using the rhetorical-dialectical method. Others, however, reflect the system of notions of modern jurisprudence back to Roman jurisprudence. Both methods of approach lead only to the formation of an inadequate picture. Roman jurisprudence is in possession of philosophical foundations the basis of which is, however, the Roman philosophy, the particularities of which shall always be taken into consideration with the investigation of iurisprudentia. Iglesias-Redondo points out, that in the range of iurisprudentia the Romans knew scientific theory inasmuch as this is connected now to their judicial practice. The Roman jurisprudence deals with notions being always in close connection with the justice, with the sense of justice ("sentimiento de lo justo"). The practice-orientedness of Roman jurisprudence is referred to among others by the fact that aequitas, bona fides, animus, id quod interest are not formulated as abstract categories, notwithstanding that they are close to the Aristotelean topoi. The ancient, archaic ius civile itself is identifiable with the law developing in the common legal practice. Two fragments by Pomponius: ius compositum a prudentibus (D.1. 2.2.5.) and in prudentium interpretatione consistit (D.1.2.2. 12.) are significant in this connection in respect of ius civile.

In the third chapter of his book the author deals with the various forms of the activity of jurisprudence. Iglesias-Redondo analyzes the archaic era and the pre-classical period only in a summary manner, referring only to their main particularities. Investigating the classical period, he stresses the role of jurisconsults having ius respondendi. Further on, he refers to the significance of Hadrian's reforms. To turn the consilium principis into official authority, implies at the same time that its members become jurisconsults of high prestige by virtue of the invitation, of the designation of the sovereign. Some forms of the activity of the jurisconsult lose considerably in weight. This refers especially to agere and respondere. This statement is obviously true of the praefectus praetorio, praefectus urbi and praeses provinciae, being state funcitonaires. From the other side, however, the importance of cavere considerably increases in the 1st century A.D. A further characteristic of the jurisprudence of this epoch – actually, the principate is understood here – consists in that the commentary

of jurisconsult attains to an important role. The author states with Wenger and Schulz that the works of didactical character (such as definitiones, regulae, sententiae, opiniones, differentiae, institutiones, enchiridia) have considerable importance further on. Henceforward, works of casuistic character are to be found (such as libri responsorum, libri quaestionum, disputationum, epistularum and libri digestorum). The commentaries written to ius civile, ius honorarium and to the edictum (edictum praetoris, edictum aedilium curulium and edictum proviciale) play similarly a part. In the range of the commentary literature mention should be made also of the commeentaries written to the works of former jurisconsults. In the post-classical period, the activity of jurisconsults is very much overshadowed. The jurisprudential activity of this period is characterized by compendia, libri singulares, paraphrasis, epitome and compilation.

In the fourth chapter the author analyses the methods, means and purposes of iurisprudentia. Among the general remarks, he refers to the significance and actuality of the activities of Savigny and Jhering. He points to the fact, that even in the field of Roman jurisprudence, systematic method is known, but – says he – in a Roman way. This is referred to by De iure civili in artem redigendo, attributed to Cicero – unfortunately, not surviving –, by Libri tres iuris civilis of Massurius Sabinus, by Ius civile of Quintus Mucius Scaevola, or by Libri iuris civilis of C. Cassius Longinus. The author states after La Pira that the demand on the systematization begins with Servius with the Romans. The influence of the Hellenic philosophy must not be left out of consideration either in this range. In the question, much debated also in the recent literature, on the relation between rhetoric and jurisprudence, Iglesias-Redondo takes essentially the position of Kaser, according to whom the collections of means and purposes of the two arts (techné) differ from each other. As a matter of fact, the opinion of Frier in the recent literature is near to that concept according to him namely the science of law is autonomous in the sense that it develops from the very beginning in its own borderland. The assumption of "coherent legal science" seems, however, exaggerated in several respects. The overdone professionalism of the jurisprudence cannot characterize the archaic epoch, consequently it does not come across just in the range of the origo.

In the part dealing with the topica of the chapter Iglesias-Redondo refers to the epoch-making significance of Viehweg's work (Topic und Jurisprudenz). The pivot of the attitude of Viehweg is constituted by that the legal mentality is problem-centric, tends towards the solution of concrete questions. Even from the point of view of the jurisprudence, Cicero's Topica, dated from 44 B.C. dedicated to Caius Trebatius Testa is highly significant. According to Cicero the topos represents the basis of the argumentum. Following Kaser, the author emphasizes that the evolution of jurisprudence has two decisive moments. The first phase is the so-called intuitive phase, whereas the second one is of a rational nature. In the second phase the rations decidendi get in the foreground. The author refuses the conception, connected mainly with the name of Savigny, re-

garding the jurisconsults as so-called fungible persons. Each jurisconsult is a so-called Hauptperson, as the direct consequence of special philosophical, cultural and political attitudes of mind. Iglesias-Redondo offers a good survey of the regulations and definitions, stressing the differences of these two categories. Relying on the results of the abundant secondary literature (Carcaterra, Martini, Stein and Schmidlin recently) he states that the regulation comes near to the canon of the grammarians, this fact being confirmed by several sources, among them also by non-legal sources. In the classical law the regulation is founded on the prestige of the jurisconsult, formulating it. The situation is different in the post-classical law where the basis of the acceptance of the regulation is legislation. The author deals in details with the concept of the pithanon known first of all with Labeo. The pithanon, meaning the criterion of the verisimilitude, is connected to the epistemological doctrina of the Stoa, being in close relation thereto. Therefore, the works of Chrysippus and Diogenes Laertius are worth being analysed, when investigating pithanon. Iglesias-Redondo agrees in many respects with the views of Carcaterra, according to whom the regulation may be regarded as a kind of a synthesis, based on casuistics. In this sense the regulation has the characteristic of the universalia known with the philosophers in so far as it is the combination of the similia. In the question of the definitions — the problem is caused by the distinction between the regulation and the definition — author is essentially in common with Albanese. Accordingly, the meaning of the definition is different in the various periods of the development of Roman law, which fact does not implicate, of course, that the definition would originally have one definitive meaning exclusively. Further on, Iglesias-Redondo investigates the precise sense of the thesis "omnis definitio in iure civili periculosa est" (Iavolenus), much discussed in the literature. From among the literary attitudes he accepts that of Guarino referring to the fact that the regulation and the definition by themselves cannot reflect the complete legal reality. In the last part of the chapter the author deals with the rationes decidendi, after Horak. And although in fact he accepts the differentiation between the logical-deductive decision and the decision taken on probability basis, he criticizes in methodological respect the Austrian author. Namely, Horak, in his opinion, does not take into consideration that the reason of the decision is different depending on the fact, whether the matter at issue is a codified system or a casuistic one.

The Spanish Romanist offers in his book a good survey of the particularities of Roman jurisprudence. With the formulation of his theses he takes into account the results of the abundant secondary literature. The work is completed by an appendix containing the main data of the Roman jurisconsults. The book of Juan Iglesias-Redondo is a valuable contribution to the highly complex question not yet come to a rest of the Roman jurisprudence.

G. Hamza

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BIBLIOGRAPHIA

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Periodicals processed in this bibliography:

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Collective works processed in this bibliography and their abbreviations:

Annales Bp. Tomus 29. 1987. = Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae. Sectio

iuridica. Tomus 29. 1987. Red. Comissio scientiae. Bp. Állami ny. 1988. 181, [2] p.

ELTE Acta. 29. köt. 1988. = A budapesti Eötvös Loránd Tudományegyetem Állam- és jogtudományi karának actái. 29. köt. 1987. Főszerk. Vékás Lajos. Fel. szerk. Hamza Gábor. [Acta of the Faculty of Legal and Administrative Sciences of the Loránd Eötvös University, Budapest. Vol. 29. 1987.] Bp. [mimeogr. 1988.] 242 p.

Igazságszolgáltatás továbbfejl. 1988. = Tanulmányok az igazságszolgáltatás továbbfejlesztéséről. Tanulmánykötet. Összeáll. Palkovics Éva. [Papers of the development of the administration of justice. A collection of studies.] Bp. [mimeogr.] 1988. [2], 391 p. /Igazságügyi Minisztérium Tudományos és tájékoztatási főosztály kiadványai 25./

Jogász szöv. ért. 1987. 2. köt. = Jogász szövetségi értekezések. 1987. 2. [köt.] Főszerk. Nagy László. [közzéteszi a] Magyar Jogász Szövetség. [Studies of the Hungarian Lawyers' Association. 1987. Vol. 2.] Bp. [mimeogr.] 1987. [1988.] 186 p.

Jogász szöv. ért. 1988. 1. köt. = Jogász szövetségi értekezések. 1988. 1. [köt.] Főszerk. Nagy László. [Közzéteszi a] Magyar Jogász Szövetség. [Studies of the Hungarian Lawyers' Association. 1988. Vol. 1.] Bp. [mimeogr.] 1988. 196 p.

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Bibliographia

Juridica начиная с № 3-4 тома 23, 1981.

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ÁI 7-12/1988.; ÁJ 1-2/1987-1988.; AJurid. 1-2/1987.[1988.]; JK 6-9/1988.; MJ 7-12/1988.; MTud. 7-12/1988.; Társadkut. 2-3/1988.; TSZ 6-12/1988.

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Annales Bp. Tomus 29. 1987. = Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae. Sectio iuridica. Tomus 29. 1987. Red. Comissio scientiae. Bp. Állami ny. 1988. 181, [2] p.

ELTE Acta. 29. köt. 1988. = A budapesti Eötvös Loránd Tudományegyetem Állam- és jogtudományi karának actái. 29. köt. 1987. Főszerk. Vékás Lajos. Fel. szerk. Hamza Gábor. [Труды юридического факультета университета им. Этвеша Лоранда. Том 29. 1987 г.] Bp. [mimeogr. 1988.] 242 p.

Igazságszolgáltatás továbbfejl. 1988. = Tanulmányok az igazságszolgáltatás továbbfejlesztéséről. Tanulmánykötet. Összeáll. Palkovics Éva. [Сборник работ о развитии системы правосудия.] Bp. [mimeogr.] 1988. [2], 391 p. /Igazságügyi Minisztérium Tudományos és tájékoztatási főosztály kiadványai 25./

Jogász szöv. ért. 1987. 2. köt. = Jogász szövetségi értekezések. 1987. 2.[köt.] Főszerk. Nagy László. [Közzéteszi a] Magyar Jogász Szövetség. [Вестник Ассоциации венгерских юристов 1987 г. Том 2.] Bp. [mimeogr.] 1987. [1988.] 186 p.

Jogász szöv. ért. 1988. 1. köt. = Jogász szövetségi értekezések. 1988. 1. [köt.] Főszerk. Nagy László. [Közzéteszi a] Magyar Jogász Szövetség. [Вестник Ассоциации венгерских юристов. 1988 г. Том 1.] Bp. [mimeogr.] 1988. 196 p.

Bibliographia

Books of Reference - Справочные издания

Collected Legislative Acts - Сборники законодательства

Hatályos jogszabályok gyüjteménye. 1945-1987. 1. köt. Törvények, törvényerejü rendeletek, elnöki tanácsi határozatok. Összeáll. Hársfalvi Rezsőné - Komáromi Gábor - Tamás Andrásné. Szerk. Petrik Ferenc - Raft Miklós. [Collections of statutory rules to force. 1945-1987. Vol. 1. Acts, law-decrees, resolutions of the Presidium. Свод действующих законодательных актов. 1945-1987 г. Том 1.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 945, [2] p.

Törvények és rendeletek hivatalos gyüjteménye. 1987. 1-2. köt. Közzéteszi az Igazságügyi Minisztérium - Minisztertanács Hivatala. [Official collection of acts and decrees. 1987. Vols. 1-2. Официальный свод законов и указов. 1987. Том 1-2.]
Bp. Közgazdasági és Jogi Kiadó, 1988. XLVII, 845, [2], [6], 856-1839 p.

Practice of Courts - Судебная практика

A gazdasági perek döntvénytára. Birósági határozatok. 3. köt. 1980-1986. Összeáll. Kálmán György - Majoros Richárd - Szilágyi Dénes. Szerk. Nagy Zoltán. Lezárva: 1988. dec. 31. [Collection of decisions in economic lawsuits. Decisions of courts. Vol. 3. 1980-1986. Closed: December 31, 1988. Сборник судебных решений по хозяйственным спорам. Том 3. 1980-1986. До 31 декабря 1988 г.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 478, [2] p.

Polgári elvi határozatok. A Magyar Népköztársaság Legfelsőbb Biróságának irányelvei, elvi döntései és állásfoglalásai. Szerk. Csiky Ottó. Közzéteszi a Magyar Népköztársaság Legfelsőbb Birósága. 2. jav. kiad. Lezárva: 1987. nov. 15. [Decisi-

sions of principles in civil law. Directives, decisions of principle and standpoints of the Supreme Court of the Hungarian People's Republic. 2nd rev. ed. Closed: November 15, 1987. Руководящие постановления Верховного Суда по гражданско-правовым делам. 2-е перераб. изд. До 15 ноября 1987 г.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 368, [4] p.

Scientific Records - Сборники статей

Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae. Sectio iuridica. Tomus 29. 1987. Red. Comissio scientiae.
Bp. Állami ny. 1988. 181, [2] p. Bibliogr. passim. — Eng. summary; Rés. franc.; Dt. Zusammenfassung; Русск. содерж.

A budapesti Eötvös Loránd Tudományegyetem Állam- és jogtudományi karának actái. 29. köt. 1987. Főszerk. Vékás Lajos. Fel. szerk. Hamza Gábor. [Acta of the Faculty of Legal and Administrative Sciences of the Loránd Eötvös University, Budapest. Vol. 29. 1987. Труды юридического факультета университета им. Этвэша Лоранда. Том -,. 1987 г.]
Bp. [mimeogr. 1988.] 242 p. Bibliogr. passim. — Rés. franc.

Jogász szövetségi értekezések. 1987. 2. [köt.] Főszerk. Nagy László. [Közzéteszi a] Magyar Jogász Szövetség. [Studies of the Hungarian Lawyers' Association, 1987. Vol. 2. Вестник Ассоциации венгерских юристов. 1987 г. Том 2.]
Bp. [mimeogr.] 1987. [1988.] 186 p. Bibliogr. passim.

Jogász szövetségi értekezések. 1988. 1. [köt.] Főszerk. Nagy László. [Közzéteszi a] Magyar Jogász Szövetség. [Studies of the Hungarian Lawyers' Association. 1988. Vol. 1. Вестник Ассоциации венгерских юристов. 1988 г. Том 1.]
Bp. [mimeogr.] 1988. 196 p. Bibliogr. passim.

Bibliographies - Библиография

Bibliography of Hungarian legal literature. 1945-1980. Ed. Nagy Lajos. Transl. Gombocz I[stván], Balázs[né] Veredy K[atalin], Zehery M[iklós]. Publ. Institute for Legal and Administrative Sciences of the Hungarian Academy of Sciences. Библиография венгерской юридической литературы. 1945-1980 гг.]
Bp. Akadémiai Kiadó, 1988. 429 p.

Hungarian legal bibliography. 1986, 1st part - Венгерская юридическая библиография, 1986 г. Часть 1. Ed. Veredy Katalin, B. AJurid. 1-2/87:281-301.

A magyar állam- és jogtudományi irodalom bibliográfiája. 1988. 1. [füz.] Összeáll. Balázsné Veredy Katalin - Orosz Ágnes. [Közzéteszi az] Országgyülési Könyvtár. [Lezárva:] 1988. jun. 30. [Bibliography of Hungarian legal and administrative literature. 1988. Part 1. Closed: June 30, 1988. Библиография венгерской литературы по вопросам государства и права. Часть 1. 1988 г. До 30 июня 1988 г.]
Bp. OK Soksz. 1988. [2], XXI, 169 p.

I. THEORY OF STATE AND LAW - I. ТЕОРИЯ ГОСУДАРСТВА И ПРАВА

Book - Книга

SAJÓ András: Társadalmi-jogi változás. A társadalmi változás jogszociológiája. [Social and legal changes. Legal sociology of social changes. Социально-правовое развитие. Правовая социология общественных изменений.]
Bp. Akadémiai Kiadó, 1988. 210, [2] p. Bibliogr. 203-211.

Bibliographia

Articles - Статьи

BAYER József: Pluralizmus a szocializmusban. [Pluralism in socialism. Плюрализм в социализме.]
TSZ 11/88:32-36.

BIHARI Mihály: Helyi társadalom és önkormányzati demokrácia. [Local society and self-governmental democracy. Местное население и самоуправляющаяся демократия.]
Társadkut. 2/88:25-35.

FÖLDESI Tamás: Justness, peace war. [Справедливость, мир, война.]
= Annales Bp. Tomus 29. 1988. 31-45.

GYEKICZKY Tamás: Tudásszociológiai kisérlet egy történelmi korszak ideológiájának értelmezéséhez. [Cognitive-sociological effort to interpret the ideology of a historical period. Результаты социологичкского исследования идеологии одного исторического этапа развития.]
= ELTE Acta. 29. köt. 1988. 165-179.

HAMZA Gábor: Bachofen "Mitterrecht"-je aktualitásának kérdéséhez. [On the timeliness of Bachofen's "Mitterrecht". Об актуальном значении "Mitterrecht" Бахгофена.]
=ELTE Acta. 29. köt. 1988. 207-209.

HOÓZ István: Népesedés és jogalkotás. [Demography and legislation. Население и правотворчество.]
ÁI 11/88:968-978.

HORVÁTH P[ál]: Internationale wissenschaftliche Konferenz über die Entstehung und Entwicklung des sozialistischen Staates und Rechtes. [Prague, 20-23 Mai 1986. International scientific conference on the origins and development of the socialist state and law. Prague, May 20 to 23, 1986. Международная научная

конференция о становлении и развитии социалистического государства и права. Прага, 20-23 мая 1986 г.]
AJurid. 1-2/87:229-231.

KARÁCSONY András: A posztmodernről - társadalomelméleti összefüggésben. [Postmodernism in connection with the theory of society. О постмодерне с точки зрения теории общества.]
= ELTE Acta. 29. köt. 1988. 181-202.

KULCSÁR Kálmán: Változás a politikai rendszerben: reformalternatívák, súlypontok és lehetőségek. [Changes in the political system: reform alternatives, centres of interest and possibilities. Изменения в политической системе: альтернативные концепции реформы, новые акценты и возможности.]
Társadkut. 2/88:5-24.

A Magyar Szocialista Munkáspárt országos értekezletének állásfoglalása a párt feladatairól, a politikai intézményrendszer fejlesztéséről. [Stand taken by the national conference of the Hungarian Socialist Workers' Party about the assignments of the party and the development of the system of political institutuons. Резолюция конференции ВСРП о задачах партии и развитии системы политических институтов.]
TSZ 6/88:19-30.

NEMES Zoltán: Hatalom és érdekviszonyok. [Power and relationships of interests. Власть и интересы.]
JK 6/88:307-311.

PÁLFALVI József: A jog hatása a gazdaságra. [Effect of the law on the economy. Влияние права на хозяйство.]
MJ 11/88:969-973.

POKOL Béla: Co-ordination problems among the subsystems of complex societies. Вопросы координации функционирования подсистем в комплексных обществах.]
= Annales Bp. Tomus 29. 1988. 127-138.

SAJÓ A[ndrás]: Legal consciousness in Hungary. Some findings and remarks. Правосознание в Венгрии: результаты исследования и замечания.]
AJurid. 1-2/87:249-254.

UJFALVI Annamária: Jog és terápia. [Tudományos tanácskozás. Budapest, 1988. jun. 3. Law and therapy. Scientific meeting. Budapest, June 3, 1988. Право и терапия. Научная конференция, Будапешт, 3 июня 1988 г.]
JK 9/88:538.

VARGA Cs[aba]: The inner morality of law. Внутренняя нравственность права.]
AJurid. 1-2/87:240-245.

II. STATE LAW. CONSTITUTIONAL LAW - II. ГОСУДАРСТВЕННОЕ ПРАВО

Books - Книги

BALÁZS István: A parlament és a központi államigazgatási szervek viszonya az egyes kapitalista államokban. [Közzéteszi a] Magyar Tudományos Akadémia Államtudományi kutatások programirodája. [Relations between Parliament and the central organs of public administration in some capitalist states. Взаимоотношение парламента и центральных органов государственного управления в отдельных капиталистических странах.]
Bp. [mimeogr.] 1987. [1988. 2], 191 p. Bibliogr. passim.

Az [ezerkilencszáznyolcvanötödik] 1985. évi országgyülési választások politikai tapasztalatai. Politikai szociológiai elemzés. Szerk. Szoboszlai György. [Közzéteszi az] MSZMP KB Társadalomtudományi Intézete. [Political experiences with the general elections of 1985. Analysis in political sociology. Поли-

тический опыт парламетских выборов 1985 года.]
Bp. [Mimeogr.] 1988. 243, [2] p.

FONYÓ Gyula: A tanácsi szervezet szabályozása az alkotmányban. [Közzéteszi a] Magyar Tudományos Akadémia Államtudományi kutatások programirodája. [Regulation of the council system in the Constitution. Регулирование деятельности советов в конституции.]
Bp. [mimeogr.] 1988. [2], 76 p. /Az alkotmány továbbfejlesztésének tudományos megalapozása 15./

FONYÓ Gyula: A választással kapcsolatos rendelkezések az alkotmányban. [Közzéteszi a] Magyar Tudományos Akadémia Államtudományi kutatások programirodája. [Provisions concerning elections in the Constitution. Конституционные положения о выборах.]
Bp. [mimeogr.] 1988. [2], 41 p. /Az alkotmány továbbfejlesztésének tudományos megalapozása 16./

KUKORELLI István: A képviselői felelősség alkotmányos intézményei. [Közzéteszi az] Eötvös Loránd Tudományegyetem Állam- és jogtudományi kar. [Constitutional institutions of Member of Parliament responsibility. Конституционный институт ответственности депутата.]
Bp. [mimeogr.] 1988. 59 p. /A jogi felelősség- és szankciórendszer elméleti alapjai 2./ Bibliogr. passim.

Nyugat-Európa alkotmányai. Szerk. és bev. tanulmányt irta Kovács István. [Constitutions of Western Europe. Конституции стран Западной Европы.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 467 p. /Alaptörvények és alkotmányok./ Bibliogr. 463-468.

A parlamenti struktura de lege ferenda. POKOL Béla: A kétkamarás Országgyülés és a politikai reform. - SÁRI János: Kell-e második kamara a parlamentben. [Közzéteszi a] Magyar Tudományos Akadémia Államtudományi kutatások programirodája. [The structure of Parliament de lege ferenda. The two-chamber National As-

sembly and political reform. The need of a second chamber of the National Assembly. Структура парламента - вопросы de lege ferenda.]
Bp. [mimeogr.] 1988. [6], 59 p. /Az alkotmány továbbfejlesztésének tudományos megalapozása 14./ Bibliogr. passim.

The state and the churches in Hungary. [Excerpts from the session on December 17, 1987 of the National Assembly of the Hungarian People's Republic. Правовой статус церкви в Венгрии.]
[Bp.] MTI Print. [1988.] 32 p.

Articles - Статьи

ÁDÁM Antal: A társadalom és az állam viszonyának alkotmányjogi vonatkozásairól. [Constitutional law aspects of the relation between society and state. О конституционных аспектах взаимоотношения общества и государства.]
ÁI 8/88:673-683.

ÁDÁM Antal: Az egyesületek érdekképviseleti szerepéről. [The representative role of associations. О роли обществ в представительстве интересов.]
MJ 10/88:820-825.

HLAVATHY Attila: Törvényesség - ügyészség - jogállamiság. [Legality - prosecution - the legality of state. Законность - прокуратура - правовое государство.]
ÁI 8/88:743-754.

JÓÓ Rudolf: A magyarországi nemzeti kisebbségek (nemzetiségek) kutatása. [Research into the national minorities (nationalities) of Hungary. Исследование национальных меньшинств в Венгрии.]
Társadkut. 2/88:36-53.

KILÉNYI Géza: A politikai reform és az államszervezet. [The po-

litical reform and the state structure. Политическая реформа и устройство государства.]
ÁI 8/88:684-694.

KISS Elemér: Milyen legyen a Kormány? [Koncepció és szövegtervezet a Minisztertanács és az államigazgatás központi szervezete alkotmányos szabályozásához. What kind of government we need? Draft concept of the constitutional regulation of the Council of ministers and the central bodies of public administration. Каковым должно быть правительство? Конференция конституционного регулирования Совета министров и центральных органов публичной администрации.]
ÁI 12/88:1076-1088.

KOLLÁTH György: Egyesülési jog - egyesület. [The right of association - association as such. Право на объединение и ассоциации.]
ÁI 8/88:720-728.

LUKÁCS Tibor: A bíróság valóságlátásunk fejlődésének tükrében. [Courts and tribunals as reflected in the development of the ideas on reality. Роль судов в свете реализма.]
MJ 7-8/88:566-590.

LUKÁCS Tibor: A bírói függetlenség - gondolkodó engedelmesség. [Independence of the judicary - thoughtful obeyance. Независимость судей - мыслящее послушание.]
MJ 10/88:826-838.

Az MJSZ Elnökségének vitaülése és állásfoglalása az egyesülési és gyülekezési jogról szóló törvényjavaslatról. [Budapest, 1988. szept. 12. Discussion and stand of the presidium of the Hungarian Lawyers' Association on the draft bill dealing with the rights of association and assembly. Budapest, September 12, 1988. Обсуждение вопросов права на объединение и права на собрание в Президиуме Венгерской ассоциации юристов. Будапешт, 12 сентября 1988 г.]

MJ 10/88:817-819.

PAP Gábor: Az alkotmány politikai természete alkotmányfogalmak tükrében. [The political nature of constitution in the mirror of constitutional notions. Политическая природа конституции в зеркале конституционных понятий.]
JK 9/88:510-517.

PETRIK Ferenc: Egyesületátalakitási vagy egyesülési jog? [Right to transform associations or right to associate? Право на основание обществ или свобода ассоциации?]
MJ 9/88:721-729.

SÁRI János: A hatalomgyakorlás felfogásának alakulása. 1957-1987. 2. r. [The development of the idea of practice of power. 1957-1987. Part 2. Формирование концепции о пользовании властью. 1957-1987. Ч. 2.]
ÁI 7/88:577-590.

SÁRI János: Kell-e nekünk második kamara? [Do we need a second chamber? Нужен ли нам двухпалатный парламент?]
TSZ 11/88:65-64.

SÓLYOM László: A szabadságjogok biztositékai. [Guarantees of the basic freedoms. Гарантии гражданских свобод.]
MTud. 7-8/88:501-509.

SZABÓ Imre: Ismét a birói függetlenségről. [Again on the independence of the judiciary. Ещё раз о независимости судей.]
ÁJ 1-2/87-88:1-8.

SZAMEL Lajos: Törvényhozás - biráskodás - közigazgatás. Kisérlet a biráskodás fogalmának megközelitésére a törvényhozástól, illetve a közigazgatástól való elhatárolással. [Legislature - judical activities - public administration. An effort to approach the concept of jurisdiction, delimitating it from legisla-

ture and public administration. Законодательство - правосудие - публичная администрация. Попытка на определение понятия правосудия в отдельности от законодательства и публичной администрации.]
ÁI 8/88:695-710.

TAKÁCS A[lbert]: Problems of the protection of the constitution, with special regard to the Constitutional Law Council. [Вопросы охраны конституции в свете деятельности конституционно-правового совета.]
AJurid. 1-2/87:165-192.

TAKÁCS György: Lehetne egy törvényhozóval több? [Could be one legislator more? Можно ли увеличить число законодателя?]
ÁI 11/88:999-1003.

TAKÁCS Imre: Az alkotmánybiráskodásról. [On constitutional courts. О конституционном суде.]
ÁI 8/88:711-719.

UDVAROS Miklós: Választási rendszer az Egyesült Államokban. [Election system in the United States. Избирательная система в США.]
JK 7/88:436-438.

III. ADMINISTRATIVE LAW - III. АДМИНИСТРАТИВНОЕ ПРАВО

Books - Книги

BALÁZS István - BALOGH Zsolt - MIHAJLOV, Dobromir: A közigazgatási bíráskodás magyarországi reformjának lehetőségei a hazai tapasztalatok, illetve a polgári és szocialita rendszerek uj tendenciái alapján. [Közzéteszi a] Magyar Tudományos Akadémia Államtudományi kutatások programirodája. [Possibilities of the reform of administrative jurisdiction in Hungary on the

basis of domestic experiences and new tendencies in both bourgeois and socialist systems. Административное судопроизводство (возможности его реформы в Венгрии в свете нашего опыта и тенденций развития буржуазных и социалистических систем.)]
Bp. [mimeogr.] 1988. [2], 90 p. Bibliogr. passim.

Beruházásokkal kapcsolatos jogszabályok és magyarázatuk. Főszerk. Halmai Gábor. Szerk. Koller Zoltán - Márton András. [Közzéteszi az] Ipari Minisztérium - Mezőgazdasági és Élelmezésügyi Minisztérium. [Statutory rules related to investments. Нормативные акты о капиталовложениях с комментарием.]
Bp. Sabaria ny. 1988. 615, [2] p.

Hatályos kölkereskedelmi jogszabályok katalógusa. 1988. Összeáll. Benkő István - Takács Imréné. Szerk. Benkő István. [Közzéteszi a] Tanácsadó és Ügyfélszolgálati Iroda. Lezárva: 1988. ápr. 20. [Collection of statutory rules in force in the field of foreign trade. 1988. Closed: April 20, 1988. Указатель действующих законодательных актов по вопросам внешней торговли. 1988. До 20 апреля 1988 г.]
Bp. Kopint-Datorg ny. 1988. 221 p.

JÁVOR István: A hatalom szerkezete a vállalatban. [Power structure in the enterprises. Структура власти на предприятиях.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 230, [2] p. Bibliogr. 225-231.

LACKÓ László: Területi fejlődés, politika, tervezés. [Közzéteszi az] MTA Regionális Kutatások Központja. [Regional development, policy, planning. Территориальное развитие, политика, планирование.]
Bp. Akadémiai Kiadó, 1988. [2], 195 p. /Területi és települési kutatások 2./ Bibliogr. 171-180. -- Eng. summary; Русск. содерж.

SZAMEL Katalin: Közigazgatás az állampolgárért, vagy állampol-

gár a közigazgatásért. [Public administration in the service of citizens or citizens serving for public administration. Административное правление - во имя гражданина либо гражданин - во имя административного управления.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 390, [2] p. Bibliogr. passim.

A területi tagozódás és a közigazgatási szervezet néhány európai országban. [Közzéteszi a] Magyar Tudományos Akadémia Államtudományi kutatások programirodája. [Territorial division and the organization of public administration in some European countries. Территориальное устройство и административное управление в отдельных европейских странах.]
Bp. [mimeogr.] 1988. 206 p. Bibliogr. passim.

TRÓCSÁNYI László, ifj.: A közigazgatási biráskodás szervezete és müködése egyes európai országokban. A jogintézmény elméleti alapjai és müködési tapasztalatai, valamint egyes európai országok közigazgatási biráskodására vonatkozó jogszabályok. [Közzéteszi a] Magyar Tudományos Akadémia Államtudományi kutatások programirodája. [Organisation and functioning of administrative jurisdiction in some European countries. Theoretical foundations and working experiences of this legal institution, complete with statutory rules of some European countries relating to administrative jurisdiction. Структура и функция административного судопроизводства в отдельных европейских странах. теоретические и практические вопросы, нормативные акты об административных судах.]
Bp. [mimeogr.] 1988. 368 p. Bibliogr. passim.

VARGA Sándor: A tanácsi gazdálkodási rendszer reformja. [Közzéteszi a] Magyar Tudományos Akadémia Államtudományi kutatások programirodája. [Reform of the economic management system of the councils. Реформа хозяйственной деятельности советов.]
Bp. [mimeogr.] 1988. [2], 132 p. Bibliogr. 131-132.

Bibliographia

Articles - Статьи

AGG Zoltán: A tanácsigazgatás megyei szervezetének korszerüsitése vagy reformja. [Modernisation or reform of country organisation in council administration. Совершенствование или реформа комитатской организации советского управления.]
ÁI 11/88:989-998.

Az államigazgatási határozatok birósági felülvizsgálata továbbfejlesztésének néhány kérdése. [Problems of developing the judical supervision of the resolutions of public administrative organs. Некоторые вопросы развития судебного контроля за административными решениями.]
= Igazságszolgáltatás továbbfejl. 1988. 78-136.

BALÁZS István: Az államigazgatási aktusok birósági felülvizsgálata Franciaországban. [Judical supervision of the acts of state administration in France. Судебный контроль над административными актами во Франции.]
MJ 12/88:1081-1085.

BARKÓCZY Tamás: A személyzeti politika időszerü kérdései [a közigazgatásban]. A Magyar Jogász Szövetség Közigazgatási tagozata választmányának üléséről. [Budapest, 1988. ápr. 15. Actual aspects of personnel policy in public administration. On the steering committee meeting of the public administration section of the Hungarian Lawyers' Association. Budapest, April 15, 1988. Актуальные проблемы кадровой политики в сфере государственного управления. Будапешт, 15 апреля 1988 г.]
ÁI 8/88:766-768.

BÁRSONY János: Településpolitikai és szociálpolitikai problémák együttes kezelése. [Joint management of settlement-politica and social political problems. Взаимозависимость проблем территориальной и социальной политики.]
ÁI 11/88:1029-1032.

BERTALANNÉ KOREK Ilona: A számitógép alkalmazása a jogi munkában. [Application of computers in the field of law. Применение вычислительной техники в правовой работе.]
= Jogász szöv. ért. 1987. 2. köt. 5-26.

BERTÓKNÉ OROS Zsuzsanna: A tanácsi gazdálkodás uj lehetőségei, gyakorlati hasznositásuk. [New possibilities for the economic activity of the councils and their practical utilization. Новые возможности в хозяйствовании советов, их практическая реализация.]
ÁI 11/88:104L-1046.

BOD Péter Ákos: Van-e jó állami strukturapolitika? [Is there any good state policy for structural adjustment? Можно ли говорить о хорошей государственной структурной политике?]
ÁI 11/88:23-31.

BORSOS Árpád: Müvelődésirányitás - kétszintü igazgatás. [Cultural management - two-level administration. Управление культурой - двухзвенное управление.]
ÁI 11/88:1004-1009.

CSERE Judit: A gyermek- és ufjuságvédelemről. [The protection of children and young people. Об охране детей и молодёжи.]
TSZ 10/88:59-67.

CSERNOK Gyula: Az igazságügyi irányitás, felügyelet és igazgatás elmélete és gyakorlata. [Theory and practice of orientation, supervision, and administration in the field of justice. Теория и практика управления, надзора и осуществления правосудия.]
= Igazságszolgáltatás továbbfejl. 1988. 182-268.

CSIBA Tibor: Helyzetkép a tanácsi szervek hatósági tevékenységéről. [General survey on the professional activity of council organs. Настоящее положение властной деятельности органов со-

ветов.]
ÁI 9/88: 779-787.

FELMÉRY Imre - MÉSZÁROS József: Gondolatok a szabálysértés jogintézményének továbbfejlesztéséről. [Ideas on the further development of the legal institution of minor offence. Размышление о дальнейшем развитии правового института административных проступков.]
ÁI 10/88:877-884.

FIAS Zoltán: A tanácsi jogi képviselet korszerüsitése. [Updating the council-level legal representation. Совершенствование юридического представительства советов.]
ÁI 12/88:1135-1143.

FICZERE Lajos: The institution and governmental relation system of the minister in Hungary. [Институт министра и его связь с правительственной сферой в Венгрии.]
= Annales Bp. Tomus 29. 1988. 3-29.

FICZERE Lajos: A Minisztertanács szervezete és müködése. [Organisation and functioning of the Council of Ministers. Организация и деятельность Совета министров.]
ÁJ 1-2/87-88:9-74.

GÜNTHER Béla: Vita a tanácsok fejlesztéséről. [Vitaülés. Szeged, 1988. jun. 8. The development of councils. Debate. Szeged, June 8. 1988. О развитии советов. Обсуждение. 8 июня 1988 г.]
ÁI 9/88:817-833.

HORVÁTH János: Helyes volt-e a közigazgatási biráskodás megszüntetése? (Avagy: az államigazgatási jogalkalmazás perspektivái.) [Was it a correct decision to abolish administrative jurisdiction? Perspectives of application of the law in state administration. Было ли правильным решение о ликвидации административной юстиции?]
= Jogász szöv. ért. 1988. 1. köt. 111-130.

HORVÁTH János: Milyen körben és hogyan valósitsuk meg az államigazgatási határozatok birósági kontrollját? [The scope and method applicaple to the judical supervision of administrative decisions? В каком объёме и какими средствами осуществлять судебный контроль над административными решениями?]
MJ 10/88: 863-872.

HORVÁTH M. Tamás: A helyi tanácsok müködésének jogi és politikai normativ közegéről. [The legal and normative background of the operation of local councils. Правовые и политические нормы регулирования деятельности местных советов.]
JK 9/88:517-524.

JANTNER Antal: Az épitésügyi igazgatás korszerüsitésének tapasztalatairól. [Experiences with the modernisation of building administration. Опыт по совершенствованию управления строительным делом.]
ÁI 11/88:961-967.

KALAS Tibor - Torma András: Integrált információs rendszer a tanácsoknál- [Integrated information system at the councils. Интегрированная система информаций в советах.]
ÁI 12/88:1100-1109.

KARDOS Gábor: A külügyek állami irányitása Nagy-Britanniában. [State orientation of foreign affairs in Great Britain. Управление внешними сношениями в Великобритании.]
= ELTE Acta. 29. köt. 1988. 83-95.

KECSKÉS László: A Posta felelősségének kérdéséhez. [Responsibility of the post administration. К вопросу ответственности почты.]
MJ 7-8/88:618-622.

KISFALUDI András: A szerződéses üzemeltetés néhány elvi és polgári jogi kérdése. [Some theoretical and civil law problems of

contractual operation. Некоторые принципиальные и гражданско-правовые аспекты арендных договоров.]
= Jogász szöv. ért. 1988. 1. köt. 58-89.

KISS Lajos, Cs. - FEHÉR József: Közigazgatás és racionalitás. Az érték- és célracionalitás mint társadalomszervező elvek érvényesülése a közigazgatásban. [Public administration and reasonableness. Enforcement of the reasonablenes of values and purposes as organizing principles of the society in the field of public administration. Административное управление и рациональность. Осуществление ценностных и целевых принципов организации общества.]
= ELTE Acta. 29. köt. 1988. 125-150.

KOVÁCS Mihály: Elképzelések a tanácsi gazdaságirányitási rendszer továbbfejlesztéséhez. [Ideas on the improvement of the council-level management system of economy. Соображения по дальнейшему развитию управления хозяйством советов.]
ÁI 7/88:657-665.

KÖKÉNYESI József: Az épitésügyi igazgatás főbb kérdései a tanácsi reform tükrében. [The main questions of council reform in the field of housing administration. Главные вопросы управления строительным делом в свете реформы системы советов.]
ÁI 12/88:1089-1099.

LŐRINCZ Lajos: A politikai modernizáció személyi feltételei. [The personal preequisites of the political modernisation. Кадровые условия политической модернизации.]
ÁI 12/88:1057-1075.

MÁTHÉ Gábor - SZABÓ András: A szabálysértési jogterület kodifikálása. Prekoncepció. [The codification in the field of minor offences law. Кодификация в области административных проступков. Предварительная концепция.]
ÁI 10/88:865-876.

PATZNER László: Gondolatok a költségvetési ellenőrzés reformjához. [Thoughts about the reform of budgetary control. О реформе бюджетного контроля.]
ÁI 11/88:979-983.

PELLE Tamás - MÉCS László: Adalékok a környezetvédelmi igazgatás korszerüsitéséhez. [Contributions to the modernization of environment protection administration. О совершенствовании управленческой деятельности в области охраны среды.]
ÁI 11/88:1047-1052.

PÉTERFALVI Attila: Az információszabályozás és adatvédelem aktuális kérdései. [Actual questions of information regulation and data protection. Актуальные вопросы регулирования информации и охраны данных.]
ÁI 10/88:928-932.

PRINTZ János: Elképzelések a tanácsi gazdaságirányitási rendszer továbbfejlesztéséhez. [Ideas on the development of the council-level economic management. Размышление о направлениях дальнейшего развития управления хозяйством советов.]
ÁI 7/88:626-634.

RÁCZ A[ttila]: Legal regulation of public administration by statutes. Правовое регулирование публичной администрации на основе законов.]
AJurid. 1-2/87:57-70.

ROMHÁNYI L[ászló]: Über das neue ungarische Gebührgesetz. [Gesetz Nr. 1 von Jahr 1986. The new Hungarian act on fees. Act No. I of 1986. Новый закон ВНР о государственных пошлинах. Закон № I. 1986 г.]
AJurid. 1-2/87:213-217.

SÁRÁNDI I[mre]: Die Umorganisierung des Wirtschaftsorganisations-systems der Volkwirtschaft und die innere Organisation der

Unternehmen. [The transformation of the economic organisational structure of the economy and the inner organisation of the enterprise. Преобразование хозяйственной системы народного хозяйства и внутренняя структура предприятий.]
AJurid. 1-2/87:3-16.

A szabálysértési jogterület rendezésének kérdései. [Regulation of problems in the field of minor offences. Вопросы административных правонарушений.]
= Igazságszolgáltatás továbbfejl. 1988. 309-328.

SZABÓ István: A tanácsi igazgatásszervező ideális foglalkozási szerepmodellje. [Ideal professional role-model of the council administrative organizer. Идеальная модель роли организатора управления советами.]
ÁI 11/88:1018-1028.

SZABÓ Lajos: Kétszintü tanácsigazgatás előkészitése, az áttérés dilemmái. [The preparation of two-level council administration and the dilemmas of transformation. Подготовка звенного управления советами, дилеммы перехода.]
ÁI 10/88:947-958.

SZAMEL K[atalin]: The possibilities of public administration in transforming citizen's rights into subjective (enforceable) rights. [Возможность трансформации административных решений в субъективные права граждан.]
AJurid. 1-2/87:95-114.

SZÁNTÓ Gergely - VARGA Sándor: A tanácsi gazdálkodási rendszer továbbfejlesztése. [The development of the council-level economic system. Дальнейшее развитие системы хозяйствования советов.]
ÁI 7/88:608-618.

TAKÁCS Albert: A közigazgatási reformok szükségessége és lehe-

tősége. [Necessity and possibility of administrative reforms. Необходимость и возможность реформы государственного управления.]
ÁJ 1-2/87-88:174-230.

TÓTH Csaba: A sportegyesületek törvényességi felügyelete. [Legal supervision of sport clubs. Надзор над законностью деятельности спортивных обществ.]
ÁI 11/88:1010-1014.

TRÓCSÁNYI László: A környezetvédelem joga Csehszlobákiában. [The Czechoslovak environmental law. Природоохранительное право в Чехословакии.]
JK 6§88:354-356.

TRÓCSÁNYI László: A környezetbédelem joga Lengyelországban. [Environment law in Poland. Природоохранительное право в Польше.]
JK 9/88:528-531.

TRÓCSÁNYI László, ifj.: A közigazgatási bináskodás szervezete és müködése Ausztriában. [Organization and functioning of administrative juris-diction in Austria. Организация и функция административного правосудия в Австрии.]
MJ 11/88:993-997.

UTTÓ György: A közigazgatási bináskodás kialakitásáról. [On the formation of administrative jurisdiction. Формирование административного правосудия.]
ÁI 9/88:805-816.

VÁGI Gábor: Megjegyzések Szántó [Gergely] - Varga [Sándor]: A tanácsi gazdaságirányitási rendszer továbbfejlesztése cimü irásához. [Remarks on the paper by Szántó-Varga: The development of the council-level economic management. Заметки к статье: Санто-Варга: Дальнейшее развитие системы хозяйствования сове-

тов.]
ÁI 7/88:652-656.

VÁGI Gábor - FERENCZI József: A tanácsi gazdaság egységes feladat-szemléletü szabályozásának prekoncepciója. [The protection of regulation of control economy with a uniform approach to the tasks. Преконцепция регулирования хозяйства советов на основе единой концепции о задачах.]
ÁI 7/88:593-607.

ZOLTÁN Ödön: A környezetvédelemről, különös tekintettel az Európai Közösségre. [Environment protection with special regard to the European Community. Об охране окружающей среды, на примере Европейского сообщества.]
MJ 12/88:1073-1080.

IV. FINANCIAL LAW - IV. ФИНАНСОВОЕ ПРАВО

Books - Книги

CSERESZNYÁK Istvánné - KISMARTY Lórándné - JÁRAI Zsigmond: Bankrendszerünk változásai. A kétszintü bankrendszer kialakitása. Kiad. a Saldo. [Changes in the Hungarian banking system. Setting up a two-level banking system. Изменения в нашей банковой системе. Создание двухзвенной банковой системы.]
Bp. [mimeogr.] 1988. 268 p.

New features of the accountancy system in Hungary. Publ. Ministry of Finance. Новые положения в венгерской системе финансовой отчётности.]
Bp. Hungarian Banknote Print. 1988. 41 p. /Public finance in Hungary 44./

A személyi jövedelemadó és a tanácsi gazdálkodás. Tanulmányok. [Közzéteszi az] Országos Tervhivatal, Tervgazdálkodási Intézet.

[The individual income tax and management of the councils. Studies. Подоходный налог граждан и хозяйственная деятельность советов. Сборник статей.]
Bp. s.p. 1988. [4], IV, 229 p. /Tervgazdasági közlemények. 1988/3./ Bibliogr. 167-168., 194. -- Русск. содерж. Eng. summary.

SZENTIVÁNYI Iván: Bankjog. Lezárva: 1987. dec. 31. [Banking law. Closed: December 31, 1987. Банковское право. До 31 декабря 1987 г.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 511 p. Bibliogr. passim.

Technical terms used in public finance in Hungary. Publ. Ministry of Finance. 2. rev., updated ed. Терминология, используемая в венгерской публичной финансовой системе. 2-е перераб. изд.]
Bp. Hungarian Banknote Print. 1988. 89 p. /Public finance in Hungary 43./

Articles - Статьи

BIRÓ Dénes: Elképzelések a költségvetési reform tanácsi gazdaságirányitást érintő részéhez. [Concepts on the part of budget reform concerning in the council-level economic management. Соображения по реформе бюджета касательно части по управлению хозяйством советов.]
ÁI 7/88:646-651.

FERENCZI József: A személyi jövedelemadó lakóhelyre szabályozásának dilemmái. [The dilemmas of value added tax related to the residence. Дилеммы регулирования налогообложения личных доходов по месту жительства.]
ÁI 7/88:666-669.

FERENCZY Endre: A bankok és biztositók felügyeletéről. [Supervision of banks and insurance companies. О надзоре над бан-

ками и страховыми фирмами.]
ÁJ 1-2/87-88:247-260.

FÜRCHT Pál: Költségvetési reform és tanácsi önkormányzat. [Budget reform and council-level self-government. Реформа бюджета и самоуправление советов (заметки).]
ÁI 7/88:619-623.

PÉTERI Károly: A költségvetési reform tanácsi vonatkozásai. [Some problems of the budgetary reform. Советы в свете бюджетной реформы.]
ÁI 7/88:635-645.

V. CIVIL LAW - V. ГРАЖДАНСКОЕ ПРАВО

Books - Книги

KECSKÉS László: Staatliche Immunität und Verantwortlichkeit für Schäden. [State immunity and responsibility for damages. Государственный иммунитет и ответственность за вред.]
Pécs, Pécsi Szikra ny. 1988. 30 p. /Stidia iuridica auctoritate Universitatis Pécs publicata 115./ Bibliogr. passim.

A polgári törvénykönyv. Összeáll. és jegyz. Baranyai János - Fluckné Papácsy Edit - Zoltán Ödön. 4. jav. kiad. Lezárva: 1987. okt. 30. [Civil Code. 4th rec. ed. Closed: October 30, 1987. Гражданский кодекс. 4-ое перераб. изд. До 30 октября 1987 г.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 675 p. /Kis jogszabály sorozat./

A társasági törvény. Az 1988. évi VI. törvény a gazdasági társaságokról, magyarázatokkal, iratmintákkal. Szerk. Kun Tibor. [Act on associations. Act VI of 1988 of economic associations, with comments and practical forms. Закон об обществах. Закон

№ VI. 1988 г. о хозяйственных обществах с комментарием.]
Bp. Láng Kiadó, 1988. 532 p.

Tőkekivinás, szanálás, felszámolás. Szerk. Veress József. [Withdrawal of capital, reorganisation, liquidation. Свёртывание капиталовложений, санация и ликвидация.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 191 p. Bibliogr. 189-191.

Articles - Статьи

Állásfoglalás a gazdasági társaságokról szóló törvény tervezetéről. [Az MTA Elnökségének állásfoglalása. Stand on the draft bill concerning economic associations. Stand of the Presidium of the Hungarian Academy of Sciences. Обсуждение проекта закона об обществах в президиуме ВАН.]
MTud. 9/88:700-703.

BASA Ildikó: Konferencia a társasági jogalkotásról. [Budapest, 1988. jan. 15. Conference on the legislation of associations. Budapest, January 15, 1988. Конференция по вопросам законодательства о товариществах. Будапешт, 15 января 1988 г.]
JK 7/88:425-427.

BATTA János: Termékesztétikum és jogi védelem. [The aesthetics of commodities and legal protection. Эстетика продуктов и правовая защита.]
MJ 7-8/88:606-617.

BOSÁNSZKY Lajos: Önkormányzat és tulajdon. [Self-government and property. Самоуправление и собственность.]
ÁI 10/88:933-942.

A gazdasági társaságokról szóló törvény alapvető elveiről. Szerk. Sárközy Tamás. The basic principles of the Act on economic associations. Основные принципы закона о хозяйственных товариществах.]
JK 7/88:371-384.

Bibliographia

HAMZA Gábor: A magánjog kodifikálása Braziliában. [Civil law codification in Brazil. Кодификация частного права в Бразилии.] = ELTE Acta. 29. köt. 1988. 203-205.

HÉJJAS István: Hozzászólás Bächer Vilmos: A szolgálati találmányok díjazása [joggyakorlatának időszerü kérdései c.] cikkéhez. [Comments to Vilmos Bächer's paper entitled "Remuneration of service inventions - topical problems of the legal practice." Вознаграждение за изобретательную деятельность, осуществляемую в рамках службы: замечания по поводу статьи Вильмоша Бахер.]
MJ 10/88:861-863.

KISFALUDI András: Jövedelemfelosztás és veszteségviselés a polgári jogi társaságban. [Division of income and compensating losses in civil law associations. Распределение доходов и несение убытков в обществе, созданного на основе гражданского права.]
MJ 7-8/88:623-635.

KOVÁCS Annamária: Az alapitvány szabályozásának problémái. [Problems relating to the regulation of foundations. Проблемы регулирования создания фондов.]
ÁI 9/88:788-797.

KULCSÁR Kálmán: A társasági törvény. [The act on associations. Закон об обществах.]
MJ 11/88:913-924.

LONTAI Endre: A francia versenyjog reformjáról. [Reform of the French law of competition. Реформа права о конкуренции во Франции.]
ÁJ 1-2/87-88:231-243.

MISKOLCZI BODNÁR Péter: Polgári jogunk jövőbeni fejlődése. [Future development of Hungarian civil law. О перспективном

развитии нашего гражданского права.]
= Jogász szöv. ért. 1988. 1. köt. 25-57.

MISKOLCZI Bodnár Péter: Szavatosság és szerződésen alapuló kártérités. [Warranty and contractual compensation. Гарантия и возмещение вреда на основании договора.]
MJ 10/88:873-881.

NÉMETH Miklós: Gazdaságpolitikai törekvéseink és a társasági törvény. [Endeavours of our economic policy and the company law. Наши стремления в области хозяйственной политики и закон об обществах.]
TSZ 6/88:56-61.

RÉCZEI László: Az ingatlan lizingről. [Leasing of real estates. Лизинговый договор о недвижимом имуществе.]
MJ 7-8/88:675-677.

SÁRKÖZI Zoltán: A kereskedelmi jogalkotás kezdetei és a részvénytársasági törvény kialakulása Magyarországon. [The beginning of commercial legislature and the development of joint stock company law in Hungary. Начало торгового законодотельства и становление закона об акционерном обществе в Венгрии.]
JK 9/88:524-528.

SZEGEDINÉ SEBESTYÉN Katalin: Mindennapi kérdőjelek. A részvénytársaság alaptőkéjéről a cégbirósági tapasztalatok alapján. [Everiday question marks: the authorised capital of a share company in the experiences of the court of registration. Ежедневно возникающие вопросы. Основной капитал акционерного общества и практика судов по регистрации обществ.]
MJ 7-8/88:656-671.

TAKÁCS Imre: Az önkormányzati tulajdon. [Property of self-governing organs. Собственность самоуправляющих органов.]
ÁI 9/88:798-804.

TARR György: A humán művi megtermékenyités jogi kérdései, különös tekintettel a vérrokonság családjogi problémájára. [Legal aspects of human artificial insemination with special regard to the problem of consanguinity under family law. Правовые вопросы искусственного оплодотворения, с точки зрения родственных отношений в семейном праве.]
MJ 9/88:774-779.

TÖRÖ Károly: Az emberi szaporodás és öröklődés mesterséges befolyásolásának jogi kérdései. [Debated issues in connection with the artificial modulation of human reproduction and inheritance. вопросы искусственного вмешательства в процесс размножения и наследственность человека.]
MTud. 12/88:921-928.

TÖRÖ K[ároly]: Versuch am Menschen. [Experiments on men. Экспериментирование с человеком.]
AJurid. 1-2/87:71-94.

TÖRÖK Gábor: A reorganizáció gondolata a magyar szabályozásban. [The idea of reorganisation in Hungarian regulations. Идея реорганизации в венгерском правовом регулировании.]
ÁJ 1-2/87-88:122-150.

Tulajdon - részvény - politika. Körkérdés a társasági törvény gazdasági és politikai összefüggéseiről. [About the new political way of thinking . A round-table discussion.Собственность - акция - политика. Конференция круглого стола об экономических и политических вопросах закона об обществах.]
TSZ 8-9/88:51-71.

ZOLTÁN Ödön: A reklámról és a tisztességről. [Advertising and honesty. О рекламе и добросовестности.]
JK 6/88:322-329.

VI. LABOUR LAW - VI. ТРУДОВОЕ ПРАВО

Books - Книги

Bulletin du Séminare international du droit comparé du travail et de la sécurité sociale - Bulletin on International Seminar of Comparative Labour Law and Social Security. Vol.1. Réd. Nagy László. Вестник семинара по вопросам сравнительного права и социального обеспечения. Том 1.]
Szeged, [mimeogr.] 1988. 239, [2] p. Bibliogr. passim.

FEKETE György: A munkaerő-gazdálkodás dilemmái Magyarországon a[z 19]80-as évtizedben. [Dilemmas of manpower management in Hungary in the 1980-ies. Дилеммы использования трудовых ресурсов в Венгрии.]
Bp. Akadémiai Kiadó, 1988. 197, [2] p. Bibliogr. 179.

Munkajogi Kézikönyv. Szerk. Radnay József. 2. átdolg. kiad. Lezárva: 1988. febr. 10. [Textbook of labour law. 2nd rev. ed. Closed: February 10, 1988. Настольная книга по трудовому праву. 2-е перераб. изд.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 901, [2] p.

A társadalombiztositás fejlődése számokban. 1950-1985. Összeáll. Fodor András - Jurth Rudolf - Tamás Jenőné. Szerk. Jurth Rudolf. [Közzéteszi az] Országos Társadalombiztositási Főigazgatóság. [Development of social security in ciphres. 1950-1985. Социальное страхование в цифрах. 1950-1985 г.г.]
[Bp.] Népszava Kiadó, 1987. [1988.] 459, [8] p. Bibliogr. 49., 457.

Articles - Статьи

[HÁGELMAYER Ida - LEHOCZKYNÉ KOLLONAY Csilla] ХАГЕЛЬМАЙЕР Ида - ЛЕХОЦКИНЕ КОЛЛОНАИ Чилла: Участие трудящихся в управлении

предприятиями в Венгрии. [Workers' participations in the management of enterprises and its legal forms.]
= Annales Bp. Tomus 29. 1988. 85-97.

PULAY Gyula: Foglalkoztatáspolitika: uj helyzet, uj feladatok. [Employment policy - new situation, new tasks. Политика по вопросам занятости: новая ситуация, новые задачи.]
TSZ 11/88:63-69.

SZITA László: A munkához való jog értelmezéséről. [Interpretation of the right to work. О толковании права на труд.]
= Jogász szöv. ért. 1987. 2. köt. 164-186.

VII. FAMILY LAW - VII. СЕМЕЙНОЕ ПРАВО

Books - Книги

A családjogi törvény magyarázata. 1-2. köt. Szerk. Petrik Ferenc. Lezárva: 1987. okt. 1. [Comments to the Act on the family. Vils. 1-2. Closed: October 1, 1987. Комментарий к Семейному кодексу. Том 1-2. До 1 октября 1987 г.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 558, [2], 544 p.

Az uj családjogi törvény [1986. évi IV. tv.] büntetőjogi összefüggései. Tudományos közgyülés. Budapest, 1987. dec. 3. Szerk. Lévai Miklós. [Közzéteszi az] MTA Magyar Kriminológiai Társaság. [Criminal law aspects of the new act on family law. Act No. IV of 1986. Scientific meeting, held at Budapest on December 3, 1987. Уголовно-правовые аспекты нового Закона о браке и семье. Закон № IV. 1986 г.]
Bp. [mimeogr.] 1988. 67, [8] p. /Kriminológiai közlemények 20./

VIII. LAND LAW - VIII. ЗЕМЕЛЬНОЕ ПРАВО

Articles - Статьи

BOBVOS Pál: A magánszemélyeket érintő termőföld-tulajdonszerzési korlátozások. [Limits of acquiring the property of cultivated land affecting individuals. Ограничения на приобретение земельной собственности частными лицами.]
MJ 7-8/88:636-646.

HALMAI Péter: Sind die ungarischen landwirtschaftlichen Grossbetriebe Unternehmungen? [Are Hungarian agricultural largescale forms enterpreneurship? Являются ли венгерские сельскохозяйственные крупные хозяйства предпринимателями?]
= Annales Bp. Tomus 29. 1988. 47-65.

HORVÁTH Zsuzsanna: A földvédelem jogintézményének kialakulása és fejlődése 1945-től napjainkig. [Formation and development of land protection as a legal institution from 1945 to the present time. Возникновение и развитие института охраны земли в период после 1945 г. до наших дней.]
= Jogász szöv. ért. 1987. 2. köt. 81-103.

PRUGBERGER T[amás]: Zur Ausgestaltung der einheitlichen rechtlichen Regelung bezüglich der landwirtschaftlichen Länderein. [The uniform development of legal regulation concerning agricultural lands. К разработке единого правового регулирования сельскохозяйственных земель.]
AJurid. 1-2/87:147-164.

IX. LAW OF CO-OPERATION - IX. СЕЛЬСКОХОЗЯЙСТВЕННОЕ ПРАВО

Articles - Статьи

DOMÉ Györgyné: A szövetkezetek és a gazdasági társaságok. [Cooperatives and economic associations. Кооперативы и хозяйственные общества.]
MJ 12/88:1041-1049.

Bibliographia

PETRIK Ferenc: Szövetkezet és jogalkotás. [Co-operatives and legislation. Кооператив и правотворчество.]
MJ 12/88:1034-1040.

PRUGBERGER Tamás - SINDLER György: Vállalkozási egységrendszerek a mezőgazdasági vállalatoknál. [Enterpreneurial units in agricultural enterprises. Системы подрядных единиц на сельскохозяйственных предприятиях.]
JK 6/88:312-322.

SÜVEGES Márta: L'évolution du statut juridique des coopératives de production agricole en Hongrie. [Develoment of the legal status of the agricultural co-operatives. Развитие правового статуса сельскохозяйственных производственных кооперативов в Венгрии.]
= Annales Bp. Tomus 29. 1988. 139-149.

SZÉP György: Érdekviszony, érdekképviselet az általános és a szövetkezeti jogfejlődés tükrében. [Relations and representation of interests as reflected by the general trend of legal development and the law of co-operatives. Интересы и их выражение в свете развития права, и особенности кооперативного права.]
MJ 12/88:1050-1056.

SZILÁGYI Sándor: Gondolatok a szövetkezeti alapelvek ujraértékeléséhez. [Thoughts on the reassessment of the fundamental principles on co-operatives. Размышления о пересмотре основных принципов кооперативной деятельности.]
JK 7/88:395-403.

TANKA Endre: A tulajdonviszonyok főbb mozgástendenciái a mezőgazdaság szövetkezeti szektorában. [Principal tendencies of changes in property relations in the co-operative sector of agriculture. Основные тенденции развития отношений собственности в кооперативном секторе сельского хозяйства.]
MJ 11/88:942-950.

X. CRIMINAL LAW. - CRIMINAL SCIENCES

X. УГОЛОВНОЕ ПРАВО. ВСПОМОГАТЕЛЬНЫЕ НАУКИ УГОЛОВНОГО ПРАВА

Books - Книги

Büntető jogszabályok. Összeáll. és jegyz. Moldoványi György - Nagy Zoltán. Lezárva: 1988. aug. 31. [Statutory rules of criminal law. Closed: August 31, 1988. Уголовно-правовые законодательные акты. До 31 августа 1988 г.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 755 p. /Kis jogszabály sorozat./

ERDŐSY Emil: A megengedett kockázat a büntetőjogban. [The permissible risk in criminal law. Допускаемый риск в уголовном праве.]
Bp. Akadémiai Kiadó, 1988. 176, [4] p. Bibliogr. 173-177.

FÖLDESI Tamás: Büntetőjog és igazságosság. [Közzéteszi a] Magyar Tudományos Akadémia Államtudományi kutatások programirodája. [Criminal law and justness. Уголовное право и справедливость.]
Bp. [mimeogr.] 1988. [4], 213 p. Bibliogr. passim.

KORDA György: A katonai és a honvédelmi kötelezettség elleni bűncselekmények. [Military offences and infringements of the obligation of rendering military service. Воинские преступления и преступления против обороноспособности страны.]
Bp. Zrinyi Kiadó, 1988. 255, [4] p.

A Magyar Kriminológiai Társaság 1987. évi közgyülése. [Budapest, 1987. máj. 29.] - A kriminalitás regionális vizsgálatának kérdései. A Jászság és a Nagykunság bünözése. [Tudományos ülés. Szolnok, 1987. ápr. 24.] Szerk. Polt Péter - Katona Géza. [Közzéteszi az] MTA Magyar Kriminológiai Társaság. [General assembly of the Hungarian Association of Criminology in 1987. Buda-

pest, May 29, 1987. - Problems of the regional investigation of criminality. Criminality in the Jászság and Nagykunság regions. Scientific meeting. Szolnok, April 24, 1987. Ежегодное собрание Венгерского общества криминологов. 1987 г. Исследование региональных вопросов преступности.]
Bp. [mimeogr.] 1987. [1988.] 130 p. /Kriminológiai közlemények 18-19./ Bibliogr. 123-129.

VIGH József - TAUBER István - MADÁCSI Imre: A hátrányos társadalmi helyzet és a bünözés kapcsolata. Kriminálstatisztikai és kriminológiai értékelés. [Relations between handicapped social environment and criminality. An assessment from the point of view of criminal statistics and criminology. Социально неблагоприятное положение и преступность.]
[Bp.] BM Kiadó, 1988. 415 p. Bibliogr. passim. — Eng. summary.

Articles - Статьи

ÁDÁM György: Megadóztatható-e az orvosi "hálapénz"? Egy [LB BTK] "állásfoglalás" margójára. [Should we tax the "gratitude money" of physicians? Могут ли облагаться налогом деньги, полученные врачём в знак "благодарности"?]
JK 8/88:476-482.

ÁDÁM György: Az "orvosi hálapénz" büntetőjogi megitélése. [The criminal law attitude towards "gratitude money" for physicians. Уголовно-правовая оценка так называемых "благодарственных денег врачу".]
JK 9/88:504-510.

BABAY Imre: Büntetőjogi eszköz a kiskoruak védelmében. [Penal law means for the protection of minors. Уголовно-правовые средства защиты несовершеннолетних.]
= Jogász szöv. ért. 1987. 2. köt. 27-55.

BÓCZ Endre: A pénzfőbüntetésről. [Fine as main punishment.

О денежном тарифе, как основном виде наказания.]
MJ 11/88:974-976.

DÁNOS Valér: A szervezett bünözés és egyes elemeinek megjelenése a hazai bünözésben. [Organized crime and appearance of some of its elements in Hungarian criminality. Организованная преступность, её некоторые элементы в нашей уголовной системе.]
= Jogász szöv. ért. 1988. 1. köt. 7-24.

FERENCZ Z[oltán]: Situation potentielle de crime et précriminalité - antécédentes de la situation d'acte criminel. [Potential crime case-situation and pre-criminality. Preceding events of the crime situation. Потенциальная криминальная ситуация и прекриминальность: предпосылки криминальной ситуации.]
AJurid. 1-2/87:133-146.

GÁL Attila: Gondolatok a közérdekü javitó-nevelő munkáról. [Thoughts on the corrective work serving public interests. Об исправительно-воспитательном труде, приносящей публичную пользу.]
MJ 10/88:839-849.

GÖNCZÖL Katalin: gazdaság - bünözés - büntetőpolitika. [Economy - criminality - criminal policy. Экономика - преступность - уголовная политика.]
JK 8/88:463-472.

GYÖRGYI Kálmán: Orvosi hálapénz és büntetőjogi felelősség. [Reward offered to doctors and responsibility under criminal law. Деньги, вручаемые врачу больными в виде знака благодарности, и уголовно-правовая ответственность.]
MJ 9/88:752-761.

IRK Ferenc: Irányzatok a tett morális és jogi értékeléséről.

[Concepts on the moral and legal assessment of a criminal act. Тенденции в моральной и правовой оценке поступка.]
MJ 11/88:951-957.

KIRÁLY Tibor: A büntetőhatalom korlátai. [The limits of penal power. Пределы уголовной власти.]
ÁI 8/88:729-742.

KIRÁLY Tibor: A büntetőhatalom korlátai. [Limits of the penal power. Пределы уголовной власти.]
MJ 9/88:730-743.

KIRÁLY Tibor: A büntetőhatalom korlátai. [The limits of criminal jurisdiction. Пределы уголовной власти.]
MTud. 10/88:745-759.

KOVACSICSNÉ NAGY Katalin: A longitudinális kohorsz elemzésen alapuló visszaesési prognózisszámitás módszertana. [Methodology of regress prognose calculation based on longitudinal cohort analysis. Метод определения вероятности рецидива на основе единиц лонгиметрии.]
= ELTE Acta. 29. köt. 1988. 109-124.

LÁZÁR Miklós: A büntetőjogi felelősség tágitásának utvesztői. [Dead-end streets of of widening the criminal responsibility. Тупики расширения уголовной ответственности.]
JK 8/88:472-475.

MERÉNYI Kálmán: A A rablás pönalizálásának fejlődése a felszabadulástól a hatályos rendelkezésekig. [The development of penalization of robbery from the situation in 1945 till the valid rules. Развитие пенализации грабежа в период от освобождения до действующего законодательства.]
JK 8/88:482-485.

RÁCZ György: A büntetőügyben emelt törvényességi óvás intézmé-

nyi jellege. [The institutional character of the legality complaint in criminal cases. Институционный характер протеста прокурора по уголовным делам.]
JK 8/88:488-489.

RÁCZ György: Az uj osztrák büntetőnovella. [1987. The new Austrian penal law statute. Австрийская уголовно-правовая новелла.]
JK 9/88:531-533.

SZABÓ András: A büntetőjog reformja - a reform büntetőjoga. [The reform of criminal law - the criminal law of the reform. Реформа уголовного права - уголовное право реформы.]
JK 8/88:459-462.

SZABÓ András: A bünözés kihivása és a kriminológia válaszai. [The challenge of crime and the responses of criminology. Вызов со стороны преступности и ответ криминологии.]
Társadkut. 3/88:5-31.

SZABÓ Győző: Gondolatok a Legfelsőbb Bíróság VII. számu büntető elvi döntéséről. [A felnőttkoruak próbára bocsátásáról, a pártfogó felügyeletről és a büntetés végrehajtásának felfüggesztéséről. Thoughts on the Decision of principle No. VII of the Supreme Court in criminal cases. Probation of adults, patronizing supervision, suspension of the implementation of a punishment. Об уголовном освобождении из-под заключения совершеннолетних, о поруке и приостановлении исполнения наказания.]
MJ 7-8/88:591-596.

VIGH József: Thoughts about the essence of socialist criminology. О сущности социалистической криминологии.]
= Annales Bp. Tomus 29. 1988. 151-175.

XI. JUDICIAL ORGANIZATION - XI. СУДОУСТРОЙСТВО

Book - Книга

Tanulmányok az igazságszolgáltatás továbbfejlesztéséről. Tanulmánykötet. Összeáll. Palkovics Éva. [Papers on the development of the administration of justice. A collection of studies. Сборник работ о развитии системы правосудия.]
Bp. [mimeogr.] 1988. [2], 391 p. /Igazságügyi Minisztérium Tudományos és tájékoztatási főosztály kiadványai 25./ Bibliogr. passim.

Articles - Статьи

BENEDEK Károly: Gondolatok az igazságszolgáltatás korszerüsitéséről. [Thoughts on the modernization of justice. О совершенствовании деятельности органов юстиции.]
MJ 9/88:744-751.

CSERNOK Gyula: Igazságügyi reformok és a birói alkalmasság. [Reforms of the judiciary and the professional aptitude of judges. Реформа юстиции и профессиональная пригодность судей.]
MJ 11/88:925-941.

GÁL Andor: A katonai igazságszolgáltatás és a katonai igazságügyi irányitás korszerüsitésének kérdései. [Problems of the modernization of military jurisdiction and the orientation of military justice. Военная юстиция и управление правосудием военной юстиции.]
= Igazságszolgáltatás továbbfejl. 1988. 137-181.

LŐRINCZ György: Gondolatok a helyi bíróság szervezetének, vezetésének továbbfejlesztéséről. [Thoughts on the improvement of the organization and direction of local courts. О дальнейшем развитии местной судебной системы.]
= Igazságszolgáltatás továbbfejl. 1988. 269-308.

PETRIK Ferenc: A bírósági szervezet reformja. [Reform of the organization of courts and tribunals. Реформа судебной системы.]
= Igazságszolgáltatás továbbfejl. 1988. 5-77.

SOMOGYI Endre: Hogyan tovább az igazságügyi orvosszakértői szervezet fejlesztésével? [New measures to take for improving the body of the medical experts of courts. Как развивать организацию судебной экспертизы.]
MJ 11/88:958-962.

SZUCHOVSZKY Gyula: Orvosszakértői díjazás - koncepcionális kérdések. [Conceptual problems on the remuneration of medical experts of the courts. Вознаграждение судебно-медицинских экспертов.]
MJ 11/88:963-968.

UDVAROS Miklós: Az igazságszolgáltatás rendszere Svédországban. [The Swedish system of administration of justice. Система правосудия в Швеции.]
JK 6/88:352-353.

UDVAROS Miklós: Az igazságügyi szervezet hatékonyságának felmérése Skandináviában. [Analysis of the effectiveness of judicial system in Scandinavia. Измерение эффективности организации юстиции в Скандинавии.]
JK 8/88:495.

XII. CIVIL PROCEDURE - XII. ГРАЖДАНСКИЙ ПРОЦЕСС

Articles - Статьи

BENKE Éva: Eljárásjogi széljegyzetek a nem vagyoni kárpótlás iránti perekhez. [Notes to lawsuits for non-material compensation from procedural viewpoint. Замечания об исках по возме-

щению неимущественного вреда.]
= Jogász szöv. ért. 1988. 1. köt. 90-110.

BÓKAI Judit - OLÁH György: Néhány gondolat a jogellenesen külföldön tartózkodó magánszemély ingatlantulajdonával kapcsolatos eljárásról. [Thoughts on the proceedings related to the property of real estate of individuals staying in abroad without authorization. Производство о недвижимом имуществе лиц, незаконно находящихся за границей.]
MJ 7-8/88:647-655.

FARKAS István: A nem vagyoni kár elmélete és gyakorlata a mult és a jelen tükrében. [Theory and practice of non-material damages in past and present reflections. Теория и практика неимущественного вреда в прошлом и настоящем.]
= Jogász szöv. ért. 1987. 2. köt. 56-80.

HORVÁTH János: A tárgyalás előkiszitése és felkészülés a tárgyalásra, valamint az itélkezés időszerüsége - elvi és gyakorlati kérdések. [Arrangements for the proceedings, preparations for the trial, and the timeliness of the administration of justice; problems of principle and practice. Подготовление процесса, подгоьовка к процессу и актуальные вопросы вынесения приговоров - теоретические и практические вопросы.]
= Jogász szöv. ért. 1987. 2. köt. 104-134.

NÉMETH J[ános]: Überprüfung fehlerhafter Gerichtsentscheidungen. [The revision of the faulty decisions of courts. Пересмотр /ревизия/ ошибочных судебных решений.]
AJurid. 1-2/87:115-131.

PAPP Zsuzsanna: A kisajátitási sorrendi tárgyalás. Kisérlet egy lassan feledésbe merülő nemperes eljárás ujjáélesztésére. [Proceedings for distribution in expropriation cases. Effort to revive an extra-judicial procedure going to sink into oblivion. Очередность удовлетворения претензий в процессе о рек-

визициях.]
= ELTE Acta. 29. köt. 1988. 23-45.

PAPP Zsuzsanna: Hatékonyság az igazság keresésében. [VIII. eljárásjogi világkongresszus. Utrecht, 1987. aug. 23-30. Efficiency in the search of justice. 8th World congress of the law of procedure: Utrecht, August 23 to 30, 1987. Эффективность процесса установления истины. Утрехт, 23-30 августа 1987 г.]
MJ 10/88:902-907.

A polgári eljárás átfogó ujraszabályozásának koncepciója. [Concept of a new comprehensive regulation of civil procedure. Концепция рекодификации гражданского процесса.]
= Igazságszolgáltatás továbbfejl. 1988. 329-391.

TIMÁR László: Vita a jogellenesen külföldön tartózkodó magánszemélyek ingatlantulajdonával kapcsolatos eljárásról. [Budapest, 1988. febr. 28. Dispute on the proceedings related to the property of real estate of individuals staying in abroad without authorization. Дискуссия о производстве по делам о недвижимом имуществе лиц, незаконно находящихся за границей.]
MJ 7-8/88:712-714.

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XIII. CRIMINAL PROCEDURE - XIII. УГОЛОВНЫЙ ПРОЦЕСС

Book - Книга

Rendőrorvosi tudományos ülésel. [X. köt. Siófok, 1987. okt. 15-16.] Összeáll. Krajcsovics Pál - Diczig István. [Scientific meetings of police doctors. Vol. X. Siófok, October 15-16, 1987. Совещание судебно-медицинских экспертов. Том X. Шиофок, 15-16 октября 1987 г.]
[Bp.] BM Kiadó, 1988. 233, [4] p.

Articles - Статьи

BÁRD K[ároly]: Über die Zweiteilung der Verhandlung. [Dividing the legal proceedings. О раздвоении судебного заседания.]
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AJurid. 1-2/87:35-55.

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Bp. [mimeogr.] 1988. [4], 104 p. /Az alkotmány továbbfejlesztésének tudományos megalapozása 18./ Bibliogr. passim.

Articles - Статьи

BÁNDI Gyula: Az ember joga a környezethez. [The human rights to environment. Право человека на здоровую окружающую среду.]
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nemzedéke? [Rights of solidarity or the third generation of human rights? Третье поколение прав человека.]
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JK 7/88:403-410.

NAGY Boldizsár: The theory of international relations and the science of international law. Теория международных отношений и наука международного права.]
= Annales Bp. Tomus 29. 1988. 111-126.

XV. PRIVATE INTERNATIONAL LAW - XV. МЕЖДУНАРОДНОЕ ЧАСТНОЕ ПРАВО

Book - Книга

A KGST általános szállitási feltételeinek viszonya a bécsi adásvételi koncepcióhoz c. nemzetközi konferencia referátumai. Budapest, 1986. okt. Rend. az MTA Állam- és Jogtudományi Intézet. [Relations between the General Conditions of Delivery of the CMEA and the Vienna Convention on Sales and Purchases. Reports of an international conference. Budapest, October, 1986. Соотношение УОП СЭВ и Венской конвенции о международной купле-продаже. Рефераты конференции. Будапешт, октябрь 1986 г.]
Bp. Gépelt másolat, 1988. Ism. lapsz. [162] p. Bibliogr. passim.

Articles - Статьи

BURIÁN László: A deliktuális felelősség a francia nemzetközi

magánjogban. [The delictual responsibility in the French international private law. Деликтная ответственность по французскому международному частному праву.]
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KECSKÉS L[ászló]: Die Anwendung des ausländischen Rechts und das internationale Privatrecht. [Application of foreign law and private international law. Применение иностранного права и международное частное право.]
AJurid. 1-2/87:231-236.

LONTAI Endre: A tudományos-müszaki együttmüködés jogi eszközei a KGST-ben. Nemzetközi konferencia. Potsdam-Babelsberg, 1986. jun. 24-26. [Legal instruments of scientific-technical cooperation in the CMEA. International conference in Potsdam-Babelsberg on June 24-26, 1986. Правовые средства научно-технического сотрудничества в рамках СЭВ. Международная конференция: Потсдам-Бабельсберг /24-26 июня 1986 г./]
ÁJ 1-2/87:244-246.

MÁDL Ferenc: Az Európai Gazdasági Közösség és Magyarország. A nemzetközi gazdasági kapcsolatok jogának egy uj fejezetéhez. [The European Community (EEC) and Hungary. A new chapter of the law of international economic relations. Европейское Эко-

номическое Сообщество в Венгрии. Новые явления в праве международных экономических отношений.]
JK 8/88:441-449.

UJLAKI László: Választottbíróság és méltányosság. [Boards of arbitration and equity. Арбитражный суд и справедливость.]
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VÉGH László: Az adhéziós eljárás néhány kérdése. [Problems of the procedure of adhesion. Некоторые проблемы гражданского иска в уголовном процессе.]
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Bp. Akadémiai Kiadó, 1988. 130, [2] p. /Értekezések a történeti tudományok köréből. U.S. 108./ Bibliogr. passim.

FALLENBÜCHL Zoltán: Magyarország főméltóságai. 1526-1848. Az udvari méltóságok archontológiája. Előszó Kállay István. [Hungary's high dignities. 1526-1848. An archontology of court dignitaries. Сановники Венгрии. 1526-1848 г.г. Высшие чины Двора.]
Bp. Maecenas Kiadó, 1988. [2], 159 p.

GERŐ András: Az elsöprő kisebbség. Népképviselet a Monarchia Magyarországán. [A sweeping minority. People's representation in the Hungary of Habsburg Monarchy. Подавляющее меньшинство.

Народное представительство в Венгрии в период монархии.]
Bp. Gondolat, 1988. 293 p. 1 térk. Bibliogr. passim.

KRISTÓ Gyula: A vármegyék kialakulása Magyarországon. [Formation of the counties in Hungary. Формирование земств в Венгрии.]
Bp. Magvető Kiadó, 1988. 641, [6] p. /Nemzet és emlékezet./ Bibliogr. 605-642.

A magyar közigazgatás-tudomány klasszikusai. 1874-1947. Szerk. és bev. Lőrincz Lajos. Vál. és szerk. közrem. Lövétei István, Szamel Katalin. [Classical figures of the Hungarian jurisprudence of public administration. 1874-1947. Классики венгерской науки государственного управления. 1874-1947 г.г.]
Bp. Közgazdasági és Jogi Kiadó, 1988. 365, [2] p. Bibliogr. passim.

SALAMONNÉ SOLYMOSI Ibolya: A legfelsőbb szintü biráskodás története Magyarországon. [Közzéteszi a] Magyar Tudományos Akadémia Államtudományi kutatások programirodája. [History of Hungarian jurisdiction at the highest level. История развития высших органов правосудия в Венгрии.]
Bp. [Mimeogr.] 1988. 89 p. Bibliogr. 87-89.

SZEGVÁRI Katalin, N.: Numerus clausus rendelkezések az ellenforradalmi Magyarországon. A zsidó és nőhallgatók főiskolai felvételéről.[Numerus clausus-based dispositions in Hungary during the counter-revolutionary era. Admission of applicants of Jewish origin and female sex to high schools. Постановления numerus clausus в Венгрии в период контр-революции. Об условиях поступления в вузы лиц еврейского происхождения и женщин.]
Bp. Akadémiai Kiadó, 1988. 200, [4] p. Bibliogr. passim.

Articles - Статьи

HORVÁTH Pál: Bedingungen der Herausbildung der volksdemokrati-

schen Rechtsgruppenregion in Mittel-Ost-Europa. [The direct historical antecedents of the development of central and East-European socialist groups of law. Прямые исторические предпосылки развития социалистического типа права в странах центральной и восточной Европы.]
= Annales Bp. Tomus 29. 1988. 99-109.

HORVÁTH Pál: Szalay László életművéről és a magyar liberális jogi historizmus kiteljesedésének lehetőségeiről. [László Szalay's life work and the prospects of the full development of liberal-minded legal historism in Hungary. О творчестве Ласло Салаи и возможности правового историзма.]
= Jogász szöv. ért. 1988. 1. köt. 183-196.

KAJTÁR István - VISEGRÁDY Antal: Jogtörténeti és jogelméleti adalékok a jog hatékonyságához. [Historical and theoretical contributions to the effectivity of law. К вопросу эффективности права с точки зрения истории и теории права.]
JK 9/88:497-503.

MEZEY Barna: A szatmári béke jogi vonatkozásai. [Legal aspects of the Szatmár peace treaty. Правовые аспекты заключения договора о сатмарском мире.]
= ELTE Acta. 29. köt. 1988. 97-108.

NAGYNÉ SZEGVÁRI Katalin: A New Deal és az USA Legfelsőbb Bírósága. [The New Deal and the Supreme Court of the USA. New Deal и Верховный Суд США.]
= ELTE Acta. 29. köt. 1988. 65-82.

XVII. ROMAN LAW - XVII. РИМСКОЕ ПРАВО

Book - Книга

BALÁZS Tamás: Pandektisztika a marxista értékelés tükrében.

[Pandectistics in the light of Marxist assessment. Пандекты с точки зрения их марксистского анализа.]
Bp. [mimeogr.] 1988. [2], 60, [2] p. /Publicationes Institutis Romani Budapestinensis. Fasc. 8./ — Dt. Zusammenfassung.

Articles - Статьи

FÖLDI András: Megjegyzések a legis actiok kérdéséhez. [Remarks to the problem of the legis actions. Вопросы legis actio.
= ELTE Acta. 29. köt. 1988. 47–64.

HAMZA Gábor: Einige Aspekte des Verhältnisses der vergleichenden Rechtsgeschichte zum römischen Recht. [Some aspects of the relation of comparative legal history to Roman Law. Некоторые аспекты сравнительной истории права и римского права.]
= Annales Bp. Tomus 29. 1988. 67–84.

HAMZA Gábor: Magyar–olasz jogászkonferencia a modern magánjog (polgári jog) római jogi gyökereiről. [Róma, 1986. máj. 15–17. Hungarian-Italian conference of jurists on the Roman law roots of modern civil law. Rome, May 15–17, 1986. Венгерско-итальянская конференция юристов об исторических корнях гражданского и римского права. Рим, 15–17 мая 1986 г.]
= ELTE Acta. 29. köt. 1988. 151–159.

HAMZA G[ábor]: Marx und das römische Recht. Das 4. Internationale Kolloquium der Römisch-rechtlicher der sozialistischen Länder und Italiens. [Szeged, 11–13. Oktober 1984. Marx and Roman law. Fourth international symposium of scientists of Roman law from the socialist countries and Italy. Szeged, October 11 to 13, 1984. Маркс и римское право. Международный симпозиум романистов соцстран и Италии. Сегед, 11–13 октября 1984 г.]
AJurid. 1–2/87:245–249.

XVIII. MISCELLANEOUS - XVIII. СМЕШАННОЕ

Book - Книга

Balogh Jenő emlékkötet. Válogatás Balogh Jenő müveiből. Gyüjt. és szerk. Kónyáné Kutrucz Katalin. [Commemorial papers in honour of Jenő Balogh. A selection from Jenő Balogh's works. Избранные работы Йэне Валог.]
Bp. [mimeogr.] 1988. 253, [2] p. /Kriminológiai közlemények 21./ Bibliogr. passim.

Articles - Статьи

BÁNDI Gyula: Tizéves a Jogász szövetségi értekezések. [1978-1988. A decade of the publication of papers by the Hungarian Lawyers' Association. Десятилетие Вестника Ассоциации венгерских юристов.]
MJ 10/88:908-910.

BASA Ildikó: NSZK-magyar jogásznapok. [Pécs, 1987. szept. 27-okt. 4. West German-Hungarian jurists' days. Pécs, September 27-October 4, 1987. Дни юристов ВНР и ФРГ. Пэч, 27 сентября - 4 октября 1984 г.]
JK 9/88:539-543.

BERÉNYI Sándor: Magyary Zoltán szellemi öröksége. [Intellectual heritage of Prof. Zoltán Magyary. Духовное наследие Золтана Мадяри.]
ÁI 9/88:769-778.

Az európai szocialista államok jogalkotásáról. Sipos Katalin: Szovjetunió. Horváth Anna: Bulgária Népköztársaság. Trócsányi László: Csehszlovák Szocialista Köztársaság. Ijjas István: Jugoszláv Szocialista Szövetségi Köztársaság. Jordán Miklós: Lengyel Népköztársaság. Salzmann Géza: Német Demokratikus Köztár-

saság. Lázár Miklós: Románia Szocialista Köztársaság. [On the legal development in the European socialist states. О законодательных актах европейских социалистических стран.]
JK 6/88:339-352.

HAMZA Gábor: Maine és az összehasonlító jogtudomány. [Maine and comparative jurisprudence. Maine и сравнительное правоведение.]
= ELTE Acta. 29. köt. 1988. 7-21.

Lukács Tibor. [1924-1988. Nekrológ. An obituary. Некролог.]
MJ 12/88:1098-1099.

Márkus Ferenc. 1915-1988. [Nekrológ. Irta] Trócsányi László. [An obituary. Ференц Маркуш. /1915-1988./ Некролог.]
JK 7/88:415.

MOLNÁR Miklós: Tudományos ülés Magyary Zoltán születésének 100. évfordulója alkalmából. [Tata, 1988. máj. 28. Scientific meeting on the 100th anniversary of Zoltán Magyary's birth. Научное заседание по поводу 100-летия со дня рождения Зольтана Мадяри.]
ÁI 9/88:834-845.

RÁCZ György: 900 éves Európa legrégibb jogi egyeteme. [Bologna. 900 years of existence of Europe's oldest university of law in Bologna. Самому старому юридическому факультету в Европе - 900 лет.]
MJ 11/88:1001-1002.

SZÁDECZKY-KARDOSS Irma: Vázlat a jogi szaknyelv multjáról és jövőjéről. [Outlines of the past and future of professional terms of the law. Заметки о прошлом и будущем юридического языка.]
= Jogász szöv. ért. 1987. 2. köt. 135-163.

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