Glossa Iuridica

VIII. évfolyam, 3. szám

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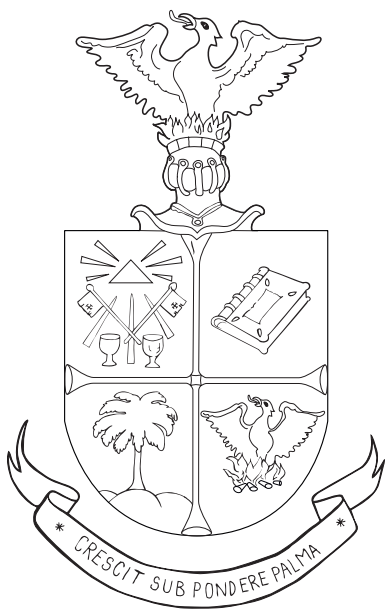
Trianon



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Ius fetiale – The beginning of the process of the creation and ratification of treaties and the declaration of war[1]

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Abstract

In the present scientific study, the author focuses on the analysis of two excerpts from the work of Titus Livius – *Ab urbe condita* (I. 24 and I. 32), which, as a non-legal source of Roman law, offers an insight into the competencies and ritual duties of the *fetiales* – Roman priests who played a significant role in the shaping of international relations of the Romans with other nations. The analysed competencies of *fetiales*, comprehensively referred to as *ius fetiale*, included the right to conclude treaties, the right to demand compensation for acts of aggression and the ritual declaration of war. From the point of view of international and Roman law, we can comprehensively document the process of drafting, ratifying and the binding nature of treaties and declarations of war through the competences of *fetiales* in the early stages of the development of international law.

Keywords

fetials, *ius fetiale, rerum repetitio*, *indictio belli*, international law, Roman law

1. Introduction

Roman law as the legal system of the ancient Roman state is perceived by the legal scientific community mainly through the prism of civil law – personal (status and family), material and contractual (contractual) legal relations of private law, while modern branches of law as their pendants still draw on detailed case studies of Roman private law. Only marginal importance is

1 This work was supported by the Slovak Research and Development Agency under Contract No. APVV-19-0419.

attached to the influence of Roman law on international law. The main theoretical and conceptual question posed by legal science when examining the issue of the influence of Roman law on international law is the question of continuity, as well as the question of the influence of private Roman law (as the most developed system under Roman law) on international law. The question of continuity is, at first, a controversial one, as it struggles with the existence of international law as a whole in the time of Ancient Rome and the general narrative of the beginnings of international law only in the time of the emergence of modern sovereign states. Although there is no direct evidence to support the argument that Roman and modern international law form one continuous whole, it is necessary to accept the premise that Roman law (in each period of its development) was involved in the creation of international law. Roman law influenced international law through customs, concepts, doctrines, complex legal institutes, or other partial influences can be referred to. The present study will focus on the oldest selected attributes of Roman archaic law affecting (modern) international contract law referred to as *ius fetiale*. At the same time, however, the author does not claim that this work is exhaustive, as the issue under investigation is broad in content and the available scope does not allow for the detailed examination of each of the indicated attributes.

2. Ius fetiale

Among the oldest indications of Roman international law as a standard (standards) regulating the relations between the Roman state and extraterritorial elements (ethnicity, nation) is the so-called *ius fetiale*. According to Berger, these standards were intended primarily for the "*fetiales*" – a Roman college of twenty priests, who, in the archaic times of Roman law development, had not only religious functions (competences) but also performed public service, specifically in international relations with other states. Their duty was to examine the fulfilment of, or the failure to meet the conditions for concluding international agreements (*foedus*). The *fetiales* were involved in approving and monitoring compliance with treaties, in matters of extradition, and they acted as the representatives of Rome in the official declaration of war. During foreign missions, they were led by one of the *fetiales* of the college, who, as the spokesperson of the delegation, would bear the official title of *pater*

patratus.[2] In addition to the powers mentioned by Berger, in the context of archaic international law, the *fetiales* had the authority to demand compensation (*rerum repetitio*) and, as already mentioned, the right to declare a just war by order of the Roman Senate (in cooperation with the People's Assembly). Catalano defines *ius fetiale* as a complex of typically Roman (Italic) legal and religious standard applicable in relation to foreign powers[3]. According to tradition (legend), the credit for the introduction of *ius fetiale* is given to the Roman king Ancus, who adopted these legal standards from the Aequi tribe, to whom they were introduced by their king Ferter (or Fertor) Resius. However, this tradition (legend) is preserved not only in literary non-legal sources, but is also found in the inscription CIL 06, 01302: "*Fert[o]r Resius/rex Aequeicolus/is preimus/ius fetiale paravit/inde p(opulus) R(omanus)/discipleinam except* – Fertor Resius, king of the Aequi, the first to create the law of *fetiales* and one from whom the people of Rome have acquired this knowledge."[4] At the same time, it is necessary to note that the tradition *of ius fetiale* being derived from the Aequi tribe does not have to be based on the truth, especially with regard to (only) the etymological suitability of the name of the tribe, which denotes a so-called ideal of equity. However, the fetial, as a bearer of authority in international relations, is not not exclusively a Roman institution. Other nations and communities in the geographical area of Rome likewise knew and actively used their priests – *fetiales* – for similar international law purposes.

3. Ius fetiale in non-legal sources

Among the basic non-legal sources of knowledge of Roman law which specify the role of the *fetiales*, we can include the work *De legibus* by Cicero, which states the following about the *fetiales*: „*Foederum pacis, belli, indotiarum oratores fetiales sunto, uindices non sunto, bella disceptanto.*"[5] – In the matters of peace and war, ratified treaties, ceasefire and messages, let *fetiales* be the judges and let them decided on the matters of war. The most

2 Berger, Adolf: *Encyclopedic Dictionary of Roman Law*. Philadelphia, The American Philosophical Society, 1991, 470.

3 Catalano, Pierangelo: *Linee del sistema sovrannazionale Romano*. Turin, Giappichelli, 1965, 5-6.

4 Available at Epigraphik-Datenbank Clauss / Slaby: https://db.edcs.eu/epigr/bilder.php?s_language=en&bild=$InscrIt_13_03_00066.jpg (26.08.2021).

5 Cic. Leg. 2.21.

prominent work dealing with *fetiales,* at least in some sections, is *History* by Titus Livius (Liv. I. 24, Liv. I. 32),[6] which will be analysed as follows based on excerpts.

3.1. *Horatio and Curiatio (Liv. I. 24)*

Based on an excerpt from Liv. I. 24 and the legendary historical events of the dispute between Rome and Alba Longa, Livy's *History* offers an insight into the competences of *fetiales* and the process of concluding archaic treaties. During the reign of King Tullus Hostilius, a dispute broke out between Rome and neighbouring Alba Longa over domination of the nations. According to the legend described by Titus Livius and Dionysius of Halicarnassus, there were three brothers (triplets) in both rival armies – the Horatians and the Curiatians. It is mostly believed that Livius was of the opinion that the Horatians were Romans and the Curiatians came from Alba Longa. Dionysius states that a certain Sicinius from Alba Longa married off his daughters (at the same time), the first to a Roman – Horatio, and the second to a Curiatio from Alba Longa. According to legend, they both became pregnant on the same day and on the same day they both gave birth to triplets – the already mentioned Horatians and Curiatians. The triplets – cousins from the opposition camps met on the battlefield, and the connection between the families was all the more pronounced because the sister[7] of the Horatians was engaged to one of the Curiatian brothers. In the legends of archaic Rome and law, number three is a common sign of the will of the gods, so instead of risking the lives of their soldiers belonging to neighbouring and related nations (the legendary founders of Rome, Romulus and Remus, also came from Alba Longa), they chose a pragmatic fight between the Horatians and Curiatians as the representatives of their peoples. The kings agreed with the Horatians and Curiatians on a battle by sword that would determine the domination of both city-states (according to the outcome of the battle), but, in order for this to become valid, it was necessary to conclude a solemn treaty. Titus Livius maps the activities of the *fetiales* in the process of

6 Citations of Titus Livius – *Ab Urbe Condita* used for this study: FOSTER, Benjamin Oliver: Livy. *Books I and II With An English Translation*. Cambridge, Harvard University Press – London, William Heinemann, Ltd. 1919. Available at: http://www.perseus.tufts.edu/hopper/text?doc=Perseus:text:1999.02.0151 (26.8.2021).

7 Titus Livius writes about her infamous death while mourning her dead fiancé in I. 26. 3-7.

concluding the solemn agreement between Rome and Alba Longa, which was to decide on the fate of the two nations, and writes about this process as commonplace, despite the fact that no other older treaty or process is known to go down to posterity.

3.2. *Horatians and Curiatians – The process of concluding the international treaty between Rome and Alba Longa*

The solemn act of concluding an international treaty between Rome and Alba Longa began with a question and a request from a *fetial* addressed directly to King Tullus: *"Iubesne me, rex, cum patre patrato populi Albani foedus ferire?"* – "Do you order me to conclude a treaty with the father of the Alban people?"[8] Upon the confirmation by king Tullus, the *fetial* asked for the sacred herbs of *sagmina* or *verbenae,* picked at the Capitol, which were to ensure the inviolability of the *fetiales* as envoys. The symbolism of the solemn site of sacred herbs at the Capitol – the religious and administrative centre of Rome – is obvious and added religious and political weight to the solemn act. The *fetial* then asked for the commission as a royal messenger of the Roman nation, along with escorts and equipment, to which the king answered in agreement and entrusted the *fetial* with the task of negotiating a treaty between Rome and Alba Longa. According to Titus Livius, the *fetial* was Marcus Valerius, who, with the assistance of an instrument – sacred herbs – commissioned the father Spurius Furius (*pater patratus*) as the spokesman for the whole procession. The role of the *pater pratatus* was to conclude an oath and to sanctify the covenant, which occurred by uttering a lengthy formula – "*Pater patratus ad ius iurandum patrandum; id est, sanciendum fit foedus; multisque id verbis, quae longo effata carmine non operae est referre, peragit."*[9] After pronouncing the conditions, the *pater patratus* continued by pronouncing the oath: "*audi inquit, Iuppiter, audi, pater patrate populi Albani, audi tu, populus Albanus: ut illa palam prima postrema ex illis tabulis cerave recitata sunt sine dolo malo utique ea hic hodie rectissime, intellecta sunt, illis legibus populus Romanus prior non deficiet si prior defexit publico consilio dolo malo, tum illo die, Diespiter, populum Romanum sic ferito, ut ego hunc porcum hic hodie feriam; tantoque magis*

8 Liv. I. 24.

9 Liv. I. 24.

ferito, quanto magis potes pollesque."[10]; which entails a curse (*exsecratio*) not only of the *fetial* himself, but also of the whole city-state if Rome were to violate the treaty first. The *pater patratus* directed the oath to the entrusted father of the Alban people, the very people of Alba Longa, and also to the god Jupiter, the guardian of oaths and covenants. To seal the validity and effectiveness of the expression of the will of Rome, the *pater patratus* killed a sacred pig with a stone from the temple of Jupiter Feretrius. This final act was intended to symbolize the exsecration oath and what would occur in the event of a breach of the Treaty – the destruction of the entire Roman city state. After the expression of will by Rome, a similar process was performed by Alba Longa – the utterance of the formula, the oath of the king (dictator) and the conclusion of the treaty by the priestly college of Alba Longa. In the actions of the person of the chief *fetial* (*pater patratus*) as the authorized diplomatic representative of the king authorized to conclude an international treaty, we can see one of the first documented cases of sacred legal proceedings (acts), the result of which was the conclusion of a sacred treaty between two neighbouring archaic city states (nations). The enforceability of the treaty is based on two pillars. Sacral, consisting of a personal or collective curse (responsibility) and legal, consisting of a highly probable declaration of a just war, which, if the non-violating party succeeded, would have the same effects as the wrath of the gods.

3.3. *Ancus Marcius and the Latins (Liv. I. 32)*

The second important insight into the formation of archaic international (Roman) law is provided by an excerpt from *History by* Titus Livius (specifically Liv. I. 32.), which describes the events after the death of the Roman king Tullus Hostilius and the ascendance of the originally Sabine king Ancus Marcius, the grandson of the famous Numa Pompilius. Ancus Marcius sought the return to the observance of his grandfather's religious ceremonies and to expand these religious and, in part, international law ceremonies. In the analysed passage, Titus Livius describes the so-called interregnum[11] and the appointment of a temporary king whose task was to organize the election

10 Liv. I. 32. 7-8.

11 Liv. I. 32. 1: *"Mortuo Tullo res, ut institutum iam inde ab initio erat, ad patres redierat, hique interregem nominaverant."* – After the death of Tullus, the reign, as had been established from the beginning, returned to the fathers, who appointed a temporary king.

of a new king. With the consent of the Senate, the people elected Ancus Marcius already mentioned, who restored the proper performance of religious ceremonies and had the proper procedure for the same carved on a white stone slab, standardizing the manner of their performance. Unlike Tullus Hostilius, who paid less attention to the performance of religious ceremonies and was all the more focused on aggressive policy, the new King Ancus Marcius directed his first royal steps to the regulation of religious ceremonies. The neighbouring tribe of Latins perceived the above-mentioned activities of Ancus Marcius as a weakness and carried out a devastating raid on Roman territory, violating a previous treaty concluded during the reign of Tullus. The Romans demanded compensation for the attack, which the Latins refused to pay. According to Livy, the Latins refused to issue the compensation because they expected Ancus to engage in religious ceremonies and not demand retribution. Ancus Marcius, aware of the situation, realized that without a proper response, the Roman people would never have peace and quiet, as other tribes (following the example of the Latins) would attack Rome and eventually expel their own people from it. The decision of King Ancus Marcius was worthy of his grandfather Numa and affected the powers and activities of the *fetiales*.

3.4. *Ancus Marcius and the Latins – The rerum repetitio process*

Numa Pompilius instituted ceremonies for times of peace, and so, given the situation created by the attack of the Latins, Ancus Marcius decided to establish ceremonies (processes) for the proper declaration and conduct of war. In excerpt I. 32, Titus Livius states that the ceremonies for the proper declaration and conduct of war were taken over by Ancus Marcius from the neighbouring Aequi tribe and let the *fetiales* perform them. The first step towards declaring war was the process of demanding compensation from the enemy, which could prevent the war itself. *Rerum repetitio* (*res repetere*), as an institute of compensation aimed at reconciling opposing and rival parties was performed by an entrusted *fetial* (*pater patratus*) as a messenger of Rome and its people. *Pater patratus* performed the above-mentioned ceremony with his head covered with a wool blanket, his task being to arrive at the border of the state from which compensation was requested (extradition of confiscated loot and perpetrators) and to present the solemn formula, the so-called *clarigatio*: *„Audi, Iuppiter audite, fines, audiat*

fas. Ego sum publicus nuntius populi Romani; iuste pieque legatus venio, verbisque meis fides sit. Si ego iniuste impieque illos homines illasque res dedier mihi exposco, tum patriae compotem me nunquam siris esse."[12] – "Hear me, Jupiter, hear me, borders! Let them hear the divine law. I am the public messenger of the people of Rome; I come righteously and devoutly as a messenger, and let my words receive faith. If I unjustly and ungodly demand the extradition of those people and those things, I ask that I never be allowed to be with others in my homeland." The same words would be spoken by *pater patratus* when crossing the border, when meeting the man of the nation to which the words of *clarigatio* were addressed, as well as for the third time when he would enter the forum. Upon arrival at the forum, a process of negotiations began between the representatives of the foreign nation and the Roman delegation led by the *pater patratus*, during which the *pater patratus* presented the content and scope of the compensation requested. The nature of the remedy (compensation) depended on the nature and type of damage caused to Rome. In the case of unprovoked raids and looting (as in the case of the Latin invasion), the *pater patratus* would demand the return of the looted belongings and of any potential prisoners, and in the event of a breach of a previous treaty, the extradition of the person responsible for the breach of treaty was required as well. *Rerum repetitio* (Titus Livius refers to the right to claim compensation as *res repetere*) represents a significant extension of the powers of the *fetiales* in Rome's foreign policy.

3.5. *Deadline for compliance with rerum repetitio*

Sources differ considerably on the duration of time for complying with the *rerum repetitio*. There is a contradiction in Titus Livius himself, who, in the excerpt Liv. I, 32 states a solemn period of 33 days, but in the section Liv. I, 22 states a period of 30 days. Dionysius of Halicarnassus[13], in an excerpt describing an event from the reign of Tullus Hostilius, (shortly before the fight between the Horatians and Curiatians – see subchapter 2.1.1) states that the envoys imposed a period of ten days, then returned and extended the period by ten days at the request of that municipality, up to a maxi-

12 Liv. I. 32. 6.

13 Dio. Hal. II, 72 – The Roman Antiquities of Dionysius of Halicarnassus, Vol. I, Loeb Classical Library edition, 1937. https://penelope.uchicago.edu/Thayer/E/Roman/Texts/Dionysius_of_Halicarnassus/2C*.html (22.08.2021).

mum of 30 days. As mentioned above, the right to claim compensation was entrusted to the *fetiales* by law only during the reign of Ancus Marcius, so the shorter period of 30 days mentioned in the excerpt of Livius I, 22 and Dionysius applied during the reign of Tullus Hostilius may not apply to the *fetiales* at all, as they did not have the right to demand compensation yet. Ancus Marcius was the king who wanted to establish religious ceremonies for declaring war, and so by applying the law of the Aequi tribe, the period could have been extended from 30 days to 33 days and this authority entrusted to the *fetiales*. On the issue of the length of the period, John Rich[14] cites the well-known doctrine that the 30-day period is derived from *legis actiones*, which also provided for a period of 30 days between the *in jure* and *apud iudicem* phases, or a debtor's obligation to comply within 30 days from the judgment and its implementation through *manus iniectio*.

3.6. *Rerum repetitio as an institute of conflict prevention*

The *rerum repetitio* institution must be seen in particular as a system of prevention of unnecessary wars, in which a large part of the Roman army would be involved. John Rich[15] presents an interesting view, according to which the institution of *rerum repetitio* as a ceremony of the *fetiales* leading to the recovery of compensation (remedy) developed as a preventive necessity. The origins of the conflicts between Rome and its neighbours were usually not community-wide in royal times and rather concerned individual attacks and reprisals. Individual conflicts of certain groups caused whole tribes (nations) to be involved in the war conflict and, as a result, exhausted their militaries. The negatives associated with frequent community-wide conflicts resulting from breaches of agreements by individuals inevitably resulted in the formation of a process that would prevent said negatives. Individual violence could thus be controlled through the institution of *rerum repetitio* carried out by *fetiales,* who demanded the extradition of looted things and the extradition of perpetrators, thus preventing a protracted society-wide conflict. A tribe (nation) that was not willing to accept the obligation of compensation and the so-called noxal responsibility of individual culprits subsequently had to accept collective responsibility

14 Rich, John: *The Fetiales and Roman International Relations*. In: Richardson, H. James – Santangelo, Federico (eds.): Priests and State in the Roman World (Potsdamer Altertumswissenschaftliche Beiträge, Band 33). Stuttgart, Franz Steiner Verlag, 2011, 214-217.

15 Ibid. 216.

in the form of a declaration of war. The fetial ritual of *rerum repetitio* thus served as a preventative institution to ward off a war and, in the event of its non-acceptance, created space for leading a so-called just war.

3.7. *Declaratory effects of testatio deorum*

In the previous subchapters, we dealt with the authority and activities of *fetiales* through the institution of *rerum repetitio*, which prevented/was supposed to prevent community war conflicts (mostly) in the case of individual breaches of the peaceful status quo. If the preventive potential of *rerum repetitio* remained unused by the petitioned tribe and no things or persons responsible for the violation of the status quo were handed over even after the expiry of the period analysed in subchapter 2.1.4 (30 and 33 days, respectively), the *fetiales* were entrusted with the authority to conduct a *testatio deorum* (*testatio* or also *denuntiatio*). Titus Livius in Liv. I, 32. 9–10 describes the solemn declaration addressed to the responsible tribe (nation) as follows: *„Audi, Iuppiter, et tu, Iane Quirine, dique omnes caelestes, uosque terrestres uosque inferni, audite; ego uos testor populum illum [...] iniustum esse neque ius persoluere; sed de istis rebus in patria maiores natu consulemus, quo pacto ius nostrum adipiscamur."*[16] – "*Hear me, Jupiter, and you, Janus Quirinus, as well as all you gods of heaven, earth and hell, hear me! I call upon you to witness that this nation [...] is unjust and does not respect the law; but that we will consult with the elders of our country in these affairs on order to determine how to assert our right.*" This statement of the *fetial* (*pater patratus*) in front of the tribe (nation) violating the law from the point of view of Rome (as arranged by a prior treaty or caused by refusing *rerum repetitio*) was declaratory in nature, as it was subject to verification by elders (senators), the people's assembly and another ceremonial act.

3.8. *The king's initiative process and the verification by Senate*

After the solemn declarative *testatio deorum*, the *pater patratus* would return to Rome with his entourage and report to the king and the Senate on the Latins' refusal to comply with the *rerum repetitio*. Titus Livius describes[17] the process of approving war directly in Rome and the division

16 Liv. I. 32. 9-10.
17 Liv. I. 32. 11-13.

of powers between the king and the Senate (senators). According to an excerpt from Livy, the initiative to open negotiations and the subsequent vote to declare war was at the disposal of the king, who would ask the senators: *"Quarum rerum litium causarum condixit pater patratus populi Romani Quiritium patri patrato Priscorum Latinorum hominibusque Priscis Latinis, quas res nec dederunt nec solverunt nec fecerunt, quas res dari fieri solvi oportuit, dic" inquit ei quem primum sententiam rogabat, "quid censes?"*[18] – Let us act (negotiate) with regard to those things, disputes and legal disputes on which the *pater patratus* – the father of the Roman Quirit people – made a statement before the authorized father of the Old Latins and the whole Old Latin people, and which things, disputes, legal disputes they did not give, pay or do what was to be given, done, and paid for: tell me (he tells the person whom he first asked for an opinion) what do you judge?" The first who the king posed the question to, gave the following answer, according to Livy: "*puro pioque duello quaerendas censeo itaque consentio consciscoque."*[19] – "I judge it necessary to demand a clear and just war, and so I decide and give my consent." The same question was then addressed to other senators. The approval of the war by the Senate had to be decided by an absolute majority of senators. In excerpt IV. 30. 15. Livy himself raises the question of whether it was possible for the Senate to declare war without the prior consent of the People's Assembly (circa 427 BCE). However, according to Rich[20], in the early archaic period (during the reign of Ancus Marcius), the People's Assembly did not have the power to vote on the declaration of war, and in Mommsen's view,[21] the Senate's authority was derived from the prior voting of the People's Assembly – prior to dispatching the *fetiales* to the Latins.

3.9. *Indicto belli – The declaration of war ceremony and its constitutive effects – The spear ritual*

In the previous subchapters, we have stated that King Ancus Marcius, following the example of his grandfather Numa, established war declaration rituals. One of the most famous ones (attributed to Ancus Marcius) is the spear ritual, which Livy describes in Excerpt I. 32. 13–14. The *pater patra-*

18 Liv. I. 32. 11.
19 Liv. I. 32. 12.
20 RICH op. cit. 204.
21 MOMMSEN, Theodor: *Römische forschungen*. Berlin, Weidmann, 1864, 245-247.

tus returned to the border common with the Latins, carrying a spear with an steel or fire-hardened tip, dipped in blood, and in front of at least three Roman adult men witnesses he uttered a formula for declaring war: *„quod populi Priscorum Latinorum hominesque Prisci Latini adversus populum Romanum Quiritium fecerunt, deliquerunt, quod populus Romanus Quiritium bellum cum Priscis Latinis iussit esse senatusque populi Romani Quiritium censuit, consensit, conscivit, ut bellum cum Priscis Latinis fieret, ob eam rem ego populusque Romanus populis Priscorum Latinorum hominibusque Priscis Latinis bellum indico facioque.“*[22] "As the Old Latin nation and all people of the Old Latin nation have transgressed against the Roman Quirit people, and since the Roman Quirit people proclaimed a war with the Old Latins and since the Senate of the Roman people decided so, agreed so and acceded to the resolution to go to war with the Old Latins, so do I and the people of Rome proclaim to the nation of the Old Latins and to all the people of the Old Latins that we declare war against them and hereby start it." The constitutive act of starting a war came when the spear was hurled into hostile territory, which meant the declaration and start of a war, a custom that Livy said had been upheld by future generations as well.

4. Conclusion

Although the present study confirmed the hypothesis that there is no direct evidence to support the argument that Roman and modern international law form one continuous whole, it is necessary to interpret the archaic (ancient Roman) *ius fetiale* in a broader context. The establishment of sophisticated rules of Roman diplomatic techniques (as represented by *fetiales*) in relation to extraterritorial ethnicities is proof of a precisely developed legal art (in the field of international law as well). The *pater patratus* (as a representative of the *fetiales*), sent on behalf of the nation, bound the whole nation by his solemn act, which in the case of concluding treaties can be considered a manifestation of community responsibility carrying the danger of a curse (*exsecratio*) and the future possibility of declaring (already) just war. On the other hand, the use of a threat through *clarigatio* and the requirement of *rerum repetitio* can be considered as the initial use of coercive or compellence diplomacy, where a foreign entity is faced with a choice that is advantageous only to the party making the request. Through

22 Liv. I. 32. 13-14.

the *fetiales*, the Romans put a foreign nation in a situation where it could choose (only) between providing the required compensation (beneficial to the Romans) or a war that the Romans would not have waged if it could not be successful. At the same time, however, the *rerum repetitio* served as a preventive institution for avoiding unnecessary wars started because of wrong individual actions. The *fetiales* and their ceremonies involved in *ius fetiale* played an important role in the international relations of the Romans and contributed to the emergence of the international legal concept of the so-called just war (*bellum iustum piumque*).

Crimes against the republic in the draft of Criminal Code of 1926 and 1937[1]

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Abstract

The state of legal dualism in the field of criminal law had adverse effects on the state and its population after the establishment of the Czechoslovak Republic in 1918. The adoption of Austrian and Hungarian legislation was to be of a transitional nature only. The main objective of the ongoing processes was the unification of criminal law, which was to reflect the unitary character of the Czechoslovak Republic. The process of unification was to result, first of all, in the adoption of new criminal codes. The present paper analyses the issue of crimes against the Republic in the draft of criminal codes of 1926 and 1937. Crimes against the Republic were included in both drafts in their first title of the special part. The author also analyses the Protection of the Republic Act of 1923. The existing regulation of the Act in question was the precursor of the proposed legislation regarding crimes against the Republic in both drafts of the criminal laws.

Key words

crimes against the Republic, unification of criminal law, interwar Czechoslovak Republic, Czechoslovak criminal law, dualism of law

1. Introduction

After the establishment of the Czechoslovak Republic, on 28 October 1918, A. Rašín prepared the Act on the Establishment of an Independent Czechoslovak State, which was published under No. 11/1918 Collection of Laws and Regulations. This so-called reception norm stipulated in its Article 2 that "all existing provincial and imperial laws and regulations shall remain

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temporarily in force". The provisions of the reception norm meant for the newly established Republic a state of legal dualism or even trialism in the early days. Thus, after the establishment of the Republic there was Austrian legislation in force in Bohemia, Moravia and Silesia, particularly in relation to substantive criminal law this was Criminal Code No. 117/1852 of Imperial Code on crimes, misdemeanours and delicts and Military Criminal Code No. 19/1855 of Imperial Code. In the territory of Slovakia and Subcarpathian Ruthenia, the Hungarian regulations, especially Act Art. V/1878 – Criminal Code on crimes and misdemeanours and Act Art. XL/1879 – Act on Delicts[2] were reciprocated and applied.

The Austrian Criminal Code of 1852 was based on an earlier legislation of the Austrian Criminal Code on Crimes and Serious Police Crimes of 1803.[3] Later attempts to recodify the Austrian Criminal Code were unsuccessful, and the various outlines of the criminal laws were not adopted.[4] The 1852

2 The replacement of the terminology used in the Czechoslovak Republic occurred on the basis of Act No. 449/1919 Collection of Laws and Regulations on the statutory protection of the Czechoslovak Republic of 23 July 1919. According to Section 1 of this Act, the terms "Austrian", "Hungarian" and "Austro-Hungarian" were replaced in all laws and regulations by the terms/forms of the words "Czechoslovak" and "Czechoslovak Republic". The provision in question applied similarly to the terms "imperial", "royal", "imperial royal" and "imperial and royal".

3 In this context, see for example: Kallab, Jaroslav: Reforma trestního zákona (Reform of the Criminal Code). *Lidové noviny*, 1920, 28(367), 1. (July 27, 1920) – where the author states in connection with the Austrian Criminal Code of 1852 that "this Code, however, the legacy of the Bach era, was only a new edition of the Criminal Code of 1803. Provided we read it more closely, we see before us the whole social and political structure from the time of the Holy Alliance: not only the monarch but also his whole family float with a gloriole of »legitimacy« over the nations of humble vassals, in the law there still lies from the time of the Great French Revolution in all parts the fear of any movement which would manifest dissatisfaction with the state given by God and his advocates [...].", Joklík, František: *Katechismus rakouského práva trestního (hmotného)(Catechism of Austrian Criminal Law (substantial).* Praha, Nakladatelství HEJDA a TUČEK, 1904, 12. – where the author states in connection with the Austrian criminal law that "however, this Code in the promulgation patent itself is only called a »new edition« of the Criminal Code of 3 October 1803. Thus, the present Criminal Code is actually more than 100 years old", or Miřička, August: *Trestní právo hmotné (*část *obecná i zvláštní) (Substantive criminal law (general and special part).* Prague, Nákladem spolku československých právniků "VŠEHRD", 1934, 8. – where the author states that "this Code, valid until now, is thus only a revision of the Code of 1803."

4 The preliminary outline of the Austrian Criminal Code of 1909 was dealt with in more detail in his work, for example, by prof. Kallab. See: Kallab, Jaroslav: *Trestní systém osnovy trestního zákonníku [Penal system of the Criminal Code outline]* [Special Imprint of the

Criminal Code thus became the basis for the regulation of substantive criminal law in Bohemia, Moravia and Silesia throughout the existence of the interwar Czechoslovak Republic. The Hungarian Criminal Code of 1878 was sanctioned on 27 May 1878 and promulgated in both national chambers on 29 May 1878[5]. The Hungarian Criminal Code, authored by the professor of criminal law Károly Csemegi, was considered to be more modern than the Austrian Criminal Code in many provisions. This comparison was based, firstly, on the fact that the law was adopted some 25 years later than the Austrian law. However, the main reason was the actual, in many ways more liberal provisions of the Hungarian Criminal Law and Criminal Code. The Hungarian criminal law was in several aspects more lenient than the Austrian one, reflecting already several more humane aspects of punishment, taking into consideration the offender's personality, or the methods of imposing and executing punishments.

The state of legal dualism in the field of criminal law after the establishment of the Czechoslovak Republic in 1918 had adverse effects on the state and its population. It was perceived negatively by both professional and lay circles.[6] In fact, since the establishment of the new state, efforts have been under way to overcome legal dualism. The main aim of the ongoing processes was to unify criminal law. The unification was carried out by adopting new, partial criminal laws, which already had a unifying character and were valid for the entire territory of the state. However, these

"Právnik", 1910, 49(3-5)], Prague, Knihtiskárna Dr. Ed. Grégra a syna, 1910. In relation to attempts to recodify the Austrian Criminal Code, see also: VLČEK, Eduard: *History D*ějiny *trestního práva* v Českých *zemích* a v Československu *[History of Criminal Law in the Czech Lands and Czechoslovakia]*. Brno, Masaryk University, 2006, 35., JABLONICKÝ, Tomáš: *Pokus* o *reformu* československého *trestního práva – osnova trestního zákona* z let 1921-1926 [*An Attempt to Reform Czechoslovak Criminal Law – the Draft Criminal Code of 1921-1926]* (Právněhistorické studie, Vol. 43). Prague, Karolinum, 2013, 84., or CHALUPNÝ, Emanuel: *Reforma trestního práva* s *hlediska sociologického (Zvláštní otisk ze Sociologicé revue) [Criminal law reform from a sociological point of view (Special reprint from the Sociological Review)]*, at own cost, Brno, Typia Book Printing House in Brno, 1932.

5 See eg: LACLAVÍKOVÁ, Miriam–Švecová, Adriana: *Pramene práva na* území *Slovenska II [Sources of Law on the Territory of Slovakia II]* (1790–1918). Trnava, Typi Universitatis Tyrnaviensis, 2012, 531.

6 On some aspects of the takeover of state power, see e.g. PANDY, Dávid: *Polepšovacia výchova na* území *dnešného Slovenska od počiatku 20. storočia do druhej svetovej vojny (Corrective upbringing on the territory of today's Slovakia from the beginning of the 20th century to the Second World*). Studia Iuridica Cassoviensia, 2021/9, 56-69.

processes were not dominant. The process of legal unification in the field of substantive criminal law was to result, first of all, in the adoption of a new criminal code – a new, joint criminal law. In the present paper, we will focus on the analysis of the efforts to unify substantive criminal law in the interwar Czechoslovak Republic – with reference to the systematic inclusion of crimes against the Republic in these proposals, as well as their anchoring in the adopted and effective criminal law norms.

2. Preliminary Outlines of the Criminal Code on Crimes and Misdemeanours and Act on Delicts of 1926

Work towards overcoming dualism in criminal law began in 1920. As early as 1921, the Outline of the General Part of the Criminal Code was drafted. The submitted outline of the general part of the Criminal Code on Crimes and Misdemeanors consisted of 132 paragraphs, its publication included an explanatory report and the general part of the Act on Delicts, which consisted of 17 paragraphs. However, this outline – as its name implies – did not yet have a specific part. It did not deal with the individual constituent elements of crimes. After work on the general part of the Criminal Code was completed in 1921, work began on the special part. Work on the special part was provisionally completed and revisions to the general part were commenced at a meeting of the Commission in July 1924.

The meetings of the Commission for the Reform of the Criminal Code came to an end in June 1925. The justification of the draft and the final works were drawn up during the summer of the same year. In 1926, the so-called professorial outline of the Criminal Code was published under the title Preliminary outlines of the Criminal Code on Crimes and Misdemeanors. This outline was submitted by the Ministry of Justice and was based on the outline drawn up in 1921. Detailed reasonings were attached to both parts of the draft laws (on Crimes and Misdemeanours as well as on the Act on Delicts). In the introduction to the publication of this outline, the Ministry of Justice distanced itself in some way from the proposal put forward. It stated that it was primarily the work of the authors themselves[7]. Although the Ministry made its officials available to them and paid the necessary

7 It was mainly about prof. Miřička, who led the preparatory work, prof. Kallab and prof. Milota.

costs, it otherwise had no influence on the content of the outline.[8] As stated by prof. Milota, "this caution with which the Ministry refused to take responsibility for the outline is understandable from a political point of view, especially because of the ideological contradictions that prevail in today's society, which can also be seen in the political stratification of the National Assembly."[9] The summary was also published in German and French.[10] The present editions in foreign languages were carried out with the intention that the draft could also be subjected to foreign expert criticism. As the Ministry for the Unification of Laws and the Organization of Administration stated in its opinion on the submitted outline, "The outline of the Criminal Code on Crimes and Misdemeanors and Act on Delicts are essentially based on completely new ideas that have dominated the science of criminal law in recent decades."[11] The Criminal Code on Crimes and Misdemeanors of 1926 had 342 sections and was divided into general and special part. The general part had 135 sections and was divided into four titles, two of which were subdivided into further sections in view of the internal structure of the proposed Code. The special part of the Criminal Code (§136–§342) consisted of a total of 15 titles. Reports for the special part were divided among the members of the Commission. The report on crimes against the Republic was prepared by prof. Milota. Crimes against the Republic were in the draft Criminal Code of 1926 dealt with in a special part, Title V (§136–§150). The special part of the Criminal code was composed in such a way that the crimes in question constituted its first part – they were included in its first title. The outline of the Criminal Code regulated the following crimes: Con-

8 Preliminary Outlines of the Criminal Law on Crimes and Offences and the Offence Act, I. Outlines, published by the Commission for the Reform of the Czechoslovak Criminal Law, Prague, at the expense of the Ministry of Justice, Prague, 1926, 5. The distancing of the Ministry of Justice from the ongoing work was also expressed in a letter addressed to the Ministry for the Unification of Legislation and the Organization of Administration dated 29. 50057/24), in which the Ministry pointed to the fact that, apart from providing support staff and procuring correspondence, it did not have any direct influence on the Commission or interfere in any way with its work – National Archives Prague, Ministry of Unification Fund, carton 119.

9 Milota, Albert: *Reforma trestního zakon v* Československu *[Reform of the Criminal Law in Czechoslovakia].* Bratislava, Právnická jednota na Slovensku a Podkarpatskej Rusi, 1934, 9.

10 The French translation of the outline was published by the Czechoslovak Society for Criminal Law, the German translation was published by the Ministry of Justice.

11 National Archives Prague, Fund of the Presidency of the Ministerial Council, carton 1772 (no. 1845/1927/5).

spiracy against the Republic (§136), Preparation of Conspiracy against the Republic (§137), Endangering the Security of the Republic (§138), Treason (§139), Disclosure of State Secrets (§140), Association hostile to the State (§141), Defamation of the Republic (§142), Endangering Neutrality (§143), Conspiracy against a Foreign State (§144), Defamation of a Foreign State (§145). The given part of the Special Part of the Criminal Code has been supplemented, in addition to the regulation of the constitual elements of crimes, by provisions relating to the imposition of sentences. These were: loss of honourable civil rights (§146), denunciation (§147), confiscation of property (§148), effective contrition (§149) and limitation (§150). The explanatory report of the draft Criminal Code on Crimes against the Republic reflected the "delicacy" of its treatment. According to the authors of the explanatory report, "the law must furthermore be as definite and unambiguous as possible, so that every citizen knows how far they can go in a political struggle without fear of coming into conflict with the Criminal Code."[12] The various opinions required in the explanatory report were put into practice from 1923 onwards. That year saw the adoption of Act No. 50/1923 Coll. for the Protection of the Republic. The relevant parts of the Act on the Protection of the Republic in question were thus, in principle, incorporated into this title of the special part of the Criminal Code. The various amendments to the present draft thus arose mostly from the need to change the systematic arrangement or from certain special considerations which guided the draft.[13]

The draft Criminal Code of 1926 was not adopted. The preliminary outlines of the Criminal Code on Crimes and Misdemeanors and Act on Delicts did not become law. The processes that took place after its passage – which were intended to gather comments, suggestions, and insights that would subsequently be incorporated into the draft law – were not completed.[14]

12 Preliminary outlines of the Criminal Code on crimes and misdemeanours and the Act of Delicts, II. Reasoning of the outlines, published by the Commission for the Reform of the Czechoslovak Criminal Law, at the expense of the Ministry of Justice, Prague, 1926, 82.

13 Ibid., 82.

14 By Decree of 26 March 1926 (No. 13344/26, case: Preliminary outlines of the Criminal Code), the Ministry of Justice sent two copies of the outlines of the Criminal Code to all ministries. At the same time, ministries were requested to send their comments to the Ministry of Justice by the end of the calendar year. In relation to this Decree, the National Archives of Prague, the Ministry of Justice Fund, in box 575 contain comments on the draft of Criminal Code, for example from the Ministry of Foreign Affairs, the

As one of the authors of the draft, Professor Kallab, said: "I do not know the opinions of politicians, but from practitioners we hear mostly sceptical opinions."[15] Also with regard to other ongoing processes of unification of substantive criminal law, prof. Kallab stated in 1929 that "if the Ministry, without awaiting the further fate of the Criminal Code, now proceeds to reform criminal procedure and juvenile criminal law, it is obvious that it does not envisage that the Criminal Code can be enacted any time soon."[16]

3. Act on the Protection of the Republic

The Act on the Protection of the Republic (Act No. 50/1923 Collection of Laws and Regulations, dated 19 March 1923) was adopted as a reaction to the assassination of the Czechoslovak Minister of Finance, A. Rašín. The law was aimed against extremism and also introduced new constituent el-

Ministry of Public Works, the Chelčický Peace Society, the Ministry of National Defense, and the Presidium of the Supreme Regional Court in Prague, Judicial Board in Košice, Ministry of Public Health and Physical Education, Supreme Audit Office, Ministry of National Defense, Institute for Forensic Medicine, Charles University in Prague, Supreme Military Court in Prague, Ministry of Education and National Education, Presidium of the Supreme Court in Brno, Ministry of Railways , Ministry of Trade, Presidium of the Judicial Board in Bratislava, Directorate of Prisons of the Provincial Criminal Court in Prague, Moravian Medical Chamber, Notary Chamber in Brno, Advisory Board for Economic Affairs, State Trade Council, Medical Faculty of Masaryk University in Brno, Presidium of the Police Director Košice, the Provincial Administrative Committee, the Association of Czechoslovak Savings Banks or the Association of Voluntary Czechoslovak Fire Brigades (some comments on the draft Criminal Code can also be found in duplicate in the fund of the Ministry of Unification – note. author). At the same time, the Ministry of Justice compiled a list of all comments received. Part of such lists (of which there were eight in the first phase in total) was also a reference to articles published in professional journals and in the daily press. These lists were (together with the description of the reports) delivered to the individual members of the commission. The eighth elaborated list (No. 22310/29), which was sent out at the beginning of June 1929, thus contained in Part A (written opinions) a reference to a total of 50 works. In Part B (articles in professional journals) there was a reference to 129 such works. In part C (articles in the daily press) there was a reference to 53 articles - the National Archives of Prague, the Ministry of Justice Fund, cardboard 575. Another list of comments and articles (No. IX.) Was subsequently processed and sent out on June 15, 1932 (No. 28510/32) National Archives Prague, Fund Ministry of Justice, cardboard 2092.

15 KALLAB, Jaroslav: Překážky reformy trestního práva [Obstacles to criminal law reform]. *Lidové noviny*, 1929, 37(527), 1.

16 Ibid, 1.

ements of crimes. It regulated crimes against the Republic uniformly for its entire state territory. The law thus "filled a gap in the legislation, which had so far lacked provisions on the protection of the Czechoslovak state and its constitutional representatives."[17] According to Professor Milota – in his preface to the second edition of the commentary on the said law – the government's outline of the law already emphasized in its brief commentary that the law was intended to eliminate obsolete regulations, built on the needs and constitution of the old state, which were not in line with the needs and constitutional set-up of the new state because they did not correspond to its democratic establishment.[18] According to several authors, there was a lack of clear understanding of this law and it evoke several controversial reactions.[19] Many of the controversial reactions stemmed from the need to properly balance the often partially conflicting interests – at the centre of which stood and operated this law. Thus, according to the explanatory report of the Constitutional Law Committee of the Chamber of Deputies of the National Assembly, "the regulation of criminal repression against attacks on the state, intended to change the state system, has always been one of the most delicate tasks of the Criminal Code. The Criminal Code of a nation which has adopted the principle of democracy as the main watchword of its constitution must adopt a position which is in some measure impartial. It must provide effective protection for the state establishment for which the majority of the nation stands, but it must not go so far as to make a just political struggle more difficult. From this consideration a twofold requirement for the criminal protection of our Republic becomes apparent. In the first place, repression must be effective and consistent; attacks on the security of the state must be repelled with strength and firmness. The dangerousness of individual attacks must be carefully considered, the less dangerous types must be separated from the more dangerous ones, and the state must not be afraid to apply even the most severe punishments

17 Malý, Karel et al.: *Dějiny českého a československého práva do roku 1945 [History of Czech and Czechoslovak Law until 1945]*. Praha, Leges, 2010, 338.

18 Milota, Albert: *Zákon na ochranu republiky [Act on the Protection of the Republic].* Kroměříž, J. Gusek, 1930, 4.

19 For more details see e.g.: Fenyk, Jaroslav–Císařová, Dagmar: *Meziválečné trestní právo* a *věda trestního práva* v Československu *[Interwar War Law and the Science of Criminal Law in Czechoslovakia].* In: Československé právo a právní věda v meziválečném období 1918-1938 a jejich místo ve střední Evropě [Czechoslovak Law and Legal Science in the Interwar Period (1918-1938) and Their Place in Central Europe] (Volume 2). Prague, University Charles University in Prague–Karolinum Publishing House, 2010, 832.

to these dangerous types of attacks. On the other hand, however, punitive repression must not be prioritized. Only those activities that pose a real danger to the State shall be prosecuted and punished."[20]

The Act on the Protection of the Republic was internally divided into four titles. These were as follows: I. Conspiracy against the Republic, II. Defamation of the Republic and Attacks on Constitutional Officials, III. Threats to the peace of the Republic and its military security, and IV. Final Provisions. The first title (Conspiracy against the Republic) contained the regulation of 3 constituent subject matter elements, namely: Conspiracy, Preparation of Conspiracy and Endangering the Security of the Republic. The second title of the Code (Defamation to the Republic and Attacks on Constitutional Officials) regulated: Treason, Disclosure of State Secrets, Military Treason, Sentences for Certain Attacks on the Life of Constitutional Officers, Bodily Harm to Constitutional Officers, Conspiracy to Attack Constitutional Officers, Violence against Constitutional Officers or Personation of their Power, Insult to the President of the Republic and Failure to Report or Notify Criminal Enterprises. Title Three (Threatening the Peace of the Republic and its Military Security) regulated: Unlawful Arming, Disturbance of the General Peace, Incitement to Failure to Perform Lawful Duties or to Commit Criminal Acts, Approval of Criminal Acts, Association Hostile to the State, Dissemination of False News, Return of Members of the Former Ruling Family, or Encouragement of Such Return, Gross indecency, Aiding and Abetting or Supporting Military Crimes, Unlawful Recruitment of Troops, Unlawful Intelligence, Endangering the Defence of the Republic, Endangering the Public Administration by a Public Authority, Failure to Remove or Creation of Unlawful Monuments. Title Four (Final Provisions) regulated the provisions relating to the imposition of punishments, namely: Effective Contrition, Imposition of Sentence, Monetary Punishment and Confiscation of Property, Substitute Punishment out of Imprisonment, Seizure and Forfeiture, Loss of Honorary Civil Rights, Denunciation, and Suspension of the Periodical Press. The Republic Protection Act has been amended several times. These were, for example, Act No. 124/1933 Coll., Act No. 140/1934 Coll., Government Decree No. 20/1939 Coll., etc. Individual provisions of this Act were applied extensively in the jurisprudence of the courts during the inter-war Czechoslovak Republic.

20 Lepšík, Josef: *Zákon na ochranu repbuliky s důvodovou zprávou [Act on the Protection of the Republic with an Explanatory Report]*. Prague, Fr. Borový, 1923, 7.

4. The Outline of the 1937 Criminal Code

Efforts to reform substantive criminal law in the interwar Republic of the 1920s, aiming at the adoption of a unified Criminal Code, were not successful. As the years passed, the question of unification became more and more urgent, resonating in both professional circlesand the general public. It was not until the mid-1930s – when a revised draft of the Criminal Code was drawn up – that more significant action was taken in this direction. It was primarily a (partial) reworking of the Preliminary Outline of 1926. The Government of the Czechoslovak Republic, at its meeting on 28 May 1935, decided to start immediate (re)working on the unification of the Criminal Code and the Code of Criminal Procedure. The unification efforts, which were under the auspices of the Ministry of Justice, this time (in contrast to the proposals of 1921 and 1926) – at the stage of drafting – took place without the direct participation of representatives of the academic community, whose activity had been crucial in the preceding years.[21] The first stage of the unification processes was the drafting of the elaboration concerning the codification of criminal law. By Ministry of Justice Decree No 45230/35-16 of 3 September 1935, the first parts of the reports were sent for consideration.[22] According to the record of the Ministry of Justice, this was a selection of basic, fundamental issues which were seen as the basis for all further work.

At this "written" stage of preparation, the Ministry of Justice requested the institutions to send their proposals/comments by means of written opinions. The fact that the Ministry of Justice initially set a really short deadline of six weeks for sending comments on the initial drafts is perhaps an indication of the intention to make the work go faster this time. The need to act quickly was therefore recognised by the Ministry of Justice. This fact was stated, for example, in one of the opinions/comments on the submitted reports, according to which "*[...] the Ministry of Justice places the greatest emphasis on speeding up the preparation of the new codification of criminal law, which is why the deadlines for submittingthe reporters' comments were set quite short. Consequently, it is not possible to see an exhaustive assessment in the attached statements on the general part of the outline [...].*"[23]

21 In this context, in the professional file, in contrast to the common concept of the so-called "Professor's Outline" (for the draft of Criminal Code of 1926), the term so-called "Official's Outline" is also used for the draft of Criminal Code of 1937.

22 National Archives Prague, Fund Ministry of Justice, cardboard 2070.

23 General introduction of the comments on the general part of the outline of the Crimi-

In contrast to the unification work carried out in the 1920s, these processes were not received with such interest by in professional circles. Considerably less was written about the process of the unification of criminal law in professional periodicals, compared to the previous period.[24]

During the final work on the drafting of the Criminal Code, the Ministry of Justice sent under No. 66667/36, the text of the special part of the draft Criminal Code and, under No. 67672/36, the recitals of the last 4 chapters that had not been discussed yet to the Ministry of National Defence, the Ministry of Unification, the Presidium of the Supreme Court and the Office of the Attorney General.The agenda for the next and final meeting was to be the discussion of the 4 chapters in question and the revision of the entire general and specific parts of the Code. The Ministry of Justice planned to convene the final meeting in January 1937. The final meeting on the Draft Criminal Code were held at the Ministry of Justice on 15-24 February 1937.[25]

Under the title "Outline of the Law Enacting the Criminal Code", the draft was issued to the press in April 1937.[26] The draft was submitted for inter-ministerial comments and circulated to selected experts and professional organizations, corporations and institutions falling within the sphere of interest of the Ministry of Justice. The 1937 draft of the Criminal law consisted of a general and a specific part and comprised a total of 426 sections. In the process of unification of the criminal law, the administration of justice originally intended to issue the Code of Criminal Procedure first. The

nal Code, looking in particular at the Decree of the Ministry of Justice of 3 September 1935, no. 45230 / 35-16 (ad Pres. 1617/35), National Archives Prague, Fund Ministry of Justice, cardboard 2070, 1.

24 In this connection, see, for example: STEINER, Robert: Osnova trestního zákona *z* roku 1937 ve světle normativního pojetí viny [Outline of the Criminal Code of 1937 in the light of the normative concept of guilt]. *Časopis pro právní a státní vědu*, 1938, 21(3), 220-242.; KEPERT, Josef: Nová osnova trestního zákona [New Outline of the Criminal Code]. *VŠEHRD*, 1937, 18(9–10), 386-389. or MIŘIČKA, August: Pokus nespůsobilý *a* formy viny v osnově trestního zákona *z r. 1937* [Ineligible attempt and forms of guilt in the outline of the Criminal Code of 1937]. *Právník*, 1937, 76(7), 289-407.

25 In this phase of the preparation of the Criminal Code, a total of 4 meetings were held, on 17-20 February 1936, 18-26 May 1936, 12-17 October 1936 and 15-24 February 1937. on the final meetings held on the premises of the Ministry of Justice on 15-24 February 1937 is in the fund of the Unification Ministry – National Archives of Prague, Fund of the Ministry of Unification, cardboard 163 (No. 512/37).

26 The outline was sent to the comment procedure by a letter from the Ministry of Justice dated April 9, 1937, under no. 20.731-37.

unification of criminal procedural law was to be implemented earlier.[27] In the course of the preparatory work, it was gradually considered necessary to issue the Criminal Code together with the Criminal Procedure Code. „The more modest objectives set by the Judicial Administration in the field of substantive criminal law reform will in fact make it possible for the Criminal Code to be unified at the same time as the new Criminal Procedure Code, i.e. the formal, procedural criminal law."[28] According to the authors of the proposal in question, „if they were not to enter into force at the same time, this would result in unforeseen problems in the transitional period and would make it unusually difficult to regulate the relationship between these codifications and the subsidiary criminal laws [...]."[29] Thus, it was assumed that the entire set of codifications of criminal law (it was also contemplated to issue the Act on the execution of sentences and security measures, the so-called Criminal Enforcement Code) – together with the common introductory law – would enter into force at the same time.[30] However, the serious social changes taking place in the Czechoslovak Republic in the autumn of 1938, which led to the dissolution of the Republic in March 1939, no longer allowed for the adoption of criminal laws.[31]

The draft of Criminal Code of 1937 regulated crimes against the Republic in its Title XI. Compared to the 1926 outline, there was a conceptual change in the first title of the special part of the Criminal Code – when crimes against the Republic, the security of the Republic and its international relations were jointly included in one title (this is how the name of Title XI was also formulated). The outline of the Criminal Code regulated the following crimes: Conspiracy against the Republic (§115), Preparation of Conspiracy against the Republic (§116), Endangering the Security of the Republic (§117), Return of a Member of the Former Ruling Family and Failure

27 Ibid.

28 *Explanatory Report Outline of the Act Issuing the Criminal Code*. Prague, Ministry of Justice, 1937, 165.

29 Ibid.

30 For more details, see also: *Protokol I. o jednání* o *osnově trestního zákona* (Protocol I. on Negotiations on the Outline of the Criminal Code), National Archives of Prague, Ministry of Justice Fund, Cardboard 2072.

31 In relation to the unification of the criminal law of the interwar Czechoslovak Republic, see also: Fico, Miroslav: *Základy trestnej zodpovednosti v procese unifikácie trestného práva medzivojnovej Československej republiky [Fundamentals of criminal liability in the process of unification of the criminal law of the interwar Czechoslovak Republic].* Košice, ŠafárikPress, 2020.

to Announce His Return (§118), Association Hostile to the State (§119), Sedition against the Republic (§120), Defamation of the Republic (§121), Insulting the President of the Republic (§122), Treason (§123), Disclosure of State Secrets (§124), Military Treason (§125 and §126), Espionage (§127), Endangering the Defence of the Republic (§128), Illicit Intelligence (§129), Endangering Neutrality (§130), Defamation of a Foreign State (§131).

This title of the Special Part of the Criminal Code was, such as the 1926 draft, supplemented by provisions relating to the imposition of sentences, in addition to regulating the constituate elements of the crimes. These were: Confiscation of Property (§132), Special Provisions for the Imposition of Punishment (§133), and Effective Contrition (§134). As we have already stated in the present paper, a uniform regulation of crimes against the Republic and its security was contained in the Act on the Protection of the Republic of 1923. In view of the fact that its regulation met the requirements of the government officials – the 1937 outline was limited to the transposition of this regulation. The outline made only such changes as arose from the necessity of adapting the provisions of the Protection of the Republic to the general provisions of the outline, and such changes as the necessity and expediency of which were further justified.[32] As the authors of the explanatory report pointed out, the relatively minor changes also resulted from the advantage of the "rich case-law" of the Supreme Court of the Czechoslovak Republic, which deepened and established the interpretation of the various conceptual features of such crimes.[33]

5. Conclusion

In the present paper we have elaborated on the problem of crimes against the Republic in the draft of Criminal Codes of 1926 and 1937. We have focused primarily on a brief description of the unification efforts, as well as the basic regulation of the facts of crimes against the Republic – in terms of their systematic classification in the drafts examined. Crimes against the Republic were classified in both proposals in their first title of the special part of the Criminal Code.

32 *Reasoning of the Outline of the Act Issuing the Criminal Code*. Prague, Ministry of Justice of the Czechoslovak Republic, 1937, 282.

33 Ibid.

We have also focused our attention on the Protection of the Republic Act of 1923, since its provisions provided the basic starting point of the subject matter on which the two Criminal Codes outlines under review were based. The provisions of the Protection of the Republic Act which were to be replaced by the provisions of the draft of Criminal Codes were to be repealed. However, this – also in view of the fact that no joint, unified Criminal Code was adopted during the interwar period of the Czechoslovak Republic – did not ultimately happen. Thus, the principal purpose of our work was to present for foreign readers the basic framework of the processes of unification of the criminal law in the interwar Czechoslovak Republic and the role of crimes against the Republic in this process. We thus see the present paper as a certain beginning of a series of publications – in which we will subsequently focus our attention on the application of individual provisions of the applicable criminal laws also regulating crimes against the newly established state and its territorial integrity.

Efforts to Question the Territorial Outcomes of the Treaty of Trianon in the Region of Southeastern Slovakia and the Tools of Legal Protection of the Interwar Czechoslovak Republic[1]

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Abstract

The presented paper deals with the research of activities directed against the territorial arrangement based on the Treaty of Trianon in the region of southeastern Slovakia. The article presents the results of archival research and organizes the findings according to their nature. The aim of the paper was also to describe the nature Czechoslovak criminal law in the period after the establishment of the Czechoslovak Republic, focusing on the instruments of protection of the newly established Czechoslovak Republic.

Key Words

Treaty of Trianon, Southeastern Slovakia, Revisionism, Criminal law

1. Introduction

The integration of the territory of today's Slovakia into the Czechoslovak Republic after the end of the First World War, definitively confirmed by the Treaty of Trianon, undoubtedly represented a substantial change in the national-legal development of the region and in the life of the population divided by the new state borders. The emergence and effects of various elements aimed at questioning the new territorial arrangement could be naturally expected. The subject of the present article is to analyze the proceedings or incidents aimed at questioning the Trianon borders in the re-

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gion of southeastern Slovakia during the interwar Czechoslovak Republic, as well as the presentation of the Czechoslovak legal order and legislation aimed at protecting the newly created state and the territory of Slovakia as an integral part of it.

2. Southeastern Slovakia and activities aimed at border revision

The subject of this chapter will be the presentation of the archival research results[2] motivated by the effort to verify the hypothesis predicting the existence of activities potentially threatening the "Trianon Peace" in the area of southeastern Slovakia during the interwar period. The structure of the present chapter will correspond to our grouping of the facts into: concerns about the invasion of Hungarian troops into Slovakia, activities consisting in dissemination of inappropriate publications and other materials, and protest rallies. In addition to the facts mentioned above, the relevant activities concerned may also be segmented or perceived from the territorial point of view, i.e. according to the fact whether said activity was carried out directly on the territory of Slovakia, or it was an activity carried out on the territory of Post-Trianon Hungary, which was, however, subject to monitoring by Czechoslovak state authorities.

2.1. *Concerns about the invasion of Hungarian troops into Slovakia*

The imperilment of territorial integrity of Slovakia as part of the Czechoslovak Republic, or more precisely, its reintegration into Hungary was the subject of legitimate concerns by the Czechoslovak authorities as soon as 4 years after signing of the Treaty of Trianon. This follows from the report of the County Prefect of the Košice County of 30 June 1924[3] addressed to all district offices and the Police Commissariat in Prešov, according to which the Ministry of Slovak Affairs was informed from a confidential source that the Hungarian government was preparing an armed uprising against Slovakia, in which several irregular military units were to participate. The report states that "At the meeting of all the combat units in Budapest held on 30 April that year in the headquarters of the 'Hungarian Territorial Integrity League' (Területvédő Liga), a consent was given for uniform acting against

2 [2] State Archive of Košice – Branch Archive Trebišov.

3 State Archive of Košice, Fond Okresný úrad Sečovce, Box 2, file number 620/1924 prez.

Slovakia". The document further describes the method of distribution of agitation leaflets in Slovakia with an exact designation of the persons entrusted with this activity and their addresses. The content of the disputed leaflets describes their copy as an annex to this document as follows: "Our long-suffering Hungarian brethren! If you want to free yourself from your fate of miserable oppression today, you must renounce fraternal hostility and unite yourselves to rebuild the blessed and glorious former Hungary. Be alert, the crucial moment is approaching when we are going to regain our old empire without bloodshed. It will be all the easier because the army of the repressive government is unreliable. With patriotic greetings from 'Nem nem soha liga' (No No Never League). Arise Hungarians, your homeland is calling you." The report finally strengthens the credibility of the trustworthy information with -further details on the suspicion of delivering arms for the uprising, as the 'confident agent' observed. On 5 May at around twelve o'clock at night, the agent noticed as two wagons of rifles and machine guns were unloaded by workers at the border railway station in Salgótarján, attracting his attention with the workers' civilian clothes and with their fine, white hands, which is not usual for ordinary workmen.

The report of the Provincial Office Presidium in Bratislava dated almost 5 years later, on April 23, 1929[4] shows that information of a similar nature about the invasion of Slovakia allegedly planned, but finally never carried out appeared every year. From the aforementioned document it is evident that their purpose was perceived by the Czechoslovak authorities retrospectively as an effort "to keep the border population in turmoil and in the hope of annexing that part of Slovakia to Hungary". The report cited from 1929 draws attention again to information about the planned invasion of Slovakia, which was to take place in direction of Košice in the period after May 1 or around May 15, and although earlier concerns had not been fulfilled, its sender urged district chiefs to pay special attention to this fact.

Information on spreading messages aimed at questioning the Trianon Peace Treaty is also proved true in the following year, as the report of the Presidium of the Provincial Office (Prezídium krajinského úradu) in Bratislava addressed to the Slovak District Chiefs of 12 July 1930[5] shows that in the border area east of Slovenské Ďarmoty, Czechoslovakia, information is being spread, that Czechoslovakia is to transfer a border zone about 30 km

4 State Archive of Košice, Fond Okresný úrad Trebišov, Box 3, file number 392/1929 prez.
5 State Archive of Košice, Fond Okresný úrad Trebišov, Box 6, file number 685/1930 prez.

wide to Hungary based on the outcomes of the conference in The Hague. These messages were to be disseminated by the travellers from Hungary, and the Hungarian border authorities were to refer to them as facts. The information on spreading misleading messages at the border-area was subsequently confirmed by the District Gendarmerie Headquarters in Trebišov (Okresné četnícke veliteľstvo) on 5 August 1930 in its report addressed to the District Office in Trebišov, in which it states that according to the report from the Gendarmerie in Čerhov it is true that these messages are coming from Hungary and they are disseminated by the Hungarian border authorities, which are in contact with the local population. However, the local people do not respond to these messages and behave calmly.

2.2. *Dissemination of printed materials and other objects*

The second group of identified adverse activities in the interwar period directed against the existence of the Czechoslovak Republic was the spread of inappropriate printed materials and other objects.

Chronologically, the earliest procedure identified in our research was the extension of the call for petition, which was captured within the documents of the District Notary's Office in Leles.[6] The call is dated of November 20, 1918, comes from Kremnica and is signed by the Hungarian National Council. It follows from the text that the call was a propaganda instrument against the Czech activity directed against the territorial integrity of the Hungarian homeland. "We know that most of the Slovaks do not want to join the Czech state, and it applies even more so to the Hungarians and Germans". Its aim was to collect one million signatures against the new territorial arrangement and the integration of Slovakia into the Czechoslovak state. The authors called for the collection of signatures not to be done publicly but rather through some trustworthy individuals. At the same time, they were to teach the potential signatories, what economic losses would mean for them the 'exploiting, capitalist Czech domination', and how their language would suffer, and finally, a much better fate would await them in the new free Hungary. The signatures collected were to be sent to the Paris Peace Conference as an argument in favor of the Hungarian demands presented at the peace negotiations.

6 State Archive of Košice, Fond Obvodný notársky úrad Leles, file number 1869/1918 admin.

The study of the available documents has also shown us that the Czechoslovak public authorities paid considerable attention to the elimination of the inappropriate book- and periodical publications in Slovakia. The circular letter of the County Prefect (Župan) of Košice County of 4 January 1924[7] addressed to all district offices and the Police Commissariat in Prešov reveals that in schools with Hungarian as the language of tuition, pupils were to be given books at the end of the school year which "are dangerous from the state's point of view and in relation to which their colportage was, in general, or individually prohibited and their postal communication permit was withdrawn." It follows from the document that the book titled "Nagy magyarok élete" (The Life of Great Hungarians), which was sold in the station bookstore in Nové Zámky, could have been considered a such publication. The district authorities were instructed to check who brought the books to Slovakia and released them to the book market, and they were asked to carry out a review of the Hungarian books in bookstores. Moreover, it was ordered to "encroach with an exemplary rigour against the authorities who allowed the import of the printed materials concerned the postal communication and colportage of which were prohibited". A similar procedure follows from the report of the County Prefect of Košice County dated of November 4 1924[8] according to which the Ministry for Slovak Affairs withdrew the postal transport and throughout Slovakia banned the colportage of the Hungarian school textbook "Bartha-Prónay: Rhetoric", as in its 1922 edition there was the Hungarian anthem, and the following edition of 1924 contained the Hungarian anthem and the irredentist poem by Sándor Sajó: Magyar ének 1919-ben (Hungarian Song in 1919). The active monitoring of the potentially risky foreign press was also evidenced by the call of the Prefect of Košice County on 14 April 1924[9] addressed to all district offices and the Police Directorate in Košice and the Police Commissariat in Prešov to raise awareness in relation to the Hungarian magazine Napkelet (Sunrise), which was brought to the attention of the Ministry of Slovak Affairs due to its irredentist nature.

Studying the documents in question we can also find that the efforts of the Czechoslovak state authorities were not limited to suppressing the reproduction of undesirable books and periodicals, but they were also focused

7 State Archive of Košice, Fond Okresný úrad Sečovce, Box 2, file number 41/1924 prez.
8 State Archive of Košice, Fond Okresný úrad Sečovce, Box 2, file number 956/1924 prez.
9 State Archive of Košice, Fond Okresný úrad Sečovce, Box 2, file number 415/1924 prez.

on other printed materials, especially on irredentist posters as well as other objects. Such an object was the children's puzzle game "Trianon Térképjáték" (Map game Trianon) published by the irredentist association Duna Szövetség (Danube Society), which, according to the report of the Presidium of the Bratislava Provincial Office of 12 April 1929[10], was supposed to be smuggled to Slovakia and to serve as a new means of propaganda against the Trianon Peace Treaty. This board game consisted of a wooden board in a box, in which a map of Hungary was carved, made up of former Hungarian counties which were carved and had to be placed back in the right place on the map. The game was intended only for 'reliable Hungarian families' as an 'eternal reminder of Trianon'. Regarding the suppression of the reproduction of the irredentist leaflets already mentioned, we would like to point to the discovered decree of the Presidium of the Provincial Office in Bratislava of March 20, 1929[11], which points out that irredentist leaflets were intended to be distributed in Slovakia and in Carpathian Ruthenia by members of the association "Tesz", Smrecsány and Gömbös, who were allegedly travelling to Slovakia and Carpathian Ruthenia, while Gömbös was supposed to use fake travel documents. On the front side of these posters the Leventist emblem was depicted, and below it a picture showing a thoughtful Leventist (in Hungarian: *Levente organizations* or simply *levente* –- were paramilitary youth organizations in Hungary during the interwar period and the Second World War) sitting by a bonfire and looking at the sun rising from the clouds, with the inscription below the image: "May it not be only a dream, but an instant truth – all the plots and iniquities shall pass, and let our former old Hungary rise again".

Finally, the distribution of undesirable publications includes also the dissemination of calls for material assistance to members of the former ruling dynasty addressed to aristocratic families in Slovakia, as pointed out by the Prefect of Košice County in the document addressed to the District Offices and the Prešov Police Commissariat on April 7, 1924[12]. He described the case when the border check officers stopped Count Fridrich Wilczek travelling to visit his brother Vilém in Horné Semerovce, Krupina district, and he was found in a possession of a letter addressed to his brother Vilém, urging him to provide material support to the former royal family. The copy of this letter revealed that its sender was a certain Ivan Hekonics, representa-

10 State Archive of Košice, Fond Okresný úrad Trebišov, Box 3, file number 350/1929 prez.
11 State Archive of Košice, Fond Okresný úrad Trebišov, Box 2, file number 259/1929 prez.
12 State Archive of Košice, Fond Okresný úrad Sečovce, Box 2, file number 407/1924 prez.

tive of the 'Supreme Council' – the association founded in the post-Trianon Hungary for supporting the ruling dynasty. In the letter he states that "even Czech aristocratic families have committed themselves, /provisionally for 10 years/, to contribute 3,000 pesetas per month to secure the domestic everyday expenses for the ruling dynasty. Austrian nobility also provides similar permanent support. [...] It is onnly in our country – with the exception of some personalities – where nothing has been done for the sake of the cause yet. This cause is also believed to be an honor for Hungary, and therefore it must not be the case that the old generations closest to the dynasty and enjoying all the privileges, are to watch the plight of the royal family today [...]." The Prefect states that similar letters were apparently sent to all aristocratic families residing in the successor states, so he asked the addressees for submission to further investigate into this matter.

2.3. *Protest rallies*

The last category of the identified activities directed against the territorial integrity of the interwar Czechoslovak Republic were protest rallies held on the territory of the post-Trianon Hungary, which were the subject of observation by the Czechoslovak public authorities.

The forthcoming assemblies in November 1928 attracted the attention of the Czechoslovak authorities in particular. The Passport Control Commander of the Border Passport Control Station of Slovenské Nové Mesto drew the attention of the District Chief of the District Office in Trebišov on 5 November 1928[13] to the content of an article published on 3 November 1928 in the periodical *Magyar Jövő (Hungarian Future)*. The article declared 18 November 1928 the National Day of Revision, as in the whole territory of the 'Truncated Hungary' (in Hungarian Csonkamagyarország) revisionist assemblies will be held, which will adopt resolutions on the need of revision of the borders, which will be subsequently sent to the Hungarian Royal Government in one copy and another copy written in French will be sent to the League of Nations. The article stated that "The unified position of the Hungarian nation on the need for revision must draw the world's attention to the fact that the Hungarian nation will never reconciliate with the Trianon Treaty and that it considers its revision to be its most important aim in life. It is important to take this position also because Czechoslovakia is cel-

13 State Archive of Košice, Fond Okresný úrad Trebišov, Box 1, file number 1318/1928 prez.

ebrating the 10th anniversary of its existence. The Hungarian people must therefore also make the world aware that Trianon did not stabilize Eastern Europe, and that the peaceful development of Eastern Europe, and even of the whole of Europe, can only take place if the injustices perpetrated on the Hungarian people are repaired."

The monitoring of the mentioned protest rallies in the border town of Sátoraljaújhely was evidenced by the report of the border checkpoint in Slovenské Nové Mesto dated 19 November 1928[14] addressed to the District Chief of the District Office in Trebišov. According to the report, about 900 participants in the lantern procession gathered in front of the tobacco factory on November 17 at 7 pm, including students from the business school, Levente and Fekete Sas associations, accompanied by Leventist music, shouting anti-Trianon slogans for about an hour on the city's major streets. The day of November 18, started with an hour-long wake-up call by playing Leventist music, and subsequently, from 11 am, a rally of about 2,000 participants, including members of irredentist associations, firefighters, government and city employees was held in front of the Lajos Kossuth Monument. Four speakers were speaking in front of the assembly, including the city's General Notary, who read a memorandum drawn up for the League of Nations and the Hungarian government, as well as a letter addressed to Lord Rothermere[15] asking him to urge a revision of the Treaty of Trianon. The Commander of the border checkpoint informed the District Chief in Trebišov that after the meeting there was a procession through the city, after which the participants parted, while apart from displaying a poster in Hungarian national colors on the common bridge in Sátoraljaújhely – Slovenské Nové Mesto – there were no other provocations at the border.

By means of archival research, the results of which we have presented in this chapter, we confirmed the hypothesis outlined in the introduction about the existence of proceedings and incidents against the Peace of Trianon in the region of south-eastern Slovakia during the interwar period.

In accordance with the goal set out in the introduction, the subject matter of the following chapter is to present the legal order of the newly formed Czechoslovak Republic as well as its tools of punishment for some of the acts described in this chapter.

14 State Archive of Košice, Fond Okresný úrad Trebišov, Box 1, file number 1354/1928 prez.

15 This is apparently Harold Sidney Harmswoth, 1st Viscount of Rothermere, the supporter of the Hungarian revisionism.

3. The Czechoslovak legal order and the instruments of criminal law protection of the state

The natural consequence of the creation of a new state was the creation of its special legal order. Given the dynamism of the revolutionary process leading to the establishment of the Czechoslovak Republic, the creation of a completely new legal order neglecting the previous historical development of law in the affected area was out of question. The basis of its existence and functioning therefore became the reception of the former law by Act No. 11/1918 Coll. and Act on the Establishment of the Independent Czechoslovak State, also referred to as the reception norm[16], since in accordance with its Art. 2 – "all existing provincial and imperial laws and regulations remain in force for the time being."[17] The practical consequence of this provision was the emergence of legal dualism, which despite of some partial unifications[18], in principle lasted throughout the interwar period and consisted of the adoption of the Austrian law in the Czech lands and Hungarian law in Slovakia and Carpathian Ruthenia.

The basic pillar of the substantive criminal law in Slovakia remained the Csemegi Code, Act No. V/1878, i.e. the Criminal Code on crimes and misdemeanours, as well as Act No. XL/1879 Criminal Code on delicts, while the procedural starting point continued to be the Criminal Procedure Code, i.e. Act No. XXXIII/1896. From the above it follows that, in the first years after the conclusion of the Treaty of Trianon, the Hungarian Act No. V/1878 and the provisions for crimes contained therein, in particular the crime of high treason (in Hungarian *felségsértés*) paradoxically remained the instrument of criminal law for protection of the newly formed state. However, the dualism of the legal regulation of the protection of the unitary state, which the interwar republic was, as well as the need to reflect the republican state establishment, already in 1923, led the Czechoslovak legislators to adopt a new law No. 50/1923 Coll. for the protection of the republic, which newly and comprehensively regulated the criminal law instruments for the protection of the newly created state and the integrity of its territory.

16 More details on the reception norm see e.g. Vojáček, Ladislav: *První československý zákon. Pokus o opožděný komentár.* Praha, Wolters Kluwer, 2018. 379.

17 Gronský, Ján–Hřebejk, Jiři: *Dokumenty k ústavnímu vývoji Československa I. (1918-1945).* Praha, Karolinum, 2004, 27.

18 For unification of the substantive criminal law see Fico, Miroslav: *Základy trestnej zodpovednosti v procese unifikácie trestného práva medzivojnovej Československej republiky.* Košice, ŠafárikPress, 2020. 192.

3.1. *Act on the Protection of the Republic*

In terms of its structure, the Act on the Protection of the Republic consisted of four chapters, namely: I. Plots against the Republic, II. Damaging the Republic and attacks on constitutional officials, III. Threatening the peace in the Republic and its military security and IV. Final Provisions. According to the Explanatory Memorandum[19], Chapter I defined the concept of plots/conspiracy against the Republic directed against the existence of the Republic and its internal as well as external security. Chapter II was to protect the Republic against any harm to its most important interests and against attacks on its constitutional dignitaries as the 'living, driving force of the Republic'. Chapter III was to prosecute acts, although directed not directly against the Republic itself, endangering its armed forces or the general peace within it. According to Malý et al., the provisions of Chapter III of the Act were the most frequently applied in practice.[20] The Final Provisions, as the last part, i.e. Chapter IV of the law dealt mainly with the principles of imposing individual sentences as well as the extinction of punishability.

The law stipulated the political offenses to a decisive extent.[21] It is considered one of the most important criminal law norms in the interwar Czechoslovakia.[22] However, Kazda[23] points out that this law is considered controversial by many, as it was supposed to protect the Republic from both the Germans and the Hungarians, as well as from the Communist coup d'etat .

Following the results of archival research, we will further describe some provisions for the crimes enshrined in this Act, which could be theoretically fulfilled by the incidents discovered by the archival research.

As the first one we will show the crime of spreading false news, which consisted of two bodies. It was committed by a person (any criminally liable person) who 1.) publicly reported or otherwise disseminated false news for which he did not have sufficient reasons for believing them to be true,

19 Lepšík, Josef: *Zákon na ochranu republiky s důvodovou zprávou.* Praha, Fr. Borový, 1923, 8-9.

20 Malý, Karel et al.: *Dějiny českého a československého práv do roku 1945*. Praha, Leges, 2010, 400.

21 Mosný, Peter–Hubenák, Ladislav: *Dejiny štátu a práva na Slovensku.* Košice, Aprilla, 2008, 243.

22 It is stated so by Malý op. cit. 400.

23 Kazda, Jan: *Právní ochrana proti kontrarevoluci za první Československé republiky.* In: Dny práva 2012 (Revoluce a právo, Část III.). Brno, Masarykova Univerzita, 2013, 614.

although he knew that through his act he will seriously disturb the population of a region or place or a part of that population; further on, a person who 2.) publicly reported or otherwise disseminated false news, even though knowing that it is damaging the security of the state, the public security or order, or that it causing a rise in the prices of consumer goods, hasty and mass purchase or sale, or hasty and mass withdrawal of deposits. In alternative 1, this act represented an infraction punishable by a pecuniary punishment of 50 to 10 000 CZK or by a term of imprisonment of three days to three months; in Slovakia up to two months in a form of arrest (in Hungarian *imprisonment*) or over two months in a form of imprisonment/ jail (in Hungarian *fogház*). The Alternative 2 described a misdemeanour punishable by imprisonment from eight days to three months. However, if the perpetrator had known that the message he was spreading was untrue, in both alternatives it was considered a misdemeanour punishable by imprisonment from eight days to six months. According to the interwar case-law, it was objectively necessary that the message be capable of causing consequences provided for in paragraphs 1 and 2, and subjectively for the offender to be aware that the dissemination of the message could have such consequences.[24] The criminal offence was accomplished by spreading false news, regardless of whether there were any consequences in the law.[25] The untruthfulness of the message was assessed objectively regardless of the fact whether the perpetrator, when disseminating the report, had supposed it was true or he himself had doubts about it, and he also informed the addressee about his doubts in this regard when disseminating the information. Thus, the perpetrator was not required to know that the report he disseminated was untrue, his carelessness in this regard was sufficient.[26] In our opinion, the acts described in subchapter 1.1 could theoretically accomplish the elements of the above offence.

Another relevant criminal offense defined by Act No. 50/1923 Coll. was the Violation of General Peace, affecting a relatively wide range of acts contained in several provisions for this crime. In connection with the dissemination of leaflets or the holding of protest rallies, we will describe in more details the first one, which consisted of the actions of a general subject, who publicly or in front of several people, or addressing several people incited

24 Decision of the Supreme Court of the Czechoslovak Republic, Zm II. 284/24. In: Černý, Jan: *Zákon na ochranu republiky.* Pardubice, Soudcovské listy, 1926, 107.

25 Uo.

26 Milota, Albert: *Zákon na ochranu republiky.* Kroměříž, J. Gusek, 1930, 111-112.

revolt against the state for its creation, independence, constitutional unity or Democratic-Republican form. The element of the publicity of this act was particularly important, and was defined by the Act for the protection of the Republic itself differently from the general legislation. Accordingly, if the act was committed in the press, through a disseminated file, in an assembly or in front of a crowd, it was performed publicly. In our view, the dissemination of leaflets (the revolt against the State carried out by them) could have fulfilled the concept of a disseminated file, which was, according to Milota, "a file whose content is accessible to a larger number of persons, whether designed for individuals or not. This file may be reproduced (mechanically or manually), but a single copy of it which is made known to several people is sufficient (e.g. by putting it up in a public place, on a notice board intended for several persons, etc.)."[27] The conduct of the protest assembly (inciting against the state), of course, fulfilled the character of the publicity under the term 'assembly', which was a deliberate grouping of people and thus differed from the random nature of the 'crowd'. It was a misdemeanour, punishable by one month up to two years' imprisonment in Slovakia and Carpathian Ruthenia.

The Act on Protection of the Republic finally provided protection against disseminating undesired printed materials through the institution of stopping the publication of periodicals if by their content, offences – exhaustively defined and regulated by the Act on the protection of the Republic – were repeatedly committed. Interpreting the relevant normative texts, we can arrive at conclusions that the preconditions of the application of this tool were the following:

- A court decision in criminal proceedings about the fact that by the content of the respective periodical a exhaustively defined criminal offence regulated by the Act on the protection of the Republic was committed,
- Existence of previous, earlier (i.e. minimally two) decisions of the same subject-matter, on committing the offence through the respective periodical, in a relatively short time ("brevity of period" was defined by the court, depending on the frequency of publication[28]), and finally
- Existence of reasonable concern that these offences will be committed continually through the respective periodicals.

27 Ibid. 168.
28 Ibid. 154.

If the following conditions are met, the court is empowered to promulgate a halt to publishing the respective periodical. After the entry into force of the court decision, the political office of the second bench has become entitled to order by its decision to halt the publication of the respective periodical. In the case of printed materials issued at least 5-times weekly, the halt could be valid maximally for the period of one month; in the case of printed materials issued at least 3-times weekly, – halt can be ordered maximally for two months, and in the case of any other printed materials, the period of halt cannot be longer than six months. Further publication of periodicals "officially halted" was considered a misdemeanour.

3.2. *Some criminal law effects of the Press law*

The protection tools of the state applied against improper printed products were contained also in norms of administrative law nature involved in the originally Hungarian Act No. XIV/1914 on press. Pursuant to Section 3 Subsection 10 of this law: "The Ministry is empowered to forbid the dissemination of printed products issued or reproduced outside the territory of the countries of the Holy Crown of Hungary for reasons of general interest." The Ministry responsible for administration of Slovakia acted under this standard within the matter of foreign printed products in the case of withdrawal of postal communication and prohibition of colportage described in subchapter 1.2. The Ministry acted by means of a Decree, what we can learn from the circular letter of the County Prefect (Župan) of the Košice County (Košická župa) addressed to all the district offices and the Police Commissariat in the City of Prešov (Policajný komisariát v Prešove) issued on 1st April 1924.[29] The Ministry of Slovak Affairs by its Decree issued on 16th March 1924, No. 5373/24 informs on the withdrawal of postal communication and prohibition of colportage of the Polish newspaper *Ilustrowany Kuryer Codzienny* because of the unacceptable style of writing against the Republic and the President of the Czechoslovak Republic. The cited norm, although primarily having administrative law character, also had criminal law-– effects, as under Sect. 3, § 24 of Act on Press the violation of such a ban on dissemination of printed materials was considered a misdemeanour (in Hungarian: *vétség*), which was punishable by imprisonment.

29 State Archive of Košice, Fond Okresný úrad Sečovce, Box 2, file number 372/1924 prez.

4. Conclusion

The aim of this article was to verify the hypothesis presuming the existence of incidents or activities directed against the Czechoslovak Republic, more precisely, against the integration of the territory of the present-day Slovakia into the Czechoslovak Republic, based on the Peace-Treaty of Trianon. The study focused on the incidents occurring during the interwar period on the territory of the South-East Slovakia. The results of our archive-research have confirmed the above hypothesis and in the present article the facts ascertained have been shown in their structured form, categorized according to their essence. Following this, the presented article has outlined some tools through which the Czechoslovak state could protect itself in the face of such acts. This was achieved by analyses of relevant provisions of the interwar legal regulation.

Slovak efforts to change the Piccion demarcation line with Hungary[1]

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Abstract

At the time of the creation of the first demarcation line separating the southern border of Slovakia with Hungary, there were the voices encouraging its correction. The designated demarcation line thus divided the territory between the two states and also the border population. These and many other unanswered questions have contributed to the resistance to the then demarcation line and to the efforts to change it. However, the efforts for change and especially the spread of misinformation and deceptive half-truths resulted in another military conflict between the Czechoslovak and Hungarian armies in the border area.

Key words

Czechoslovakia, demarcation line, Slovak-Hungarian relations, military conflict

Already at the moment of the agreement on the first demarcation line separating the southern border of Slovakia with Hungary, there were voices in the general public as well as among political representatives, encouraging its correction. The negative attitudes demanding the correction or adjustment of the demarcation line gradually began to be perceived on both sides of the Danube. Although the reasons for dissatisfaction with the newly marked limits were different and both sides defended their opinion on the basis of different motives, both camps had one thing in common efforts to create a new demarcation line.

From the point of view of the Hungarian-speaking population clustering mainly in the area of southern or south-eastern Slovakia, the determina-

1 This work was supported by the Slovak Research and Development Agency under the Contract no. APVV-19-0419.

tion of the first demarcation line was quite unacceptable. The demarcation line thus established divided not only the territory between the two states, but above all the border population too, often bound together by ties of kinship. Representatives of Hungary, on the other hand, were in favor of returning to the demarcation line previously agreed upon between M. Hodža and Barth. It was established on St. Nicholas Day in 1918 in Budapest. At the same time, the growing tension on the Slovak side of the divided territory did not help to calm the situation. The stabilization of the Slovak-Hungarian border brought with it the resolution of several state policy or national economic issues. Its possible military security also played an important role. The general population has faced a language barrier in the border areas, which did not help to calm the situation either.

The military solution to the railway issue in the area of the demarcation line passing through the Ipľa river basin did not contribute to the tense situation after the end of the war. Efforts to occupy the railway network in the demarcation line ultimately resulted in the conclusion of an agreement to stop hostilities, but the final solution to this complicated situation does not come until the Lučenec Treaty was adopted. Representatives of the 7th Czechoslovak Division, together with representatives of the Hungarian military authority, declared recognition of Piccione's first demarcation line. However, the Ipľa river basin was not the only railway problem in the demarcated line. These and many other unanswered questions have contributed to the opposition to the current demarcation line and to efforts to change it.

Vavro Šrobár also joined the opponents of the demarcated border between Hungary and Czechoslovakia, actively advocating the need to change the demarcation line. Šrobár's dissatisfaction with the demarcation line is also evident from his correspondence, both before the beginning of the peace conference in Paris and during it. In his dissenting position, the Minister with a power of attorney for the administration of Slovakia argued primarily that the the demarcation line did not coincide with the economic, cultural, or linguistic requirements of the population living in the given territory. He was also very concerned in his communication at the time about ensuring the security of Prešpork, which in his opinion could only be achieved if the southern part of the demarcation line was moved further.

Ultimately, General Piccione himself joined the opponents of the established demarcation line. However, the position of the Italian peacekeeping

mission on our territory already had to face several complications during this period. As a result, due to the insufficient number of Czechoslovak troops occupying the demarcation line, General Piccione ordered the inclusion of II. brigade among the relevant military units, thus dividing the demarcation line. The Italian peacekeeping mission on our territory therefore had to face considerable resentment, both domestically and internationally. The arrival of the French peacekeeping mission also contributed to the unstable situation in our territory and thus to destabilizing the situation on the territory of the demarcation line. The above-mentioned Vavro Šrobár joined the opponents of the Italian troops in our territory, who, from the beginning, clearly spoke out against the preservation of the demarcation line established initially.[2]

The arrival of the French peacekeeping mission on our territory also brought with it competence disputes between members of the Italian and French diplomatic missions. Dissatisfaction with the presence of the Italian military mission was underlined by the relatively clear pro-French stance of the then Minister of Foreign Affairs. Initially, the French military was supposed to have only an advisory body, but gradually they were involved in the complicated process of establishing the final border between Hungary and our territory. Apart from the issue of the Hungarian-Slovak border line, however, French troops were obliged to solve several other problems arising during the creation of an independent Czechoslovak state, among which we can mention the military conflict between the Czech-Slovak Republic and the Republic of Hungary.[3]

The escalating situation in Slovakia and the never-ending dispute between the top representatives of the French and Italian peacekeeping missions resulted in a growing resentment against General Piccione and his demarcation line. At that time, the head of the operational department of the Prague Ministry of National Defense, Major Emil Fiala, was also among the critics of the initial demarcation line.[4] The growing reluctance in professional circles resulted in the adoption of the Ministry of National Defense

2 AMZV ČR, Praha, PA, zv. 38, č.4859. (archival document).

3 Hronský, Marián: *Le rôle de la Mission militaire francaise dans les combats en Slovaquie et dans la formation des frontiéres de la Slovaquie en 1919.* In: Batir une nouvelle sécutiré. La coopération militaire entre la France et les États d´Europe centrale et orientale de 1919 á 1929. Paris, Chateau de Vincennes, 2001, 331-344.

4 AMZ V ČR, Praha, PA, zv. 36, č.4286 – výťah z listu E. Fialu spracovaný R. Kalhousom v Paríži 27.2.1919. (archival document).

Memorandum clearly declaring the unsatisfactory provision of the demarcation line in the first post-war days. The unacceptable definition of the first demarcation line was thus derived from the hectic period of the first post-war days as well as the unavailability of adequate cartographic documents reflecting the geographical conditions in the country.

The basic point of the Memorandum was the efforts to shift the demarcation line toward the area of southern and eastern Slovakia, as a result of which it was possible to solve the problematic railway issue in our territory. The new demarcation line was therefore to be moved from Ipľa to the Carpathians. However, in addition to the new demarcation line between Hungary and Czechoslovakia, the Memorandum created also proposed establishing a special demarcation line from the Hungarian side, which would create a separate neutral and demilitarized zone between the two countries. Such a solution to the situation was supposed to improve the security situation in the border area. The need to resolve the unfavorable railway issue was also recognized by General Pellé, who, by letter, appealed to the French Prime Minister to comply with these requirements.

However, professionals advocating the creation of a new demarcation line with Hungary could not agree on the final demarcation of the new border. However, the pressure on members of the Czechoslovak political leaders to change it continued to intensify. The unstable situation on our territory could no longer be ignored, as a result of which the political authorities in Paris also began to deal with it. The relevant negotiations aimed at correcting the demarcated border also brought with them considerable complications.

However, in the case of resolving the issue of creating a new demarcation line between Hungary and Slovakia, we cannot forget the activities of the Commission for Czech-Slovak Affairs, whose basic task was to decide on the final borders of Slovakia. In this context, it should be noted that a possible correction of the demarcation line reflecting railway requirements was not entirely in line with the notions of military mobility at the time. From the point of view of Czechoslovakia, a much better solution seemed to be a change of the demarcation line reflecting the strategic requirements, subsequently confirmed also through the peace conference in Paris. The efforts of military officials to consider the strategic aspect of the demarcation line between Czechoslovakia and Hungary thus ultimately made the already complicated situation leading to the creation of a new demarcation line in

the given area even more obscured. The ambiguity of the situation is thus evidenced by several recorded telephone conversations from March 1919 between the highest representatives of the then political elite. General Piccione, who requested military reinforcements to occupy the demarcated border, contributed to the disinformation, although no final decision was reached yet. This situation was also confirmed on March 19 and 22 of that year, when Dr. Fric made it clear that the Prague Ministry of Foreign Affairs had not received an answer on the border issue from Paris.[5]

However, disinformation and obscure facts contributed to V. Šrobár himself becoming involved in the whole situation, who asked General Piccione to prepare an operation to occupy the railway line in accordance with the new demarcation line. Preparations for the occupation of Hungarian territory were also to begin on the Slovakian side according to the information available to him.[6] The situation caused by disinformation and the related military-political activities of V. Šrobár ultimately only contributed to the escalation of tensions between the two countries. However, the subsequent request for reinforcements from General Piccione to General Pellé was rejected due to a decision not to move the line. He was also unaware of any operations to occupy the new territory that would require reinforcements.

However, the failure of General Pelle to provide military reinforcements did not prevent the Presidium of the Council of Ministers from asking both the Ministry of National Defence and the Ministry of Foreign Affairs to do everything necessary in preparation for the occupation of Subcarpathian Russia. By letter no. 8445/op. of 31 March, in its preparations for the occupation of the alleged Slovak territory, the Ministry requested the Ministry of Railways to prepare the necessary documents for the immediate provision of transport in the given territory, both in Subcarpathian Russia and the affiliated territories of Slovakia.[7] In the end, the Ministry of National Defence took all the necessary steps for the forcible occupation of the said territory, which, as they thought, had already been clearly attached to Slovakia.

Unexpected complications in the case of negotiations on the determination of a new demarcation line and thus on the creation of a permanent bor-

5 AMZV ČR, PA, zv. 48, č.4886, č.4889. (archival document).

6 Ferenčuhová, Bohumila: *Slovensko a Malá dohoda z hľadiska geopolitiky.* In: Valenta, Jaroslav – Voráček, Emil – Harna, Josef (ed): Československo 1918-1938. Osudy demokracie v střední Evropie: Sborním medzinárodní vědecké konference v Praze 5-8 října 1998 Praha, Historický ústav, 1999, zv. 1, 589.

7 VHÚ Praha, MNO – Hlavný štáb, Oper. odd. 1919, kr. 1,3-9/7. (archival document)

der between Czechoslovakia and Hungary were also brought about by the development of the political situation on the Hungarian side of the Danube. The preparation and subsequent arrival of the Bolshevik representatives only complicated matters to a greater extent causing more tension and confusion. The new political mobility fundamentally rejected Hungary's obligation to leave the territory between Transylvania and the Vásárosnamény–Debrecen–Dévaványa–Gyoma–Orosháza–Hódmezővásárhely–Szeged line, which they were to leave to Allied troops. The deteriorating situation on both sides of the Danube raised questions about a possible military solution to the situation. The preparation of the Czechoslovak political leaders for a possible war solution to the unfavorable situation is also evidenced by E. Beneš's subsequent communication with President Masaryk, in which Beneš informs the President about the possibility of a military expedition to Hungary. In connection with the newly created situation, it was possible to assign a new strategic-military dimension to the solution of the railway situation in our territory, which was noticeable especially on the railway section Sátoraljaújhely–Čop.

Subsequent negotiations between E. Beneš, Pichon, Foch and the French president indicate the efforts of the parties to shift the demarcation line and thus align it with the political-military ambitions of the Allies in other areas. The meeting of the Commission for Czech-Slovak Affairs, which took place on March 24, 1919, was also forced to deal with the issue of the second demarcation line. Marshal Foch's proposal was substantiated, both by letter communication and by the Memorandum. These documents were to clearly declare dissatisfaction with the previous demarcation line, as well as the need for its subsequent correction. Following the example of the Memorandum of 9 March 1919, the Commission was to decide on the creation of a narrow strip between the borders of Hungary and Slovakia, serving as a neutral zone between the countries. Foch also proposed shifting the demarcation line and creating an inter-allied railway commission. It was then to operate in the neutral zone and ensure the free use of the Štúrovo-Miškovec railway line to both neighboring countries.

Despite the fact that the Commission forwarded Marshal Foch's requests to the Supreme Council to decide on the proposal, we still cannot forget, that not only Marshal Foch has ultimately decided on the final border between Slovakia and Hungary. The political-power ambitions of the treaty powers also had a significant effect on the adjustment of the demarcation

line. The top representatives of the treaty powers, however, had no clear idea of the final post-war arrangement of relations between Czechoslovakia and Hungary.

The emerging tensions, created mainly from the power ambitions of the treaty powers, did not subside with regard to another problematic border. Hungarian officials had to reflect mainly on the proposal of Marshal Foch. Through the Council of Four, he tried to push through a military invasion of Budapest. However, the effort to find a peaceful solution to the post-war international relations ultimately outweighed his opinion. The proposal thus met with strong opposition from the representatives of the Agreement.[8]

At the same time, Marshal Foch's order to occupy the territory was expected every day on the domestic political scene. The impatience of the domestic officials is clearly stated in the subsequent communication between Marshal Foch and General Pelle, in which the general tries to outline the most likely plan of attack. Therefore, for a smooth progress in the military operation, he proposed the immediate occupation of the railway south of the demarcation line, which was supposed to help the subsequent advance to Subcarpathian Russia. However, given the political sentiment that persisted in Paris, no military interaction was possible, and the political elite kept trying to find a peaceful solution to the unfavorable situation.

On March 29, 1919, despite political efforts for peace negotiations in Paris, Minister Klofáč issued a directive File No. 9680/op., dealing with instructions for General Hennocque. The essence of this directive was to allow the general to occupy the eastern basin of Bodrog militarily, but only in case the diplomatic situation should deteriorate. At the same time, the occupation of the railway line connecting Michaľany and Užhorod remained the basis of the entire military operation. However, the adopted directive recording the exact military campaign still remembered Piccion's demarcation line, which it forbade to cross. However, in the event of an attack, the current positions were to be defended.[9]

The communication between General Pelle and the commander of the Eastern armies, who informed the general about a possible military action against Hungary, also contributed to the aggravation of the already unfavorable situation. Such communication could help to clarify it. However,

8 PERMAN, Dagmar*: The shaping of Czechoslovak State. Diplomatic History of the Boundaries of Czechoslovakia 1914-1920.* Leiden, E.Y. Brill, 1962, 184-185.

9 VHA Praha, FVM, kr.5, A-M. s., III. odd., kr. 5,9. zv., č.15. Tiež VHA Bratislava, ZVV Bratislava 1919. Prezídium, kr. 3, č. S-279-1/7. (archival document).

as it reported on a possible military conflict in the border area, it greatly increased tensions between the two countries. The delivered communication triggered an avalanche of other decisions led by Minister Klofáč. He responded by issuing the order "Occupancy of new borders in Slovakia" (No. 1080 / op.). Minister Kolfáč ordered General Piccione to take part in the military occupation of the new demarcation line and occupy the Danube line up to Verőce, then in the direction of the Szurdokpüspöki – trigonometer 803 – Mátra – trigonometer 314 – Kakasnyilás kóta 219–Mályi–Gesztely–Monok–Tállya–Sárospatak. At the same time, the order does not forget General Hennocque, who was to proceed further and occupy the line Vajdácska–Baťovo–M Dobroň–river Uh.[10] In this context, however, we cannot forget the Serbs or Romanians, who were also to begin a military campaign against Hungary to defend their own borders at the same time as members of the Czechoslovak army.

In its plans for a new demarcation line between Slovakia and Hungary, the political elite failed to agree on a date for convening a peace conference, which would then clearly determine its real contours. Several dates came into consideration during February, March, and April 1919. However, we can reliably exclude from the historical facts outlined so far, any date that would time the peace conference on the establishment of a new demarcation line during February 1919. The fact that the negotiations on the second line of demarcation could not take place in February is evidenced by the adoption of the above-mentioned Memorandum adopted by the political elite in Paris, submitted in the first half of March 2019. As in the case of February, a possible peace conference on the shift of the demarcation line could not take place in April either.

Minister Šrobár, who from the very beginning tried to correct the first demarcation line, said that the border line between Hungary and Slovakia had been changed several times. Negotiations on the final demarcation line took place not only in Paris, but also in Pest. At the same time, Minister Šrobár did not forget to mention in his statements the domestic correction of the demarcation line while encountering General Piccione's military attempt in the Ipľa Valley.[11] During the negotiations in Pest, the Hodž demarcation line was established during 1918. Opponents of Piccione's demar-

10 VHÚ Praha MNO – Hlavný štáb, Oper. odd. 1919, kr. 2,č.3 78/25. (archival document).

11 SNK-ALU MS Martin, 173, M2, pamäti Vavra Šrobára: Oslobodené Slovensko. Pamäti z roku 1918-1920 , zv. 2, časť III., 57. (archival document)

cation line from around the then Hungarian political elite also invoked it. However, the most important and final negotiations on the establishment of a demarcation line between Hungary and Slovakia took place at a peace conference in Paris.

However, the issue of the second demarcation line was not completely resolved even by E. Beneš. Based on his subsequent communication with President Masaryk, it is clear that the issue of the second demarcation line has not yet been fully resolved during June 1919. Beneš himself asks Masaryk when the new demarcation line was established, or who determined it. Such ambiguous communication between the two top representatives of Czechoslovakia testifies to clear disinformation and doubts about when and whether the second demarcation line was established at all.

To Beneš's allegations, that Marshal Foch had acted in some cases without the consent of the treaty powers, or that he had 'forgotten' to inform them about his action, F. Peroutka has subsequently joined. However, apparently neither Beneš nor Peroutka had information that Marshal Foch, despite his obvious disagreements with Clemenceau, submitted a proposal for a new demarcation line to the Commission for Czech-Slovak Affairs and consulted on his further action on March 24, 1919. However, it remains questionable whether Marshal Foch informed the domestic political scene in Prague not only of the Commission and thus of the representatives of the treaty powers about his diplomatic efforts to establish a second line of demarcation.

However, on a closer look at the demarcation line declared in Minister Klofáč's order, we can clearly state that the established line of activity of the Czechoslovak army cannot be considered final. In this case, the sketched line was supposed to only reflect on the area of interest of the Czechoslovak army, in the case of a military invasion of Allied troops into Hungary. The document was intended to illustrate the possible course of action of the Allied troops, but any assumptions about the meaning of this document are currently unsubstantiated claims, as no documents are known to support such a statement. In this context, we can argue about whether Klofáč did not count on the spontaneous crossing of the Piccione line on the basis of the disinformation made available and through his order. Therefore, if Foch could not inform the domestic political scene about his indications of the correction of the demarcation line in time, we can also play with the idea of whether the question of the second demarcation line was not accepted in our territory until the Klofáč line of military progress was sketched.

On the domestic political scene in the post-war period, also as a result of the departure of Beneš and other politicians to Paris for peace negotiations, Masaryk, Klofáč and Pellé decided on the most important issues. However, communication between members of the domestic political mobility and the peace delegation in Paris was not easy and, as already mentioned, there was often considerable misinformation or incomplete interpretations of the facts presented. Nevertheless, we can hardly assume that Klofáč acted on his own regarding an important international political issue and did not undertake any political negotiations, at least on the domestic political scene, through which he would consult on the intended situation. On the other hand, we can also consider other facts that bring closer the reasons for the considerable reluctance to hold such a consultation, mainly with President Masaryk. Unlike Klofáč, he advocated the correction of the demarcation line on a much smaller scale while in his deliberations he counted on the acquisition of the southern bank of the Danube. Masaryk also tried in his reflections on a possible correction of the demarcation line to find a political solution suitable for both neighboring countries, which would bring from the Slovak side the capture of only a minimum of the Hungarian population.

Despite the fact that the establishment of the second demarcation line was fully in the competence of Foch in the first days of April 1919, we can draw attention with the focus on this important issue for Slovakia, especially to Minister Klofáč. On May 7, 1919, Klofáč was invited to a meeting of the Defense Committee of the National Assembly, which asked him to explain the situation. Klofáč explained to the members of the Defense Committee that a new demarcation line had been set earlier, on 13 January 1919, but the Czechoslovak army had only begun its military occupation now as it wanted to avoid bloodshed.[12] However, the subsequent activities of V. Šrobár were also connected with the date of March 13, 1919. Klofáč also defended the second demarcation line in the case of the July communication with Beneš, in which he clearly pointed out that the new demarcation line between Hungary and Slovakia was established as early as March 1919. Minister Klofáč thus clearly declared that any changes in demarcation lines were no longer possible and therefore, in his view, the representatives had already reached a final decision on this issue. For this reason, he also took part in its subsequent

12 VHA Praha, MNO, Prezídium 1919, kr.9, inv. č. 3/2 – Branný výbor, č. 503 – 5950. (archival document).

implementation in the form of a military offensive on the territory of Hungary. On the basis of the information provided to him, he was therefore firmly convinced that the demarcation line which had been determined would no longer change, but in the context of both the foregoing and the following facts, it was relatively questionable at that time whether the negotiations in question had in fact been definitively concluded.

The subsequent opinion of the Defense Committee of the National Assembly shows that, on the basis of Klofáč's statements, it was not him who announced the progress of the Czechoslovak army either to General Pellé or to Marshal Foch.[13] He was to be informed by letter of April 7, 1919, in which Pellé described the course of announced offensive. However, General Pellé's plans in the letter in question continued, as he did not forget to outline in the letter the subsequent march of Allied troops directly to Budapest. However, such offensive thinking by top military officials ultimately only escalated tensions in addressing key issues. However, the need to resolve them peacefully was more than necessary after the end of the global military conflict.

Internal confusion among individual military officials also contributed to the dire situation to a large extent, as there are well-known and historically documented cases in which Pellé asks Foch to hand over military command over the Czechoslovak army. However, Foch vehemently rejects his request and leaves command to General Piccione.

Plans for the implementation of the Military Action occupying the new demarcation line were implemented in connection with the planned offensive action of General d'Espèrey. However, the plans of the military offensive were thwarted by Marshal Foch himself through his telegram no. 3597/BS of 8.4. 1919. In response to information from Pellé, it clearly showed a defensive solution to the situation. The defensive position was thus also ordered to the Czechoslovak army.[14] Minister Klofáč also had to take a stand on Floch's telegram by issuing order no. 11021, the essence of which was the restriction of military activities in the border area with Hungary exclusively for defense purposes. Contrary to the telegram, however, this order ordered members of the Czechoslovak army to proceed covertly in occupy-

13 VHA Praha, Prezídium 1919, kr. 7, č.38. (archival document).

14 Ferenčuchová, Bohumila: *Talianská a francúzska vojenská misia na Slovensku a česko-slovensko-maďarský konflikt v rokoch 1918-1919*. In: Slovensko a Maďarsko v rokoch 1919-1920: Zborník referátov z konferencie v Michalovciach 14-15.6.1994, Matica Slovenská, 1995, 140.

ing Hungarian territory.[15] The direct order to proceed was thus not issued through the Paris Ministry of National Defense until 27.4. 1919. Nevertheless, operation in the border area significantly contributed to the deterioration of relations and to the unpleasant life of the war-torn population of the border area.

From the point of view of the new demarcation line and its subsequent integration into the Slovak territory, the order of Minister Kloфáč No. j. 10807/op. from 7.4.1919 played an important role. It modified the procedure of Western Group troops in relation to the occupation of a new demarcation line. However, General Hennocque's Eastern Group was to join the advance, supporting the Eastern bloc of Piccione's army. However, Minister Kloфáč's order also reckoned with possible Hungarian resistance to the Czechoslovak army. The resistance was to be faced with the help of General Hennocque, with the proviso that the possible occupation of Subcarpathian Russia would be postponed until the conflicts with Hungary were resolved. However, the primary goal of the Eastern group remained to occupy the line Vajdácska, Szölömaj elevation 121, Kiskövesd, Nagyrozvágy, Agárd, Bezdék, Nagylónya, Hetyen. To the east, the group was to continue in the line of Bótrágy, Bátyú, Nagydobrony, Putka Helmec elevation 304, Árok elevation 333, Úh river.[16]

The order of Minister Kloфáč itself also encouraged the accelerated process of occupying the demarcated border, while the Western Group was to ensure occupation from Verovíce to Blatný stream. As a result, individual action plans were subsequently developed by the commanding generals. From the point of view of the Western Group, it was crucial to occupy the industrial and surrounding area near Miskolc was crucial. However, creating a concrete and comprehensive roadmap was not a simple task. General Piccione worked on his plans continuously during April 1919, with specific contours being created through six separate and consecutive orders.[17]

In their plans to occupy the new demarcation line, neither Generals Piccione nor Hennocque could forget the decision of the Minister of National

15 VHA Praha, MNO – Hlav. štáb, Oper. odd. 1919, kr. 1, č.3-9/4, tiež kr.2 č.3 23/13. (archival document)

16 HRONSKÝ, Marián: *Trianon Vznik hraníc Slovenska a problémy jeho bezpečnosti (1918-1920).* VEDA, 2011, 217.

17 There were orders: no. 2187/op. from 10.4.1919, no. 2233/op. from 12.4.1919, no. 2275/op. from 14.4.1919, no. 2347/op. from 19.4.1919, no. 2505/op. from 27.4.1919, no. 2528/op. from 28.4.1919.

Defense Klofáč and his plans which were more than territorial. Klofáč also tried to prevent the penetration of Bolshevik political views into our territory. Last but not least, we cannot forget the efforts to ensure the smooth running of rail transport through the Ipľa valley to Uzhhorod. The subsequent process of occupying the demarcated areas and its successful implementation was to be coordinated with representatives of the Romanian army. Together with the Czechoslovak ones, they were able to force the Hungarian army back.

However, as we have already mentioned, the occupation of the mentioned areas was supposed to start as soon as possible. The most probable date for the start of the military offensive against Hungary was thus set on 18 January 1919, despite the fact that the first ministerial order did not include the possibility of its implementation yet. However, the order issued on April 7, 1919, also came with the reorganization of the armed forces in the territory of the former Hungary. As a result of Klofáč's order, the Czechoslovak army was divided into two groups, the above-mentioned Western and Eastern groups. In this context, however, we cannot forget the emerging complications with the formation of the 4th Czechoslovak Division. It was to be formed by militia battalions from Italy.[18] However, problems could also arise due to the accumulation of German forces. They were concentrated around the German-Silesian border and made it difficult for troops in the Tešín region to cross. Due to the complicated international political and military situation, the relevant military units did not manage to consolidate their positions, and the military operation could not begin on the expected date of April 18, 1919. The unchanging and relatively strict attitude of Marshal Foch to maintaining a defensive attitude in the area of occupying a new demarcation line with Hungary is unforgettable. General Pellé also tried to solve the ambiguous situation in the Czechoslovak army. As the situation became considerably more complicated as a result of the Romanian army, it was necessary to reconsider the attitude of Marshal Foch at the time.

As a result, he wrote to the marshal asking about his current position. However, Pellé did not receive answers to his questions in connection with the further progress of the Czechoslovak army. As a result, it is therefore necessary to argue about how the general could or should have explained

18 VHA Bratislava, Zemské vojenské veliteľstvo Bratislava 1919, Prezídium, kr. 3, S-280-3/11 – Hlásenie generála Piccioneho č.2233/op. z 12.4. 1919; VHA Praha, MNO – Hlavný štáb, Oper. odd. 1919, kr. 1, č.3-9/4 – hlásenie generála Piccioneho č. 2275 z 14.4.1919. (archival document)

the marshal's actions. Should the Czechoslovak army continue to maintain its position and continue to maintain a defensive stance towards further action, or invade into Hungarian territory and occupy a new demarcation line in cooperation with the Romanian army? However, the emerging historical circumstances clearly indicate that the situation and especially the spread of misinformation and half-truths contributed to this hectic post-war period and managed to provoke a military conflict between the Czechoslovak and Hungarian armies in the border area.

Peace conference in Paris and negotiations with Germany in 1919[1]

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Abstract

The present study deals with the initial stage of the Versailles Peace Conference. In the first phase of the conference, in addition to the Covenant of the League of Nations, efforts were made to conclude an agreement with Germany. The negotiation process has been extremely turbulent. German officials sought to make a peace that fully respected Wilson's points, which was no longer possible at the time. The presented study maps the state of negotiations and compares the final form of the Versailles Peace Treaty with the position of Germany and the so-called Entente Powers. It also pays attention to the impact of the Treaty of Versailles on the creation of new state borders in Central Europe.

Keywords

Versailles Peace Conference, Peace Treatys from Paris, creation of borders in Central Europe in 1918, negotiations in Paris Peace Conference, End of the First World War

Although the armistice after the Great War had been signed on 11 November 1918, the Peace Conference itself did not formally begin until 18 January 1919. There were several reasons for that time shift. The UK elections and Lloyd George's attempt to retain his position as the Prime Minister was the first of them. Another reason was US President Woodrow Wilson's effort to travel to Europe and attend the planned Peace Conference in person. In addition to the aforementioned US and UK officials, Georges Clemenceau, the French Prime Minister also played an important role. It was these three politicians who largely determined the nature of the negotiations. How-

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ever, Russia as one of the former allies of the Treaty was absent from the Conference. The Peace Treaty of Brest-Litovsk signed between Russia and the Central Powers in 1918 excluded Bolshevik Russia from the Alliance. Russia's political character after the Bolshevik revolution was perhaps the biggest obstacle to their joining the negotiations in Paris.

A total of thirty-two states and about two hundred plenipotentiaries attended the Peace Conference. The Conference had the character of an allied conference. The defeated countries were not represented, but their representatives were invited in the final stage of the adoption of peace treaties. The actors participating at the conference dispositioned themselves by power into powers with general interests and smaller states with limited interests. The participating countries were classified into four categories:

1. Great Powers with general interests – the USA, the United Kingdom, France, Italy, and Japan.
2. Countries engaged in the war having interests of a partial nature, e.g. Belgium, Brazil, Czechoslovakia, Serbia, Poland, and China. They only attended the meetings that concerned them.
3. Countries that severed diplomatic relations with the Central Powers, e.g. Peru and Bolivia. They attended only the meetings that concerned them.
4. Neutral states or those being in the stage of establishment – these were only admitted to meetings if invited by one of the Great Powers.

The number of delegates who could take part in the negotiations was also determined for each country. The Great Powers had 5 authorised delegates each. Belgium, Brazil, and Serbia could send three delegates. Czechoslovakia, Poland, Portugal, Romania, Thailand, the British Commonwealth of Nations (Australia, South Africa, and Canada), and India could send two delegates each. Other countries could only send one delegate. The total number of delegates in the relevant stages of the Conference approached a thousand. However, the decision-making on the most important issues as well as the prioritisation of the addressed issues remained in the hands of the Great Powers.

The dispositioning of the states by their power and the individual ideas on peaceful arrangement among the representatives of the Great Powers defined the main topics of the Conference, besides the main contentions. The Peace Conference agenda was being shaped in the process and was

conditioned by the development of the situation in Europe, by the current conflicts among the states, by the demands of nationalities and, to a large extent, by the demands of the victorious Treaty Powers. Specifically, the Conference was to discuss the issue of the formation of the League of Nations, the German and Italian issues, as well as the issues of new states, emerging borders, or redistribution of the former colonial territories.[2]

The so-called *Council of Four* was the supreme body of the Conference[3] which comprised of the representatives of the United Kingdom, France, the United States, and Italy. Independently of that, the so-called *Triumvirate* composed of Clemenceau, Lloyd George, and Wilson was created – they were the key actors in the Conference. Other bodies of the Conference included the *Supreme Military Council* that decided on military issues, the *Supreme Economic Council* that served as an advisory body for issues related to the economy and also took care of e.g. supplying the areas that suffered from the greatest shortages of food and clothing after the war. Individual committees and commissions also served as the main bodies which comprised of experts in the relevant branches of science, they were responsible for preparing drafts and subsequently submitting them for decision to the Supreme Council. We also include *the Peace Conference plenary sessions* among the main bodies of the Conference. Their role was to familiarise themselves with the drafted motions concerning the League of Nations and the peace treaties that had previously been approved by the Supreme Council of the Conference.[4]

At the Paris Peace Conference, a two-pronged approach was used to address the issues. In the first place, demarcation of problematic territorial boundaries was left to the selected experts. They were commissioned to assess the affiliation of the area concerned in terms of its geography or history with an emphasis laid on accurate statistics and specific attitudes of the local population. The second principle of the decision-making was the subsequent plebiscite, i.e. popular secret ballot under the supervision of an international body.[5] We consider the application of both of the above prin-

2 Procházka, Rudolf: *Likvidace války 1919.* Praha, Orbis, 1935, 24-26, 28-43.

3 The original Council of Ten (two representatives of the USA, Great Britain, France, Italy, and Japan) was first replaced by the Council of Five (comprising only the heads of delegations of the 5 powers) and later by the Council of Four which, at one point, became the so-called Triumvirate.

4 Houdek, Fedor: *Vznik hraníc Slovenska.* Bratislava, Prúdy, 1931, 289.

5 Dejmek, Jindřich a kol.: *Zrod nové Evropy. Versailles, Saint Germain, Trianon a dotváření*

ciples as an effort to partition Europe as fairly and sustainably as possible after World War I. As a matter of fact, no previous peace conference[6] had to address so many problematic issues together and subject them to such a thorough analysis.[7]

The future organisation of Germany – a country that was considered one of the villains of the war – was one of the fundamental issues that the Conference had to address. By signing the Peace Treaty of Brest-Litovsk on 3 March 1918, Germany itself considered the issue of the organisation of Eastern Europe to be resolved. Peace with Soviet Russia was beneficial for the Germans. However, the course of the last stage of the Great War destroyed Berlin's ideas on the outcome of the war. The way out of the unfavourable situation in which Wilhelm's Germany found itself was in President Wilson's well-known 14 Points the general wording of which often allowed for different interpretations and gave Germany a relatively wide margin of manoeuvre in peace negotiations. In particular, the first five points could be used to weaken the superpower position of the United Kingdom and France.[8]

The Government Statement of Prince Maximilian von Baden, the last Chancellor of Imperial Germany, dated 5 October 1918, clarified the German war objectives as, in a sense, the opposite to Wilson's Memorandum. The Chancellor of the Reich formulated the following points:

1. It was also in Germany's interest to conclude a special agreement that excluded the formation of both defensive and offensive associations and ensured open diplomacy under the control of public opinion and nations.
2. Germany was to agree to free navigation at sea in times of peace and war, so that the closure of the seas would never again become an instrument for the starvation of nations.

poválečního mírového systému. Praha: Historický ústav AV ČR 2011, 23-24. Boemeke, Manfred–Feldman, Gerald–Glaser, Elisabeth (eds.).: *The Treaty of Versailles. A Reassessment after 75 Years.* Cambridge, Cambridge University Press, 1998, 469.

6 On the beginnings of diplomacy, see: Vrana, Vladimír: *Rímska diplomacia na sklonku republiky.* In: Vladár, Vojtech (ed.): Rímsko-kánonické východiská slovenského a európskeho verejného práva: zborník z konferencie Katedry rímskeho a cirkevného práva. Prague, Leges, 2020, 39-51.

7 Macmillan, Margaret Olwen: *Mírotvorci: pařížská konference 1919.* Praha, Academia, 2004, 18.

8 Prokš, Petr: *Vítězové a poražení. Střední Evropa v politických plánech velmocí za Velké války a na mírové konferenci v Paříži (1914-1918/1919-1920).* Prague, Naše vojsko, 2016, 174.

3. Germany wanted to have the same rights and no advantages in trade with other nations because it was these advantages that caused discrepancies among the nations to date.
4. Germany did not reject the equal and balanced disarmament of all the countries, including its neighbours, on land, at sea, and in the air.
5. The colonial issue had to be addressed in the light of the economic interests of the peoples of Europe based on efforts to restore ownership of the colony according to the pre-war situation.
6. Withdrawal from the occupied Russian territory and freedom for Russia should exclusively apply to territories originally inhabited by Russians, while other peoples and territories of the former Tsarist Empire, such as the Poles and Lithuanians, the Baltic and the Caucasian peoples or Finland and Ukraine, were free to decide on their destiny with the exclusion of demagogic or military terror. Their freedom of self-determination had to be ensured under international supervision while re-establishing the right of each region to reunite with new Russia in the future.
7. Germany agreed to restore the sovereignty and integrity of Belgium.
8. Germany did not want to usurp any territory belonging to France and was ready to negotiate Alsace-Lorraine with its enemies. However, Germany rejected President Wilson's view that the annexation of Alsace-Lorraine to Germany in 1871 was unjust because long before that it had been France that had forcibly severed Alsace-Lorraine from Germany, having made the territory a bone of contention in Europe. Therefore, its destiny had to be resolved not according to the old lawlessness, but according to historical law under which the population of Alsace-Lorraine could not be subjugated to military seizure by the German army but neither to ruthless French chauvinism, and its future must be decided accordingly.
9. and 10) Regulation of the internal relations of Austria-Hungary and settlement with Italy was a matter of our faithful ally the interests of which were as close to our hearts as our own.
10. The same position applied to Romania, Serbia, and Montenegro.
11. Similarly, the same principles had to apply to Turkey as to all countries made up of diverse nations. Switzerland as the homeland of three different ethnicities offered evidence of the possibility of resolving such national issues.

12. Germany agreed with Poland's declaration of independence, but the vital interests of Allied Austria-Hungary had to be taken into account, as well as the safeguarding of the rights of ethnic and religious minorities in Poland.
13. Also, the principles of the envisaged union of nations for securing peace had to apply to all the existing enemies who, after the end of the war, plan to wage an economic war against Germany, which sought the same opportunities for commercial activity as all the enemy countries did. Otherwise, proposals to establish a similar union of nations would be a common-place phrase because in reality it would become a commercial hostile league against Germany and the war would continue by other means.[9]

Maximilian von Baden, the Chancellor of the Reich, sent President Wilson a request for peace on 3 October 1918 asking him to take over the restoration of peace and inform all the war-leading countries of the German offer. In his answer of 8 October 1918, Wilson posed Germany the following questions:
1. Whether it was willing to accept his peace programme of January 1918.
2. Whether it would leave all of the occupied territories.
3. Whether the Chancellor of the Reich was only acting on behalf of those who had waged the war so far.

Maximilian von Baden announced the acceptance of all the US demands on 12 October 1918. Wilson responded with a note of 14 October 1918 in which he demanded unconditional submission to his conditions, leaving from the occupied territories, making of a ceasefire, ending the submarine war, and removing the personalities who violated international treaties and started the war, especially the resignation of Emperor Wilhelm II. Otherwise, he refused to negotiate peace.[10]

Berlin accepted the US conditions on 20 October 1918 with the assurance that it was ready for fundamental changes to the German constitutional system of the time. It is only understandable that the Emperor in particular was surprised by radical US demands leading to the abolition of the monarchy; therefore German diplomacy began to squirm. Wilhelm II as monarch repeatedly promised to advocate the change of the constitution-

9 Chickering, Roger: *Imperial Germany and the Great War, 1914 – 1918.* Cambridge, Cambridge University Press, 2002, 205.

10 Křížek, Jaroslav: *První světová válka.* Prague, Naše vojsko, 1968, 258.

al system. The response, however, was Wilson's third note of 23 October 1918, in which the US President demanded the unconditional surrender of Germany, abdication of the Emperor, and abolition of the monarchy as a precondition for making the peace. Berlin accepted these demands on 27 October 1918, but relied on the British and the French in particular to respect Wilson's original programme when negotiating peace.[11]

The peace made on 11 November 1918 was preceded by a series of uprisings in the German Army. Dissatisfaction of the German public and radicalisation of the country's political life compelled the resignation of the Emperor just two days before making the peace in Compiégne. Power in the country was taken over by the Council of People's Deputies headed by Friedrich Ebert, Germany's future first President. The conditions imposed on defeated Germany on 11 November 1918 were devastating. These may be summarised in several groups:

1. Conditions on the Western Front: Cessation of military operations within six hours of the signing of the armistice; immediate evacuation of troops from the occupied territories of Belgium, France, and Alsace-Lorraine; releasing the prisoners of war; surrendering a specified number of heavy military equipment; evacuating the German Army from the left bank of the Rhine which would be occupied by the troops of the Treaty, while the cost of their stay was to be borne by Germany.
2. Conditions on the Eastern Front: All of the German troops were to leave the territory of Russia, Romania, and Turkey and withdraw beyond the borders of Germany of 1 August 1914; the German Government was expected to annul the Peace Treaty of Bucharest and the Peace Treaty of Brest-Litovsk; allied troops would be given free passage through Germany east to Gdansk and the Vistula.
3. Conditions in Africa: Evacuation of German troops from East Africa within one month at the latest.
4. Conditions at sea: Immediate cessation of hostilities at sea and notification of the exact whereabouts of German warships; all the German submarines were considered to be captured vessels and were required to dock of the nearest port belonging to the Treaty within 14 days; Germany was obliged to hand over naval ships to the Allies and was obliged to destroy 50 new vessels; Germany was obliged to return the captured merchant ships to the Allies.

11 von Baden, Max: *Erinnerungen und Dokumente.* Stuttgart, Ernst Klett, 1968, 602.

5. Conditions in the air: all of the German military aircraft was to withdraw to German airports and remain on the ground.
6. Other conditions: The Allies would maintain the existing blockade of Germany; German merchant ships would be confiscated; the Allies would supply Germany with necessities to the extent necessary; Germany undertook to pay war compensation to the Allies and neutral states.

The conditions set in this way had a very grave impact on Germany's internal life and its international standing.[12]

In order to achieve the best possible position for Germany at the Paris Peace Conference, the Minister of Foreign Affairs was removed from his office in Germany. On 18 December 1918, Ulrich von Brockdorff-Rantzau, a career diplomat who was more acceptable to the Allies, was appointed to the office. The new German head of diplomacy emphasised that the German Government accepted the US President Wilson's programme, but the territorial demands of the enemy (especially those of Poland) were not fair and were in direct conflict with Wilson's programme. Therefore, they rejected these demands as they were potentially leading to another war in Europe. The foreign policy programme of the new German Minister of Foreign Affairs was also taken over by the new social democratic government of the Weimar Republic.[13]

At the Peace Conference, disputes were meanwhile taking place among moderate Americans, pragmatic British, 'revanchist' French and ambitious Italians over the conditions of a peace treaty with Germany. At one point, it seemed that the whole Conference would end in failure (what they had hoped for in Germany). German diplomats relied on the unity of the victorious countries falling apart, that the Americans and the British would oppose the exaggerated claims of the French. Germany would join the 'Anglo-Saxons' in such a situation and, together with them, strike back France's claims. The British Prime Minister David Lloyd George therefore submitted to the other members of the Council of Four on 24 March 1919 a funda-

12 Prokš, Petr: *První světová válka a velmocenské plány císařského Německa (1914- 1918).* In: Hájek, Jan – Kocian, Jiří – Zítko, Milan (eds.).: Fragmenty dějin. Sborník prací k šedesátinám Jana Gebharta. Prague, Institute of History of the AS CR, 2006, 425.

13 Schwabe, Klaus: *Deutsche Revolution und Wilson-Frieden. Die amerikanische und deutsche Friedensstrategie zwischen Ideologie und Machenpolitik 1918/1919.* Düsselforf, Droste Verlag, 1971, 92.

mental Memorandum on the need for a sensible approach in creating the conditions of a peace treaty to ensure long-term peace. In his opinion, colonies could be taken away from Germany or its army could be reduced – this was irrelevant. If Berlin got the impression that it was treated unfairly during the peace negotiations, it would find a way to avenge its enemies.[14] Twenty years later, it became clear that the British Prime Minister was an excellent prophet.

The British Prime Minister's Memorandum further emphasised that the Peace Conference must not leave behind a "pernicious legacy" by placing millions of Germans, Hungarians and other minorities under foreign rule. It must not incite revolutionary forces to ignite whole Europe. And above all – the Conference must not put Germany's back to the wall, because a threat would arise that it will unite with the Bolsheviks and provide its intellectual and organisational skills to revolutionary fanatics whose dream is to conquer the world for Bolshevism by armed forces. The Four Great Powers must therefore also put limits on building the warships and the expansion of armies only accepting Germany into the League of Nations when it is sufficiently stable. The League of Nations will protect international law and freedom throughout the world. In return for their moderation, London expected a high-levelled accommodating approach from Berlin. However, the Germans did not manifest this for a very long time. It was realistically possible to expect the occupation of the whole of Germany as requested by the French in particular.[15]

At the request of the Allies, the official German delegation headed by the German Minister of Foreign Affairs arrived in Paris on 17 April 1919 to whom the Allies officially presented the conditions of the Peace Treaty on 7 May 1919. Brockdorf-Rantzau communicated the views of the German delegation to the Allies as soon as two days later. After a preliminary review of the draft treaty, the German delegation came to the conclusion that the decisive points of the peace conditions were contrary to the principles of the rule of law, therefore the German nation would not accede to them. In the opinion of the German delegation, the draft Peace Treaty contained requirements that were unacceptable to any nation, and many of them were unattainable in the opinion of German experts. The German delegation

14 Graebner, Norman–Bennett, Edward (eds.).: *The Versailles Treaty and Its Legacy: The Failure of Wilsonian Vision.* New York, Cambridge University Press, 2011, 76.

15 Schelle, Karel: *Paris Peace Conference (1919–1920) and its influence.* Brno, NOVPRESS, 24.

therefore decided to draw up and submit to the Allies their own comments on the draft Peace Treaty. This happened on 29 May 1919.

In terms of its own counter-proposal, Germany was aware that it had to make sacrifices in order to gain peace. On the other hand, there were certain limits that it could not cross. Therefore, Germany submitted the following proposals:

1. Proposal for its own disarmament with a reduction in the number of its army to 100,000 soldiers. Germany was also willing to give up those battleships that its enemies had left to it. However, it expected admission to the League of Nations as an equal member in return.
2. On territorial issues, Germany accepted the US President Wilson's programme.
3. Germany was willing to pay war compensations up to the amount of 100 billion gold marks.
4. Germany was ready to provide its own economic power to rebuild the devastated areas of Belgium and northern France.
5. Germany was to provide the tonnage of its merchant navy to the enemy as part of war compensations.
6. Germany offered its own river vessels as a replacement for the destroyed river vessels of Belgium and France.
7. According to Germany, fulfilment of its compensation obligations would be accelerated if it granted creditors shares in its own industry, in particular in coal mines.
8. Germany would apply social welfare policy and provide social security to its workers.
9. Germany demanded a neutral assessment of guilt for the outbreak of the war and for the war damage caused.[16]

These German 9 points were followed by a relatively large-scale counter-proposal by the German Government to the conditions of peace, the first part of which contained general conditions. These can be summarised in three areas:

1. Legal grounds for peace negotiations: The German Government considered President Wilson's well-known 14 Points of January 1918 as the ground for negotiations. The Armistice Treaty of 11 November 1918 in

16 Cohrs, Patrick: *The Unfinished Peace after World War I. America, Britain and the Stabilisation of Europe, 1919-1932.* Cambridge, Cambridge University Press, 2008, 52.

effect guaranteed Germany that President Wilson's 14 Points would exclusively serve as the basis for concluding the peace treaty and no other conditions of allied governments would be supported by the US President. Germany signed ceasefire only on the basis of this guarantee. The Allies also adopted President Wilson's 14 Points as the ground for the subsequent peace. Both parties solemnly committed to that. It follows that Germany was entitled to these conditions of peace. If the Allies had violated them, it would have been a violation of international law.

2. The conflict between the draft Peace Treaty and the agreed legal grounds and previous guarantees of the statesmen of the enemy: The statesmen of the enemy repeatedly stated during the war that they were not waging war against the German nation. They rejected violence against it and guaranteed it a fair peace. Membership in the emerging League of Nations was promised by the representatives of the Treaty to all, both winners and losers. They repeatedly claimed that even Germany was entitled to that membership, which therefore had the same rights as the victorious Allies. However, on the other hand, the enemies tried to destroy Germany's national existence in violation of international law. The principle of self-determination of nations declared by the Allies had to apply also to Germans and the rights and freedoms of Germany had to be guaranteed.
3. Conclusion: The draft Peace Treaty submitted to the German Government was in sharp conflict with the already agreed principles of establishing a lasting and legal peace. It threatened the territorial integrity of Germany, meant oppression of German ethnicity and complete destruction of the economic life in Germany in the future.

The German proposal itself was the second part of the proposal. It can be divided into the following points:

1. League of Nations. Only the establishment of the League of Nations on the basis of equality of both large and small states could guarantee lasting world peace and a general reduction in armaments. Therefore, Germany also had to become its equal member.
2. The range of territorial issues in the counter-proposal was relatively extensive, in accordance with the following points:
   The right of the nations to self-determination. No territory was to be torn away from Germany without the consent of its inhabitants. Germany

was to agree to safeguard all the rights of national minorities within the League of Nations. It was unacceptable that the self-determination of nations should be to the detriment of Germany's needs, in particular the desire of the German population to join the territory of the German Reich.
Belgium. The draft Peace Treaty required Germany to recognise the neutrality of Belgium. However, Germany was to refuse to cede the areas of Moresnet, Eupen, and Malmünd to Belgium which had never belonged to Belgium and were home to the "Prussian Walloons". Their rights also had to be guaranteed.
Luxembourg. Economically and politically, it should continue to be part of the customs union with Germany.
Saarland. Germany considered the secession of the Saar to France's economic interests to be an illegal solution and an infringement of the rights of its German-speaking population.
Alsace-Lorraine. It was largely an age-old part of the old German Reich. Its future was to be decided by the local population. There were three possible options – to join France; annexation to the German Reich in the form of a free state; complete independence, in particular the possibility of making an economic association with neighbours.
German Austria. Its population had been closely associated with the German "tribal country" through its history and culture for almost a thousand years. Therefore, Germany could not commit itself to the obligation to oppose the desire of its German brothers in Austria to reunite with Germany in accordance with the right of nations to self-determination.
Eastern issue:
Upper Silesia. It was a constitutional, territorial and economic part of the German Reich, which could not exist without it. Poland, on the other hand, did not need it.
Poznan. A large German population lived here. Therefore, any solution, regardless of national conditions, was unacceptable, only in terms of strategic preparations for a possible future attack on the German territory, especially when future relations between Germany and Poland would be regulated within the League of Nations.
West Prussia. This was an old German territory to which the Order of the Teutonic Knights had already granted its German character. Therefore, it could not be torn away from Germany.

Gdansk. As a free city, it had to continue to be economically and by transport connected to the German Reich.
East Prussia. One and a half million Germans lived here, so Germany could never agree to its territorial and economic secession to Poland.
Memel. From historical, linguistic, national, and religious points of view, the German Government rejected the secession of this area as the border of East Prussia from Germany.
Schleswig. Its future was to be determined by a linguistic point of view and the right of nations to self-determination, especially in the southern regions.
Helgoland. It had to stay fortified in the interests of the island's population, free navigation at sea, fishing, and coastal protection to fishing ports.
Colonies. Germany would continue to use its colonies as markets for its own industry and source of raw materials, as well as settlement areas for its population surpluses. Germany intended to resolve the colonial issue in the spirit of President Wilson's points by agreement with the local population.
Jiao Zhou. Germany was ready to relinquish all of its rights and privileges to the territory of Jiao Zhou and the Shantung Peninsula in China.
Russia and Russian states. Germany would not claim any territory that belonged to the Russian Empire on 1 August 1914. It considered the issue of constitutional order and independence of former Russian territories to be their internal affair. Germany renounced the Peace Treaty of Brest-Litovsk when the armistice was made on 11 November 1918. However, no one could expect Germany to restore and rectify Russia's previous rights. Germany could not recognise any allied treaties with the territories of the former Tsarist Empire in the interests of friendly relations with Russia or individual parts of the former Tsarist Empire. Germany wanted to live in peace and friendship with all its eastern neighbours.[17]

3. German rights and interests outside Germany, foreign trade and maritime navigation. Germany needed maritime transport for foreign trade, import of food and raw materials, export of goods and improvement of its balance of payments. To do so, it needed its own naval fleet and free

17 *Akten zur deutschen Auswärtigen Politik 1918-1945.* Serie A: 1918-1925. Band II. 7. Mai bis 31. Dezember 1919. Göttingen, Vandenhoeck & Ruprecht, 1984, 104.

access to seaports in Europe and other parts of the world. Therefore, it could not waive its original rights, privileges, and concessions in international trade.

4. Compensations.
   Legal grounds of German obligations of compensation. Germany had already evacuated its troops from the occupied territories of neutral and hostile states – Belgium, France, Italy, Montenegro, Serbia, and Romania. In addition, it had to compensate for damage caused to civilians, military personnel, and hostile states during the war. However, the German Government considered that their claims should be significantly reduced.
   Financial payments. First, it was necessary to accurately calculate the true value of the damage caused. At the time, Germany had an amount of 20 billion gold marks ready for this purpose, but the total amount could in no case exceed 100 billion gold marks.
   Economic supplies.
   Ships. Germany needed to have its own naval fleet to be able to meet the supplies of important necessities. It therefore called for a significant reduction in compensation in the form of the transfer of merchant ships to the Allies.
   Machines and more. In order to preserve the economic sovereignty of the German nation, it was essential to maintain its own industry. It would be significantly damaged by compensation in the form of supplies of machinery, most of which were also privately owned.
   Coal. The required compensation amounting to hundreds of millions of tonnes of coal was impossible for Germany to meet, as they did not correspond to German coal reserves or the production of German mines. At the same time, they would have required disproportionately high transport costs. In addition, Germany had to have enough coal for its own use.
   Chemical industry. Germany did not consider it compatible with the principles of justice or decency to allow any control of its chemical industry.
   Cables. This issue was not related to compensation and could be resolved in a different way.[18]
5. Economic and political conditions. No secret international treaties were to be made. Full freedom of navigation on all seas except for coastal waters would be allowed. All of the economic constraints would be

18 Ibid., 110.

removed and a level playing field would be created for all the nations. All the economic issues would be resolved on the basis of the freedom and equality of all nations, not on the basis of the material interests or advantages of some to the detriment of other nations. No special interests of certain nations or groups of nations would be allowed to serve as the basis of any peace treaty. No associations or unions or special treaties and agreements were to be permitted in the common family of the League of Nations. Likewise, no special selfish economic combination or any form of economic boycott or discrimination would be allowed in the League of Nations, unless the League of Nations itself used economic sanctions as a tool to enforce discipline and control. Economic rivalry and hostility were a major cause of intolerance and a source of war in the modern world. It was therefore essential to ensure that any oppression that could result from an unjust peace was ruled out.

6. Inland shipping transport. Germany rejected international control of shipping on its rivers and waterways, as well as control of its river ports. Germany saw it as a violation of its own sovereignty.
7. Treaties among states. Germany had to conclude a 'collective agreement with the Allied and Associated Powers' to cover all the matters of mutual relations. However, Germany preferred specific and supplementary treaties with individual states on specific issues of mutual relations.
8. Prisoners of war and cemeteries. Germany called for an immediate release of prisoners of war and interned civilians, as well as the conclusion of a treaty on military cemeteries.
9. Sanction conditions. Germany considered the sanction conditions in the draft Peace Treaty to be unlawful persecution. It therefore called for the blame for starting the war and violating the rules of war to be assessed by an international court of justice the members of which would be representatives of all the Parties to the Treaty; Germany would have the same participation in the composition of this Court as the Allied and Associated Powers; the jurisdiction of the International Court of Justice would be limited to ruling on matters of international law and the serving of sentences would be left to the national courts.
10. Labour market regulation. If Germany had not become a member of the League of Nations and its labour force and labour protection organisations, it would not have felt bound by its responsibilities and would have dealt with these matters through German labour organisations.

11. Liabilities. The fulfilment of all the conditions of the Peace Treaty was to be related to the long-term occupation of the German territory. Germany considered this a violation of the principle of non-violence in international relations and interference in its internal affairs.[19]

Tasker Bliss, the US military representative to the Allied Supreme Military Council and the chief military expert of the US delegation, presented an analysis of the German counter-proposals on 6 June 1919 in which he emphasised that Germany should be admitted to the League of Nations as an equal member since this was the only way to keep its military potential under control and to avoid the country becoming the focus of potential future military conflicts.

Nevertheless, Georges Clemenceau, the French Prime Minister and the Chairman of the Peace Conference, replied to the Head of the German Delegation, Minister of Foreign Affairs, on behalf of the Allied and Associated Powers on 16 June 1919 as follows:

1. Germany with its Prussian tradition was responsible for starting a war. Its aim was to control and tyrannise the whole of Europe and to suppress the freedom of nations. Germany started the war by invading neutral Belgium and terrorised civilians in the occupied territories. Subsequently, it unleashed an unrestricted submarine war with defenceless civilians, especially women and children, as its victims. The war deprived millions of people of their lives. The Allied and Associated Powers therefore insisted on the conditions of the Peace Treaty that had been presented so that Europe could be freed from Prussian despotism.
2. The Allied and Associated Powers sought to establish a new order based on the liberation of oppressed peoples and the demarcation of national frontiers in order to ensure lasting peace in Europe.
3. Resolution of territorial issues was linked to international control of inland navigation and the access of landlocked countries to the sea, which would have excluded the domination of any state over its neighbours and allowed for free trade.
4. The German delegation misunderstood the conditions of peace which were not intended to destroy Germany that was entitled to an adequate place in world trade. However, Germany had to settle all the claims for the damage caused.

19 Ibid., 111–115.

5. The amount of compensation was not to be determined by Germany itself but by the 'Reparations Commission' to be appointed by the Peace Conference.
6. The Allied and Associated Powers were to admit Germany to the League of Nations immediately upon fulfilment of the conditions of the Peace Treaty and renunciation of the aggressive policy that gave rise to the war. Admission to the League of Nations therefore depended on Germany itself and on the German nation.
7. The Allied and Associated Powers intended to use any eventual economic blockades solely as a legal means in the spirit of international law in order to put pressure on Germany to satisfy the conditions of the Peace Treaty.
8. The conditions of peace were not intended to legally settle the previous war; they were primarily intended to ensure peace, friendship, and equality among the peoples of Europe.[20]

The German delegation left Paris in protest immediately after receiving Clemenceau's response. The Memorandum of the German Minister for Foreign Affairs, drawn up after the delegation returned to Berlin on 17 June 1919, contained the following points:

1. *The League of Nations*. According to the Allied and Associated Powers, Germany would be admitted to the League of Nations immediately after demonstrating goodwill by fulfilling the conditions of the Peace Treaty. However, the Treaty was technically unenforceable, so the Allied and Associated Powers did not envisage the accession of Germany to the League of Nations in the view of the German delegation.
2. *Territorial issues*. The principles of the Peace Treaty were not changed. They remained identical for Belgium, Luxembourg, Saarland, Alsace-Lorraine, and German Austria, as well as for West Prussia, Gdansk, East Prussia, Memel, Pomerania, and Silesia. Poland was to annex German territories, with just promises to provide a rail link with East Prussia. Denmark was also to exclusively receive German territory in Schleswig. The colonies were taken away from Germany without any compensation and settlement of pre-war debts and without ensuring the security of the Germans inhabiting some German overseas territories. The con-

20 Schelle, Karel: *Erster Weltkrieg und die Pariser Friedenskonferenz.* München, GRIN, 2009, 100; Prokš (2016) op. cit. 194.

ditions for Germany's relations with Russia and with the newly created states in the territory of the former Tsarist Empire were not changed.

3. *German rights and interests outside Germany*. At the time, Germany had no licences at all for foreign trade and shipping. Also, nothing had changed regarding its bills of exchange (receivables) and foreign investment. Germany's foreign assets were practically confiscated, especially in the German colonies and in the territories belonging to Belgium and France. Mitigation applied only to areas in the newly created countries in the east – in Poland, Czechoslovakia, and also in Denmark.
4. *Compensations*. Article on Reparations No. 231 had been maintained despite Germany's inability to pay the amount requested. At the same time, reduction of this amount by the value of the previously confiscated ships and cargo had been refused.
5. *Trade and political conditions*. The possibility of Germany's reintegration into world transport was ruled out. It was clearly an attempt by the enemy to catch up with Germany's economic lead from pre-war times. Rejecting the promise of equal participation of Germany in the League of Nations and its trade and transport organisations also served this purpose. German industrial and trade recovery was thus built on uncertain foundations for an indefinite time period.
6. *Occupied territories*. All the natural economic and transport relations with the occupied areas of Germany had been severed. The enemies had introduced a special customs regime there which was intended to serve the permanent political secession of the Rhineland.
7. *Legal issues*. German private property, which the enemies even intended to use to cover war compensations, was not observed in those occupied territories.
8. *Transport issues*. Germany was still unable to manage its inland waterway transport. Enemy interventions against German rail transport tariffs still continued. In order to access the occupied territories and East Prussia, Germany requested: appointing its own representative on the River Oder (Odra) Transport Commission; the same in the Danube Transport Commission; it was necessary to ensure that the enemies could not unilaterally order the construction of the Rhine-Danube waterway.
9. *Treaties among states*. Germany already cancelled all the treaties it had made with Russia, Romania, and with its allies during the war. All the rights granted by Germany to hostile, allied, and neutral states before the war was to remain without reciprocity.

10. *Prisoners of war*. Germany released all the prisoners of war, expecting the same approach from the enemy.
11. *Military issues*. Germany was willing to limit its own military force in the spirit of general disarmament, but solely on the basis of equality.
12. *Sanctions*. Germany demanded from the enemies a definitive list of persons, political and military representatives to be handed over for punishment. Germany would not be willing to extradite any more people.
13. *Labour law*. Germany repeatedly stated that it was ready to make international commitments on labour law, if it became a member of the relevant international organisations. Otherwise, Germany would ensure the resolution of these issues itself, according to its own laws.

Conclusion: The German Government was willing to accept a fair peace according to President Wilson's Fourteen Points but considered the presented conditions of peace to be too harsh.[21]

Meanwhile, the Allies agreed to occupy all of Germany, if it did not accept the conditions of peace. Germany's political and military leaders ultimately agreed that a catastrophe threatened in rejecting the Peace Treaty, i.e. occupation and explosion of revolution. They decided to accept the conditions of peace in order to gain time and the possibility of political change in the joint reconstruction of Europe. To this end, the Incumbent German Government resigned and a new one was appointed, headed by Gustav Bauer. Hermann Müller became the Minister of Foreign Affairs on the day of the appointment of the new Government on 20 June 1919. In diplomatic language, this meant opposition to the Peace Treaty to be signed by the German Government that comprised less important figures than the previous one. From the German side, this was meant to reduce the importance of the Peace Treaty as much as possible.

The new Prime Minister informed Paris on 21 June 1919 that Germany was willing to sign the Peace Treaty, but did not acknowledge any guilt by the German nation for starting the war and did not comment on Article 277 (Accusation of Emperor Wilhelm II) for violation of international law and his being brought before an international court) and Article 230 of the Peace

21 *Akten zur deutschen Auswärtigen Politik 1918-1945.* Serie A: 1918-1925. Band II. 7. Mai bis 31. Dezember 1919. Göttingen: Vandenhoeck & Ruprecht 1984, 120-122. Prokš, Petr.: *Diplomacie a „Velká válka" 1914–1918/1919. Kapitoly o dějinách diplomacie za první světové války a na mírové konferenci v Paříži.* Prague, Institute of History of the AS CR, 2014, 300.

Treaty (German Government's obligation to provide all the documents and data in the prosecution of perpetrators for war crimes). The next day, the Allies accepted the German proposal and invited the representatives of Germany to sign the Peace Treaty in Paris. The head of the German delegation immediately objected that Germany was to accept and sign an unfair peace treaty that affected the honour of the German nation and Germany was forced to sign such treaty by the threat of a forcible attack on the German nation.

Representatives of the Allies and Associated Powers (including Czechoslovakia) and representatives of Germany (Minister of Foreign Affairs and Minister of Transport) signed the Treaty of Versailles on 28 June 1919. Accordingly, Germany was obliged to cede Alsace-Lorraine to France; Eupen-Malmünd district to Belgium; the region of Hlučínsko (Hultschiner Ländchen) to Czechoslovakia; Pomerania, West Prussia and Greater Poland; the plebiscite was to decide on the affiliation of Upper Silesia and selected areas of East Prussia, as well as the destiny of Schleswig. Gdansk became a free city under the patronage of the League of Nations. The latter was also to administer Saarland incorporated during that time into a monetary union with France for 5 years. The left bank of the Rhine was to be occupied by the Treaty Powers' troops for 5 years. The Treaty created a demilitarised zone on the right bank of the Rhine to a distance of 50 km. All the fortifications were destroyed in it and German troops were forbidden to enter. The German colonies were taken over by the League of Nations which assigned them as mandated territories to France, Great Britain, its dominions, and Japan. Germany had to confirm the abolition of the Peace Treaty of Brest-Litovsk and the Peace Treaty of Bucharest. The German Army was reduced to 100,000 men of mercenary troops with a ban on general military service, its own Navy and submarines. The country's Navy was severely reduced. Germany was obliged to surrender a large part of its merchant navy as compensation for the unlimited submarine warfare and its consequences. Germany was obliged to supply a specified amount of coal to France and Belgium as compensation for war damage and pay the first instalment of war compensations in the amount of 20 billion gold marks for the years 1919–1921. The overall reparations were subsequently to be decided by a special commission. Germany committed itself to recognising peace treaties with its former allies, Austria, Hungary, Bulgaria, and Turkey.[22]

22 *Mírová smlouva mezi mocnostni spojenými a přidruženými a Německem a Protokol*

The German delegation lodged legal reservations against the Treaty of Versailles on 28 June 1919, the essence of which was that the Treaty thus adopted was not a means of establishing a lasting peace, but was to give rise to other possible conflicts. The Peace of Versailles was considered a 'harsh peace' by Germany. Despite the harsh conditions, the signing of the Treaty of Versailles clarified the international legal position of interwar Germany, allowing it to focus on post-war reconstruction. The situation that arose in Europe in the 1920s and 1930s (the economic crisis, social divisions, and associated moods in society) resulted in Berlin's policy based on the restoration of Germany's previous position of power. Related to this, there was an effort to revise some articles of the Peace Treaty of Versailles and its gradual repeal. Today we know what no one had known at that time, namely that this would happen as early as 20 years after signing the Peace Treaty.

podepsané ve Versailles dne 28. června 1919 – published in the Collection of Laws and Regulations of the Czechoslovak Republic under number 217/1921 Sb. z. a n.

Recovery of a Debtor In Financial Difficulties at the Pre-Insolvency Stage[1]

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Abstract

The paper entitled "Recovery of a Debtor in Financial Difficulties at the Pre-insolvency Stage" analyses the issue of pre-insolvency and hybrid proceedings, which, unlike Council Regulation (EC) No 1346/2000 of 29 April 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p. 1), fall within the material scope of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (OJ L 141, 5.6.2015, p. 19). These are proceedings which, under the law of some Member States of the European Union, may be opened and conducted for a certain period of time on an interim or provisional basis before a court issues an order to open insolvency proceedings. These proceedings are an alternative to formal insolvency proceedings. Their aim is to recover the financial situation of a debtor facing bankruptcy.

Key words

insolvency, bankruptcy, pre-insolvency proceedings, hybrid proceedings, insolvency proceedings

1. Introduction

Since 2005, in line with the renewal of the Lisbon Strategy, the European Union (the "EU" or the "Union") authorities have been focusing their efforts on ensuring sustainable growth by creating an environment in which businesses are encouraged to create more jobs. Every business activity involves a certain degree of risk. Success and failure in business are intrinsically linked to each market economy.[2] Creating a more favourable environment

1 This work was supported by the Slovak Research and Development Agency under the Contract no. APVV-19-0419.

2 Communication from the Commission to the Council, the European Parliament, the

for financially vulnerable businesses may be one of the prerequisites for reducing business failure. Taking into account the objectives of the Lisbon Strategy, EU Member States should seek to ensure that entrepreneurs who are facing bankruptcy or became bankrupt are given a second chance, as not every bankruptcy is caused by fraud or personal inability of the debtor.[3]

The activities of businesses cross the borders of the Member States of the Union. According to statistics, about one-quarter of insolvency proceedings have a cross-border element.[4] Creating a more favourable environment for vulnerable businesses is also linked to the need to improve the legal framework for cross-border insolvency proceedings by streamlining, simplifying, and speeding up these proceedings. One of the key measures to improve the functioning of the internal market is the modernisation of the rules on cross-border insolvency proceedings in the European area, aimed at facilitating the survival of businesses in financial difficulties and giving them a second chance.

In order to promote the rescue of economically viable businesses and to give a second chance to businesses in financial difficulties, Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (OJ L 141, 5.6.2015, 19) (the "Insolvency Regulation" or the "Regulation") was adopted, which provides a legal framework for the conduct of cross-border insolvency proceedings in the European Union and provides for the coordination of multiple proceedings with a foreign element concerning the same debtor.

2. Material scope of the Insolvency Regulation

The material scope of the Regulation is defined in a general way to cover not only Member States' insolvency proceedings which are winding-up in nature and the purpose of which is to realise the debtor's assets and to end the debtor's business activities, but also proceedings the purpose of which

European Economic and Social Committee and the Committee of the Regions. Overcoming the stigma of business failure – for a second chance policy. Implementing the Lisbon Partnership for Growth and Jobs. COM(2007) 584 final. Brussels, 5.10.2007.

3 Modern SME policy for growth and employment, Commission of the European Communities, COM(2005) 551 final, 10.11.2005.

4 Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee. A new European approach to business failure and insolvency. Brussels, 12.12.2012, COM(2012) 742 final.

is to reorganise, recover and give the debtor a second chance.[5] The Regulation applies not only to bankruptcy proceedings, restructuring proceedings and proceedings concerning discharge of debt, but also to pre-insolvency and hybrid proceedings.[6] Therefore, when interpreting the Insolvency Regulation, it is more correct to use the broader term "insolvency proceedings" instead of "bankruptcy proceedings".

Unlike the previous legislation, which was Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, 1) ("Regulation No 1346/2000"), the Insolvency Regulation does not require in every case that a debtor be divested of its assets and that an insolvency practitioner be appointed in the proceedings. The Insolvency Regulation also applies to proceedings in which a debtor remains in possession of its assets and no insolvency practitioner is appointed. It follows that the Regulation applies to proceedings in which the debtor's assets and affairs are only subject to control or supervision by a court.[7] The Insolvency Regulation defines who is considered a debtor in possession. A debtor in possession is a debtor in respect of which insolvency proceedings have been opened which do not necessarily involve the appointment of an insolvency practitioner or the complete transfer of the rights and duties to administer the debtor's assets to an insolvency practitioner and where, therefore, the debtor remains totally or at least partially in control of its assets and affairs.

In some EU Member States, certain insolvency proceedings may be characterised as proceedings in which a debtor is in possession of its assets. The divestment of the debtor's assets is optional in some States (e.g. Austria), and in some States a partial divestment of the debtor's assets is applied (e.g. Finland, Belgium, the Netherlands, Slovenia), where certain disposals of assets have to be approved by an insolvency practitioner. The reason for introducing proceedings in which a debtor is in possession of its assets is to reduce the costs of insolvency proceedings (if no insolvency practitioner

5 Ďurica, Milan: *Konkurzné právo na Slovensku a v Európskej únii (Issue 3.).* Bratislava, Eurokódex, 2012, 702.

6 Mucciarelli, Federico: A New Insolvency Regulation at Last. *European Company Law*, 2016, 13(2), 44-45; Preliminary opinion of the Ministry of Justice of the Slovak Republic on the Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1346/2000 on insolvency proceedings; COM(2012) 744 final – 2012/0360 (COD) of 21 January 2013.

7 Piekenbrock, Andreas: The future scope of the European Insolvency Regulation. *International Insolvency Law Review*, 2014, 5(4), 424.

is appointed, there is no need to pay the insolvency practitioner's fees and expenses). Another reason is the fact that the debtor knows its business activity best and can propose measures that could lead to its recovery. According to the Heidelberg-Luxembourg-Vienna Report, proceedings in which a debtor is in possession of its assets were introduced in Germany in 1999 but are less used in practice (about 1% of all cases). An application for debtor-in-possession proceedings can only be rejected by the court if there are known specific circumstances that might lead to the proceedings being disadvantageous to creditors (e.g. it can be proven that the debtor has been disposing of its assets prior to the filing of the application).[8] Unlike Regulation No 1346/2000, the Insolvency Regulation also applies to pre-insolvency and hybrid proceedings. Compared to the previous legislation, the material scope of the Insolvency Regulation has been extended.

As regards the opening of proceedings, the insolvency laws of the different Member States differ on the question of jurisdiction to open insolvency proceedings.[9] As a general rule, a court is the authority having jurisdiction for opening insolvency proceedings. An exception to this rule is that, under some national laws, jurisdiction for insolvency matters may be conferred on national authorities other than courts. The Insolvency Regulation responds to this situation by providing for the jurisdiction not only of the courts but also of other bodies which, under the national law of EU Member States, are empowered to act in insolvency matters. For the purposes of the Insolvency Regulation, the term "court" means not only a judicial body of a Member State but also any other competent body of a Member State empowered by national law of that State to open insolvency proceedings, to confirm such opening or to take decisions in the course of insolvency proceedings.[10] It follows that the term "court" is understood more broadly in European insolvency law. The Insolvency Regulation explicitly sets out the matters in which a court, and not another body of a Member State, is given exclusive jurisdiction. In this context, the Regulation provides for the

8 Hess, Burkhard–Oberhammer, Paul–Pfeiffer, Thomas: *European Insolvency Law: The Heidelberg-Luxembourg-Vienna Report: on the Application of Regulation No 1346/2000/ EC on Insolvency Proceedings (External Evaluation JUST/2011/JCIV/ PR/0049/A4).* München, C. H. Beck, 2014, 52.

9 Göpfert, Burkhard: *International Jurisdiction in European Insolvencies,* 2004. [cit. 2017-04-15]. Available on the internet: https://www.iiiglobal.org/sites/default/files/11-_International_Jurisdiction_0.pdf (15. 08. 2021.)

10 Hess–Oberhammer–Pfeiffer op. cit. 43.

exclusive jurisdiction of a court in pre-insolvency and hybrid proceedings. The exclusive jurisdiction of a court (and not of another body) is established in proceedings under Article 1(1)(c) of the Regulation in which a temporary stay of individual enforcement proceedings is granted by a court or by operation of law, in order to allow for negotiations between the debtor and its creditors, provided that the proceedings in which the stay is granted provide for suitable measures to protect the general body of creditors where no agreement is reached.[11]

3. Pre-insolvency and hybrid proceedings

The Insolvency Regulation also applies to proceedings that, under the law of some Member States, are opened and conducted for a certain period of time on an interim or provisional basis before the court issues an order to open insolvency proceedings. These pre-insolvency and hybrid proceedings were not covered by the previous Regulation No 1346/2000. Pre-insolvency and hybrid proceedings are governed by the law of the EU Member State within the territory of which insolvency proceedings have been opened (insolvency statute). From a temporal point of view, the basis for determining the insolvency statute is the moment when the proceedings are opened. In particular, the insolvency statute governs the opening, conduct and closure of insolvency proceedings. The insolvency statute is a set of legal rules governing the agreement between a debtor in financial difficulties and its creditors concluded in the course of pre-insolvency or hybrid proceedings. Pre-insolvency and hybrid proceedings are governed by the law of the Member State within the territory of which the proceedings have been opened (*lex fori concursus*).

The Insolvency Regulation provides *expressis verbis* that it also applies to situations where a temporary stay of individual enforcement proceedings is granted by a court or by operation of law in order to allow for negotiations between the debtor and its creditors, provided that the proceedings in which the stay is granted provide for suitable measures to protect the general body of creditors in order to ensure the greatest possible satisfaction of creditors where no agreement between the debtor and its creditors

11 Bělohlávek, Alexander: *Evropské a mezinárodní insolvenční řízení: Nařízení Evropského parlamentu a Rady (EU) č. 2015/848 o insolvenčním řízení. Komentář.* Praha, C. H. Beck, 2020, 51.

is reached. Pre-insolvency and hybrid proceedings aim to achieve a debt adjustment in relation to creditors, for example by reducing the amount to be paid by the debtor to its creditors, reducing the interest rate or extending the payment period granted to the debtor.[12] Pre-insolvency and hybrid proceedings are characterised by the fact that during the negotiation of a debtor in financial difficulties with its creditors, the debtor is protected from individual enforcement by creditors during this period, which is limited in time by law.

Pre-insolvency proceedings can be characterised as proceedings in which a debtor facing bankruptcy is given the opportunity to recover at a pre-insolvency stage, as a result of which it avoids formal insolvency proceedings.[13] Pre-insolvency proceedings are an alternative to formal insolvency proceedings. Their aim is to recover the financial situation of a debtor facing bankruptcy. Therefore, it is not a condition for the opening of such proceedings that a debtor is bankrupt. These proceedings apply to a debtor who is in financial difficulties, as a result of which it is facing bankruptcy. Some Member States (Austria, Belgium, Estonia, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Poland, Spain, Sweden, and the United Kingdom) have national legislation governing pre-insolvency proceedings. These procedures are applied before insolvency proceedings are opened, i.e. at the pre-insolvency stage. They allow for the recovery of a debtor to take place before the bankruptcy order. Pre-insolvency proceedings give a second chance to a debtor to recover its financial situation, unlike insolvency proceedings, which are winding-up in nature.[14]

Pre-insolvency proceedings come into play in the event of probable insolvency, and they are, as a rule, proceedings without an insolvency practitioner appointed. In these proceedings, a debtor remains in possession of its assets. The debtor is temporarily granted protection from creditors (a moratorium), which consists of a temporary stay of enforcement proceedings against the debtor to allow the debtor to negotiate with its creditors. During the moratorium, the debtor may not be declared bankrupt, and its restructuring may not be allowed. Two conditions must be met for the con-

12 Bewick, Samantha: The EU Insolvency Regulation. *International Insolvency Review*, 2015, 24(3), 172.

13 Brinkmann, Moritz: *European insolvency regulation. Article-by-Article Commentary.* München, Verlag C. H. Beck oHG, 2019, 28.

14 Boon, Gert Jan: Promoting Business Rescue in Europe. *International Insolvency Law Review*, 2016, 7(1), 1.

duct of pre-insolvency proceedings to take place. Firstly, suitable measures must be taken to protect the general body of creditors. These are measures to prevent the debtor's assets from being diminished in order to ensure the greatest possible satisfaction of its creditors. The second condition for the conduct of these proceedings is that they are preliminary to insolvency proceedings.[15] The moratorium period granted to a debtor is intended to serve the purpose of out-of-court and group settlement of disputes with creditors. In some Member States, the moratorium is granted by a court[16] or directly by operation of law.[17] Pre-insolvency proceedings can result in successful negotiations with creditors leading to an agreement with them. If the debtor's negotiations with its creditors during the moratorium fail (no agreement between the debtor and the creditors is reached), this will result in the opening of insolvency or restructuring proceedings, either directly by operation of law or the law provides that the debtor is obliged to file an application for the opening of such proceedings.[18]

Pre-insolvency and hybrid proceedings must be of the type listed in Annex A of the Insolvency Regulation. Pre-insolvency and hybrid proceedings are temporary. The Insolvency Regulation does not specify the length of these proceedings. Their length is governed by the law of the Member State within the territory of which such proceedings have been opened (*lex fori concursus*). In general, they last several months. Since these proceedings are applied at the pre-insolvency stage, the condition of a debtor's insolvency is not required. It is sufficient that the debtor is in financial difficulty. The term "debtor in financial difficulty" is not the same in the laws of different Member States. In general, it can be stated that it is a debtor who is not yet insolvent but is faced with the prospect of insolvency.

According to the degree of court intervention, proceedings allowing a debtor to avoid formal insolvency proceedings vary from one Member State to another. These may be proceedings in which a court has no influence on the conclusion of an out-of-court arrangement with creditors. In such proceedings, a court cannot determine the content of the arrangement between a debtor and its creditors. The creditor cannot be forced by the court to change the content of the arrangement with the debtor. These

15 Ikrényi, Ivan: *Nariadenie o insolvenčnom konaní. Komentár*. Bratislava, C. H. Beck, 2020, 61.

16 For example, Greece, Spain.

17 For example, France, Italy, Malta.

18 Bělohlávek op. cit. 11.

are voluntary negotiations between the debtor and its creditors, without the court being able to influence the content of the arrangement concluded with the debtor. The concept of out-of-court proceedings does not include court supervision. In pre-insolvency proceedings, the debtor in financial difficulties renegotiates the terms of its contracts with its creditors. The debtor negotiates more favourable terms which may result in a rescheduling of payments, a reduction of interest rates, contractual penalties, partial discharge of debt, or a new loan, this all without court supervision. In pre-insolvency proceedings, the court has no influence on the conclusion of the arrangement between the debtor and its creditors. Out-of-court proceedings represent a voluntary arrangement concluded between the debtor and its creditors without coercion, without court intervention, and without the possibility for the court to influence the content of such an arrangement.

Some Member States provide for proceedings which contain elements of an out-of-court arrangement between a debtor and its creditors in combination with some elements of formal judicial insolvency proceedings. In this case, we are talking about hybrid proceedings, which are characterised by a certain degree of intervention by an insolvency court. Hybrid proceedings include elements of contract law and some aspects of formal insolvency proceedings.[19]

In hybrid proceedings, a debtor in financial difficulties negotiates better terms of contracts concluded with creditors under the supervision of an insolvency court (e.g. extension of the maturity of claims). Hybrid proceedings contain some elements of the so-called out-of-court proceedings (insolvency proceedings without the influence of an insolvency court) and some elements of formal insolvency proceedings, which take place under the supervision of a court. The consent of each creditor is not required to reach an agreement in hybrid proceedings; the consent of the majority of creditors is sufficient. In some Member States, the agreement between a debtor and its creditors does not have a binding effect on dissenting secured creditors.[20] A common objective of hybrid proceedings is to avoid formal insolvency proceedings, which are winding-up in nature. The means of achieving this objective is an agreement between a debtor in financial difficulties and its creditors, supervised by an insolvency court, allowing for the debtor's recovery. In some hy-

19 Moravec, Tomáš–Pastorčák, Jan–Valenta, Petr: European regulation of insolvency status in the hybrid proceedings. *US–CHINA Law Review*, 2015/12, 455.

20 Hess–Oberhammer–Pfeiffer op. cit. 63.

brid proceedings, the intervention of a court only takes place at the end of the proceedings in which a debtor is to be recovered, when the court's role is to approve the agreement reached with the creditors.

In hybrid proceedings, the debtor remains in possession of its assets under the supervision of a court or an insolvency practitioner. In most States where hybrid proceedings are applied, an insolvency practitioner is appointed whose powers are limited to supervision, mediation, and consultation. As a rule, the disposal of a debtor's assets requires the approval by a court or an insolvency practitioner. Within supervision, the court examines whether the agreement of the debtor with its creditors pursues the debtor's honest intention, whether it has been reached by fraudulent conduct and whether any group of creditors has been given special advantages that would lead to discrimination against certain creditors. During these proceedings, enforcement procedures conducted against the debtor are stayed either directly by operation of law or by a court order. During the proceedings, the debtor is granted protection against enforcement proceedings. Hybrid proceedings have the advantage of being less costly than formal insolvency proceedings.

The Insolvency Regulation does not oblige individual Member States to introduce specific types of pre-insolvency and hybrid proceedings in their national laws.[21] If a Member State has introduced pre-insolvency or hybrid proceedings in its insolvency law, the Insolvency Regulation will apply to such proceedings in addition to the applicable national laws. In the context of the financial crisis and the increasing number of natural persons who became bankrupt, some Member States introduced or enlarged existing pre-insolvency proceedings for individuals.[22] Proceedings in which negotiations between a debtor and its creditors are to take place with the aim to recover the debtor and achieve greater satisfaction of the general body of its creditors take precedence over insolvency proceedings, the aim of which is the total or partial divestment of the debtor's assets and the cessation of its business activities.[23]

As regards provisional and protective measures, it generally applies that a temporary administrator and an insolvency practitioner have the active

21 Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU [COM/2016/0723 final – 2016/0359 (COD)].

22 Hess–Oberhammer–Pfeiffer op. cit. 42.

23 Recital 11 of the Insolvency Regulation.

procedural standing (*locus standi*) to apply for such a measure in insolvency proceedings. In insolvency proceedings in which the right to dispose of a debtor's assets is not transferred to an insolvency practitioner (pre-insolvency and hybrid proceedings), the active procedural standing to apply for a provisional and protective measure pertains to the debtor. In terms of the passive procedural standing, the ordering of a provisional or protective measure will be, as a rule, directed against a third party who holds the property which is subject to insolvency proceedings. In pre-insolvency and hybrid proceedings, provisional and protective measures may also be ordered against the debtor itself (passive procedural standing), because no insolvency practitioner may be appointed in these proceedings, i.e. the right to dispose of the debtor's assets may not pass to the insolvency practitioner, but the debtor remains in possession of its assets. The purpose of these provisional and protective measures is to prevent the debtor's assets from being diminished.

4. Conclusion

In our opinion, the inclusion of provisions on pre-insolvency and hybrid proceedings in the Insolvency Regulation is beneficial. If the material scope of the Insolvency Regulation did not cover pre-insolvency and hybrid proceedings, this could result in multiple pre-insolvency or hybrid proceedings being opened against the same debtor with establishments in different EU Member States, which could have unforeseeable legal consequences, as the insolvency laws of several Member States would be in competition and conflicting orders could be issued. Thanks to the inclusion of pre-insolvency and hybrid proceedings in the Insolvency Regulation, it is possible to streamline and coordinate these proceedings, which are often cross-border in nature. At the same time, the interests of foreign creditors in these proceedings can be effectively protected. Creditors will be able to defend themselves more effectively against those acts of the debtor which are detrimental to their interests.

Since pre-insolvency and hybrid proceedings have been included in the material scope of the Insolvency Regulation, the so-called *forum shopping* should be minimised in the future. In practice, it is often the case that a debtor speculatively changes its registered office to another Member State where the conditions are better for concluding an agreement with credi-

tors at the pre-insolvency stage. In these cases, conflicts of jurisdiction then arise where the bodies from more than one Member States may exercise jurisdiction to open proceedings. The provisions of the Regulation should prevent a debtor from being able to intentionally transfer its registered office from one Member State to another Member State before the opening of pre-insolvency or hybrid proceedings in order to obtain more favourable terms for concluding an agreement with its creditors. The inclusion of pre-insolvency and hybrid proceedings in the scope of the Insolvency Regulation is intended to prevent speculation by debtors which, as a result of an intentional transfer of their registered office to another State, would result in the establishment of the jurisdiction of a court of another Member State to open pre-insolvency or hybrid proceedings. As a consequence, conflicts of jurisdiction in pre-insolvency and hybrid proceedings will be effectively avoided so that jurisdiction to open pre-insolvency or hybrid proceedings concerning the same debtor can no longer be exercised by the bodies of more than one Member State.

The Insolvency Regulation is based on the principle of giving priority to pre-insolvency and hybrid proceedings over formal insolvency proceedings. Where there is a likelihood of insolvency of a debtor (e.g. imminent insolvency caused by the loss of a contract which is crucial for the debtor's continued business activity), priority should be given to the opening of proceedings the purpose of which is to avoid the debtor's insolvency or the cessation of debtor's business activities. Accordingly, the aim of pre-insolvency and hybrid proceedings is to achieve the debtor's recovery and give it a second chance.

The previous Regulation No 1346/2000 focused more on the debtor's winding-up than recovery, causing the total value of the debtor's assets to diminish, its creditors to be less satisfied and jobs to be cut. In contrast to the previous Regulation No 1346/2000, the Insolvency Regulation has modified the basic rules for the conduct of cross-border insolvency proceedings to be more geared towards promoting the rescue of debtors in financial difficulties. The Regulation gives priority to giving debtors a second chance instead of insolvency proceedings, which are winding-up in nature. The scope of Regulation No 1346/2000 did not extend to pre-insolvency and hybrid proceedings aimed at the recovery of debtors and the restoration of their economic activity. In some Member States, the sharp increase in the indebtedness of natural persons in recent years has prompted the introduc-

tion of pre-insolvency and hybrid proceedings not only for legal persons but also for insolvent natural persons, in order to give them a second chance.

Legislation governing pre-insolvency and hybrid proceedings is found in the laws of some Member States. This legislation differs significantly from one Member State to another, which may cause legal uncertainty, in particular from the perspective of foreign creditors. Therefore, the inclusion of pre-insolvency and hybrid proceedings in the material scope of the Insolvency Regulation can be viewed as beneficial.

Hungary in the Views of Polish Conservatives in the Interwar Period[1]

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Abstract

In this study, I would like to present the views of Polish conservatives on the Hungarian state in the interwar period. In the interwar period, there were few positive premises for cooperation between Poland and Hungary. The Polish-Hungarian policy was characterized by passivity, despite many previous years of friendship, no alliance between Warsaw and Budapest was concluded. Of course, ad hoc political considerations related to the plans to revise the borders, especially the border with Czechoslovakia, and territorial interests with regard to Slovakia and Subcarpathian Ruthenia, as well as Romania in the future, brought both countries closer from time to time. In this study, the views of the National Democracy will be presented, which, in the interwar period, was one of the largest and most influential political parties in Poland, although it never created independent governments in the Second Polish Republic. I hereby present especially the views of Roman Dmowski, the leader of the national camp. While the Hungarian delegation left Versailles in mourning moods, it was R. Dmowski, who was the chairman of the Polish National Committee and the signatory of the Versailles Treaty, together with other representatives of national democracy (S. Kozickiego,. K. S. Frycza, R. Piestrzyńskiego and Z. Berezowskiego).

Key words

Hungary, Poland, national democracy, political relations, National Democracy

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1. Introduction

The dispute over the genesis of independent Poland, which regained its sovereignty after 123 years of partitions, is still quite vital in the doctrine of Polish law. There is no doubt, however, that one of the most important factors which guaranteed this independence was the so-called "Versailles order". In turn, at the Versailles peace conference, Hungary was recognized as the successor of the defeated Austria-Hungary in World War I. Under the treaty, the Kingdom of Hungary lost over 70 percent of its territory. Węgrów was outside the territory of the Hungarian state. As a result of all this, in the interwar period, there were few positive premises for cooperation between Poland and Hungary. The Polish-Hungarian policy was characterized by passivity, despite many previous years of friendship, no alliance between Warsaw and Budapest was concluded. Of course, ad hoc political considerations related to the plans to revise the borders, especially the border with Czechoslovakia, and territorial interests with regard to Slovakia and Subcarpathian Ruthenia, as well as Romania in the future, brought both countries closer from time to time.

In this study, I would like to present the views of Polish conservatives on the Hungarian state in the interwar period. Of course, I will focus on the views of the National Democracy, which was one of the largest and most influential political parties in Poland in the interwar period, although it never formed independent governments in the Second Polish Republic. I will present especially the views of Roman Dmowski, the leader of the national camp.[2] While the Hungarian delegation was leaving Versailles in

2 Roman Stanisław Dmowski (born August 9, 1864 in Kamionek, died January 2, 1939 in Drozdów) – Polish politician, political journalist, minister of foreign affairs, member of the Legislative Sejm of the Second Polish Republic, deputy of the Second and Third State Duma of the Russian Empire. Co-founder of the National Democracy (National Democracy, national movement), the main ideologist of Polish nationalism. Polish independence activist, who in the first stage proposed the unification of all Polish lands and gaining autonomy within the Russian Empire, and then regaining independence based on an alliance with Russia and the Entente, and in opposition to the central states (in particular Germany). Associated with the neo-Slavic movement. At the end of World War I, he headed the Polish National Committee, which was recognized by the Entente states as a substitute for the Polish government in exile and a representative of Poland's interests. Polish delegate to the Paris conference in 1919 and signatory to the Versailles peace treaty. A staunch political opponent of Józef Piłsudski and his project of creating a federal state – a multireligious and multinational vision of Poland, the creator of the

mourning moods, R. Dmowski, who was the chairman of the Polish National Committee and a signatory to the Treaty of Versailles, could be pleased with himself.[3] In addition, I will present the views of other representatives of national democracy on the Hungarian issue.

2. Hungary in the political views of Roman Dmowski

The Hungarian state did not play a major role in the foreign policy plans of the National Democracy. This was due to several reasons, including the fact that after 1918 it did not directly border on Poland and could not be a supporter of Polish politics. Secondly, it was in conflict with the Little Entente states, with which, according to the National Democratic Party, Poland should cooperate. Finally, the foreign policy of Hungary, seeking to regain lost territory, was contrary to the core curricula of the national democrats, who guarded the inviolability of Poland's borders.[4] It was the revisionism that was, in the opinion of the National Democrats, one of the main reasons that disqualified Hungary as a state that could become a close ally of the Republic of Poland.[5]

incorporation concept of the nation state, assuming the polonization of the non-Polish population. One of the fathers of independent Poland – Niklewicz, Konrad (red): *Roman Dmowski 1864-1939; w pięćdziesięciolecie śmierci.* Londyn, Instytut Romana Dmowskiego, 1989, 1-80; Wapiński, Roman: *Roman Dmowski.* Lublin, Wydawnictwo Lubelskie, 1988, 1-392.; Kawalec, Krzysztof: *Roman Dmowski (1864-1939).* Wrocław, 1997.; Dobraczyński, Jan: *Spadające liście, powieść historyczna o Romanie Dmowskim.* Warszawa, Wydawnictwo Prasy Lokalnej, 2010, 1-251.; Włodyka, Wojciech: *Drugie życie Dmowskiego, Polityka.* 2012, 47, 58-61.; Kawalec, Krzysztof: *Roman Dmowski.* Wrocław–Warszawa–Kraków, Ossolineum, 2002, 1-36.; Jackowski, Stefan: *Roman Dmowski i jego droga do Niepodległości.* Londyn, Poldom, 1980, 1-40.; Kułakowski, Mariusz: *Roman Dmowski w świetle listów i wspomnień.* Dębogóra, 2014, 1-34.; Giertych, Jedrzej: *Rola dziejowa Dmowskiego.* Chicago, Nakł. Komitetu Wydawniczego, 1968, 1-812.

3 Dmowski, Roman: Polityka polska i odbudowanie państwa. 1. połowa, Przed wojną, wojna do r. 1917, Częstochowa, Antoni Gmachowski i S-ka, 1937, 1-386.; Dmowski, Roman: Polityka polska i odbudowanie państwa. 2. połowa, Wojna od r. 1917. Pokój, Częstochowa, Antoni Gmachowski i S-ka, 1937, 1-400.; Dmowski, Roman: Świat powojenny i Polska. Częstochowa, 1937 1-336; Dmowski, Roman: Niemcy, Rosja i kwestia polska. Częstochowa, 1938, Antoni Gmachowski i s-ka, 1-253.; Program Stronnictwa Demokratyczno-Narodowego w zaborze rosyjskim. Kraków, Przegląd Wszechpolski, 1903, 1-59.

4 Snopek, Jerzy: *Węgry. Zarys dziejów i kultury*. Warszawa, Oficyna Wydawnicza RYTM, 2002, 255-256.

5 Koziełło, Tomasz: *Trudne sąsiedztwo. Stosunki Polski z państwami ościennymi w myśli*

The direction of national democrats' thoughts on Polish foreign policy, including the foreign policy related to the Hungarian state, was given by R. Dmowski in the publication entitled: *"Polish politics and the rebuilding of the state"*[6]. According to R. Dmowski, it was necessary to strive for an alliance with Czechoslovakia and Romania, the interest of which was also to defend the Versailles order. Thus, the main ideologist of the national camp could not call for the strengthening of Hungary, as he considered it a state that had common interests with Germany.

According to R. Dmowski, before the First World War, it was not in the interest of the Hungarians to rebuild Poland. They believed that a strong Germany would protect them against the aspirations of national minorities in Central Europe and in the Balkans, so the alliance between Vienna and Berlin was in their interest. The Hungarians were afraid that the collapse of Germany would also cause the collapse of Austria-Hungary and the reduction of the lands subordinate to Hungary to ethnographic territories, which, of course, was contrary to the interests of Poland. He blamed both Germany and Hungary for participating in the war and was an opponent of the vision of rebuilding Poland alongside Germany and Austria.[7] He accused Hungarians that at the time of the Austro-Hungarian uprising, the Magyars stopped supporting the freedom-making efforts of the Slavs, including Poland. Despite the fact that R. Dmowski appreciated the Polish-Hungarian friendship, for example during the "Spring of Nations", he believed that one should strive to weaken Hungary on the international arena and reduce its territory only to ethnically Hungarian lands.[8] Roman Dmowski assumed that the main threat to independent Poland in the interwar period was a strong Germany, and he treated Hungary as a potential ally of Germany, not Poland.[9]

It is difficult to present Roman Dmowski's views on Polish-Hungarian relations without referring to the issue of relations with Czechoslovakia and Ro-

politycznej Narodowej Demokracji (1918-1939). Rzeszów, Wydawnictwo Uniwersytetu Rzeszowskiego, 2008, 199.

6 Dmowski, Roman: *Polityka polska i odbudowanie państwa.* Warszawa, Instytut Wydawniczy Pax, 1989, 1-2.

7 Studnicki, Władysław: *Przebudowa Europy Środkowej przez współczesna wojnę. Sprawa polska i jej międzynarodowe znaczenie.* Wiedeń, 1915, 16.

8 Warto tu jednak zaznaczyć, ze po Traktacie w Trianon spora część terytorium etnicznego pozostawał poza granicami Węgier. Batowski, Henryk: *Rozpad Austro – Węgier 1914-1918.* Kraków, Wydawnictwo Literackie, 1982, 286-300.

9 Kowalczyk, Michał: Węgry W publicystyce Romana Dmowskiego (napodstawie „Polityka polskai odbudowanie państwa"). *Saeculum Christianum,* 2015, 22, 222-228.

mania. R. Dmowski differed in his attitude towards Prague from many leading politicians of interwar Poland. In interwar Poland, Czechoslovakia was accused of a generally unfavourable attitude towards Poland. As, for example, during the Polish-Bolshevik war, it was believed that Czechoslovakia sympathized with the Bolsheviks. Moreover, the occupation of Zaolzie by Czechoslovakia aroused negative emotions among Poles. The Czechoslovak Republic was attacked most by conservatives who considered it a state under the influence of freemasonry, being anti-clerical and artificially separating Poland and Hungary. On the other hand, the leader of the National Democrats positively assessed the existence of Czechoslovakia as being in line with Polish interests. He marginalized the role of the Slovaks in it, arguing, rightly so, that the state is controlled almost exclusively by the Czechs, hence he used the terms "Czechoslovakia" and "Czech Republic" interchangeably in his publications. According to Roman Dmowski[10], the revival of the Czech state made it possible to rebuild Poland within such borders and not within other borders in the west of the country. He noted that, of course, Prague was not interested in building good relations with Warsaw, but argued that Poles should not pursue an aggressive policy, but strive to improve Polish-Czech relations, as it was necessary to prevent Germany's expansion to Eastern Europe. Therefore, he considered the attempts to come closer to Budapest and supporting the ambitions of Hungarians towards Slovakia as desirable actions for Germany, and therefore against Polish interests.[11]

R. Dmowski was also very positive towards Romania, claiming that there were basically no disputes between Warsaw and Bucharest. Therefore, he saw Romania as Poland's natural ally. While Czechoslovakia was to prevent the expansion of Germany to Eastern Europe, Romania and Poland were to constitute a protective wall against the Soviets. Therefore, it was in the Polish interest to strengthen Romania, although he was aware that not everyone in Poland understood this.[12]

3. Hungary in the views of other representatives of National Democracy:

Another representative of the National Democratic Party who referred to the issue of Polish-Hungarian relations in his statements was Stanisław

10 Dmowski op. cit. 293-294.
11 Kowalczyk op. cit. 226.
12 Dmowski op. cit. 290.

Kozicki, a Polish politician and publicist of the national movement, colleague of Roman Dmowski. Kozicki wrote that Hungary wanted to revise its borders and the territory that was lost as a result of the war, granted to Czechoslovakia, Yugoslavia and Romania, and therefore would not want to belong to the alliance that defended the territorial system of the time. In his opinion, the victory in the 1935 elections of Gyula Gömbös's party exacerbate the already existing revisionist tendencies on the Hungarian side. He considered the trends aimed at border revision as dangerous for the whole of Europe, because the rejection of the Treaty of Trianon and the return to the pre-war borders threatened to politically destabilize the entire region.[13]

Similar views were presented by another representative of national democracy, i.e. Ryszard Piestrzyński, who was a journalist, politician, and a member of the Sejm of the 3rd term in the Second Polish Republic on behalf of the National Party. To confirm the expansionist aspirations of the Hungarian state, he cited, among others, Hungarian Prime Minister Istvan Bethlen's speech at the League of Nations in 1929 regarding the need to change the existing borders.[14]

For representatives of national democracy, the goals of Hungarian foreign policy, including border revision, were not in themselves dangerous, but the Endeks were well aware that the Hungarians were too weak to achieve these goals and needed strong allies. Such a natural ally was the Germans, who also considered themselves wronged by the provisions of the Versailles agreements and sought change. Therefore, almost throughout the entire interwar period, representatives of Polish conservatives denounced Hungarian-German cooperation and saw it as a threat to peace and the inviolability of the borders of the Republic of Poland. It was believed that Hungary and Germany had a common political goal, which was to regain pre-war borders and pre-war position in the world. Therefore, they strongly criticized, among others, the meeting of the Hungarian Prime Minister István Bethlen with the German Minister of Foreign Affairs Julius Curtius in Berlin in 1930, as well as the visit to Germany by Gömbös after the victory of Adolf Hitler.[15] For the cooperation of Hungary with Germany, which was recognized by the representatives of national democracy as the

13 Kozicki, Stanisław: Sprawy węgierskie. *Gazeta Warszawska*, 1920/42, 1.; Kozicki, Stanisław: Węgry i traktaty. *Gazeta Warszawska,* 1928/353, 3.; Kozicki, Stanisław: Jasne Stanowisko. *Gazeta Warszawska,* 1930/158, 3.

14 Piestrzyński, Ryszard: Polityka Zagraniczna. *Awangarda,* 1929/7–8, 168.

15 Koziełło op. cit. 199-200.

main enemy of Poland and the political balance in Europe, made any political alliance between Poland and the Hungarian state impossible.

The second reason that hindered closer relations with Hungary was their cooperation with Austria, which, according to the National Democratic Party, also wanted to revise the borders. The greatest concern in this regard was presented by Stanisław Kozicki, who commented on Prime Minister Bethlen's visit to Vienna in 1931, saying that the main goal of both of these countries was to rebuild the great Austro-Hungary. To achieve this goal, both countries had to work closely with Germany, which, according to Stanisław Kozicki, was the only one capable of abolishing the existing borders.[16] A few years later, he presented the consequences of the possible restoration of the Habsburg dynasty in Budapest and Vienna, of course related to the re-establishment of the Austro-Hungarian federation and joint actions regarding the change of borders, including also the borders with the Polish state.[17]

Accordingly, the Democrats were afraid that the possible cooperation of Hungary and Austria, based on the alliance with Germany, would create a very strong alliance in Central Europe, directly threatening, among others, the security of Poland. In 1926, an article appeared in the Warsaw morning newspaper, in which it was written: *„it is more than doubtful that we would have survived a similar upheaval in the system of political equilibrium without our dependence on Germany".*[18]

Thus, the National Democracy negated any Polish-Hungarian agreement as one which was a threat to good relations with Czechoslovakia and Romania and the building of a possible alliance with these countries and which would consequently lead to the isolation of the Polish state in the region. Moreover, through Hungary, Germany could have an influence on the Polish foreign policy. On the one hand, such an alliance would in some way facilitate entering into friendly relations with Germany, but Poland could pay for it with Pomerania, Poznań and Upper Silesia. The Endeks also saw negative effects with regard to the relations with the Soviet Union, as such an alliance would be directed against the communists. Such views were expressed not only by Stanisław Kozicki and Ryszard Piestrzyński, but also by Joachim Bartoszewicz (a Polish politician from the National Democratic Party, columnist, indepen-

16 Kozicki, Stanisław: Węgry i Austria*. Gazeta Warszawska,* 1931/39, 3.
17 Kozicki, Stanisław: Habsburgowie*. Gazeta Warszawska,* 1934/243, 2.
18 Koziełło op. cit. 201. (Sugestie. *Gazeta Warszawska Poranna,* 1926/209.)

dence activist, lawyer, doctor) and Karol Stojanowski (Polish anthropologist and political activist, scoutmaster, professor, he was the author of a number of works on history and anthropology, mainly political, social and historical anthropology, one of the most active eugenicists in Poland). As an argument for a negative assessment of a possible close Polish-Hungarian cooperation, the same argument was always made that Hungary and Poland were and would always be in opposing camps on territorial issues, and therefore a deeper political cooperation between them was impossible. The Polish-Hungarian alliance, according to the National Democratic Party, was simply dangerous for Poland, especially due to the German efforts for territorial changes.[19]

Despite these prevailing views negatively regarding the political alliance between Hungary and Poland, there were also some publications by representatives of the National Democracy that pointed out to some positive aspects of such an alliance. The aforementioned Stanisław Kozicki, who was generally negative about close Polish-Hungarian ties, emphasized, however, a positive attitude towards the Hungarian nation and attachment to cooperation between both nations in the past.[20] Karol Stefan Frycz, a lawyer and national activist, also wrote about the common features of both nations, such as: Roman civilization, noble culture, the tradition of fighting Muslims or the cooperation of both nations in the past, as well as the need for "eternal friendship" between Poland and Hungary.[21]

However, in their views, the National Democrats made it clear that, despite common traditions, political rapprochement and Polish-Hungarian cooperation would only be possible after the revisionist plans of Hungary had been abandoned. According to Tomasz Kozielło[22], the Endeks believed that the Polish state should show political confidence only in those states that guaranteed the present state borders and the territorial structure of Europe after the First World War. On the other hand, representatives of conservatives clearly indicated that if the Hungarians, instead of the revisionist policy pursued in cooperation with Germany, came closer to the countries of the Little Entente, Poland should tighten its political cooperation with the Hungarian state. Of course, Hungary would have to give up its retaliation

19 Kozielło op. cit. 199-205.; (Szerzej Stosunki Polski z Węgrami w oparciu o w myśl polityczną Narodowej Demokracji w latach 1918-1939 przedstawia).

20 Kozicki, Stanisław: Polska i Węgry. *Gazeta Warszawska,* 1934/314, 2.

21 Frycz, Karol Stefan: Polska i Węgry. *Myśl Narodowa,* 1934/47, 685-686.; Frycz, Karol Stefan: Węgry a Polska. *Myśl Narodowa,* 1938/48, 734.

22 Kozielło op. cit. 202-203.

plans, but as indicated by the alliance with Germany, it could be dangerous for them, because they might regain part of the territory, but they would become a state dependent on Germany. On the other hand, cooperation with the countries of Central Europe would allow Hungary to maintain full sovereignty and political independence.[23]

Some further changes in the views of Polish conservatives towards the Hungarian state took place in the 1930s, when, according to the Democrats, there was a chance for Hungary to abandon its revisionist policy. Assessing the meeting of Prime Minister Gömbös with Benito Mussolini, which took place in 1933 in Rome, among others Stanisław Kozicki claimed that it was aimed at bringing Hungary closer to the Little Entente, thanks to which the Magyars ceased to be a threat to the region.[24] A similar reference was made to the non-aggression pact concluded in 1938 between Hungary and the Little Entente states. According to representatives of national democracy, this pact guaranteed the inviolability of borders.[25]

This was especially important after the annexation of Austria and Czechoslovakia by Nazi Germany. The new geopolitical situation in Europe forced the representatives of the National Democracy to modify their views on the political system in the countries of the Central European region. Moreover, it was hoped that Hungary, threatened by German expansion, would be forced to conclude a defense agreement with Poland and Romania. Among others, Zygmunt Berezowski, Karol Frycz and Marian Seyda (Polish politician and journalist associated with the national movement, in the 2nd Polish Republic, a member of the Legislative and 1st term Sejm, senator of the 2nd and 3rd term, member of the Committee of Ministers for National Affairs on behalf of the National Party from November 8, 1939) presented views on the necessity of concluding a trilateral Polish-Hungarian-Romanian alliance, which would prevent Germany from further territorial expansion. According to them, the Polish-Hungarian border was to be created by incorporating the Subcarpathian Ruthenia into the Hungarian state. The created border junction of three countries (Poland, Hungary, Romania) was to play an important role in the political system of this part of Europe.[26]

The above postulates of the representatives of the National Democracy regarding cooperation with Hungary were only an episode in the overall

23 Kozicki Stanisław: Jasne stanowisko. *Gazeta Warszawska,* 1930/158, 3.

24 Kozicki, Stanisław: Po rozmowach rzymskich. *Gazeta Warszawska,* 1933/236, 3.

25 Koziełło op. cit. 203.

26 Berezowski, Zygmunt: Rozbiór Czechosłowacji. *Polityka Narodowa,* 1938/7, 426.

development of the political thought of Polish conservatives in the interwar period. The Endeks very quickly noticed that the Hungarians did not intend to form any anti-German bloc in Europe. For this reason, the publications pointed to the dependence of Hungary's foreign policy on German interests. One of the latest statements by representatives of the National Democratic Party on Hungary's foreign policy was the assessment of the statements by the Hungarian Foreign Minister Imre Csáky about the need for friendship and cooperation between Hungary and Germany. It was pointed out that in the event of a war, Hungary would find itself in the German camp, and the borders with Hungary were to be treated as Polish-German borders.[27]

4. Summary

Briefly summarizing the views of Polish conservatives on the Hungarian state in the interwar period, it can be stated that the position of the National Democracy towards Hungary was twofold. On the one hand, the National Democrats emphasized the cultural, historical and civilization community between the Hungarian state and the Polish-Lithuanian Commonwealth. The similarities in the historical, social and political development of both nations certainly facilitated their rapprochement and the representatives of the National Democratic Party could not fail to emphasize this in their views. In addition, a certain belief in the proximity of the two countries, as well as xenophobia, inherent in the conservatives of the time (one could also say the same for modern nationalism of the interwar period), could also contribute to a political rapprochement between the two countries. Moreover, possible close cooperation was favoured by the lack of a common border between Hungary and Poland and, of course, the conflicts related to it.

On the other hand, the attitude of the National Democracy towards Hungary was determined by political considerations which militated against close relations between the two countries. National democrats believed that one should not cooperate and form an alliance with a state the goals of which were contrary to the political interests of the Second Polish Republic. After the First World War, the most important political division in Europe was the division into the revision states, including Hungary, and the anti-revision states, of which Poland was a part. For this reason, despite their efforts, there was no broader cooperation between the two countries

27 Koziełło op. cit. 204.

in international politics. Also for the National Democrats, the issues related to the revision of the borders and rapprochement with Germany disqualified Hungary as a political partner of the Polish state. The Endeks rightly believed that it should be in Poland's political interest to maintain the inviolability of the treaties, and thus of the borders. Of course, Hungary did not threaten Poland directly, but the great danger, according to the representatives of the National Democratic Party, was the support of a country that pursued a retaliatory policy. In their opinion, the territory of the Second Polish Republic would be threatened then, because Germany, taking advantage of Poland's consent to revise its borders through Hungary, could also file claims for the return of its eastern borders to the state before the First World War. Poland, which was more exposed to danger due to its geopolitical position, should, according to the National Democratic Party, seek to defend the status quo by creating a new political configuration in Central and Eastern Europe. Therefore, closer cooperation with the Hungarian state could lead to a tightening of relations with the countries considered to be the basis of the political system, i.e. Czechoslovakia and Romania. In addition, closer political contacts with Hungary would also result in closer cooperation with Germany, which was an ally of the Magyars. According to the representatives of the National Democracy, this could have led to the subordination of Polish foreign policy to German ingress. Therefore, representatives of national democracy showed political realism in Polish-Hungarian relations, ruling out permanent and strong political rapprochement as a threat to destabilize the European order and violate Poland's security.

Finally, it should be noted that Polish-Hungarian political relations in the interwar period were very much influenced (apart from revision and anti-revision considerations, of course) by national problems and the combination of international politics with the policy towards national minorities, common in the interwar period. This led to a short-term Polish-Hungarian rapprochement in the 1930s through the participation of both countries in the partition of Czechoslovakia. However, this did not bring any major benefits, except maybe that Hungary did not agree to help the Third Reich in 1939 in its aggression against Poland.

The assessment of the international situation by the representatives of national democracy, including relations with Hungary, was generally correct. Although the suggested steps to ensure Poland's security, as time has shown, were not entirely effective.

The League of Nations – The Chance for the Preservation of World Peace, its Rise and Fall[1]

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Abstract

The First World War, also known as the "Great War", had catastrophic consequences for international relations, world politics and, last but not least, the world economy. It was necessary after the war to restart mutual cooperation and relations between countries which were disrupted by the war. The relations between the countries were disrupted also by the Versailles peace system, according to which some empires perished and new states were created. The outlined relations could not be resolved only through peace negotiations, but it was necessary to resolve and regulate these relations comprehensively and systematically "from above". For this reason, it was desirable to create an independent international organization that would be able to regulate these relations in a neutral and peaceful manner. It was the League of Nations, as the first international organization with permanent institutions, to serve to ensure a world peace, principle of a collective security and international cooperation. Despite considerable efforts, the activities of this organization did not bring the expected results, and the tense relations and power efforts of the aggressors resulted in another catastrophe in the form of the Second World War. In the article, the author focuses on the reasons for the establishment of the League of Nations, its goals, its internal organization, as well as the reasons for its failure and demise.

Key words

The First World War, collective security, the League of Nations, world peace, termination of activity of League of Nations

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1. Introduction

Relations between individual countries have been formed since the beginning of the existence of various state institutions. Primarily, it was first a matter of forming the so-called neighbourly relations between neighbouring states, which were based either on a relationship of peace and cooperation or on various power efforts to control neighbouring countries. Political, social and trade relations between the individual countries developed in this way.

There is no doubt that if the country intends to prosper, to be 'strong' and internationally accepted, it is necessary to look for allies and supporters. Alliance relations between countries have been strengthened and legalized on many occasions on the basis of various agreements, whether bilateral or multilateral. In this way, these relationships are being strengthened and realized even today. It is not uncommon for countries to conclude various agreements and pacts with each other, on the basis of which they trade, support each other and maintain political and social contacts. The best situation is when these states have the same or at least similar interests. The prominent French lawyer and politician, Léon Bourgeois, based his reasoning on the belief that states, like individuals, are bound together by bonds of mutual interest.[2]

If we look at the history of the creation of relations between individual countries, we can find the necessary need to institutionalize cooperation between them. With the signing of the Peace of Westphalia in 1468, a system of nation-states was created. Until that time, there were empires, city-states, free cities, etc. After the introduction of the transnational relations, especially between traders, international organizations began to emerge from the national – state system. The first international organizations created by governments were the so-called administrative unions. The Central Commission for Navigation on the Rhine was the first modern intergovernmental organization. It was created by the Congress of Vienna (1815) and later replaced by the International Commission for Navigation on the Rhine in 1831. The International Telegraph Union (ITU – 1865) is considered to be the oldest intergovernmental organization with a single program goal.[3]

2 Bujnová, Helena–Privalinec, Peter: *OSN na prahu 21.storo*čia. Bratislava, AG Musica Liturgica, 2007, 11.

3 Horvátová, Petra: *Medzinárodné organizácie.* https://www.ekonomicky.sk/medzinarodne-organizacie/ (August 12, 2021)

It can be stated that the institutionalized form of cooperation between states in all its forms, from its inception to the present, is constantly growing and has an increasingly significant impact on the development of international relations.[4] And it was no different in the period after the First World War, when it was necessary to establish general world peace and restart the broken relations between the countries, as well as their paralyzed trade ties.

2. The League of Nations – the reasons for its creation and its role

The outbreak of the First World War led to a significant paralysis of the relations between the countries built so far, to the disintegration of society as a whole and to huge losses both in lives and in the economy and trade.

As a result of the First World War, some empires were disintegrated and new states were created. It was necessary to restart the war-torn political, diplomatic and economic relations. It was necessary to put the society back on its feet. The ideas of pacifism, European and world integration were gradually promoted in individual countries. The impact of the war on society manifested itself in widespread opposition to the war and pressure to establish an international political organization to ensure international peace and cooperation. According to Bystrický, the course and results of the First World War brought three political tendencies to the forefront of interest: the right of nations to self-determination, the principles of collective security and the democratization of the whole socio-political life, including international relations.[5] As a solution, the program of US President Woodrow Wilson was offered, which was summarized in 14 points and concerned the international organization of the world after the First World War (1914–1918). In Point 14, he formulated the need to establish a League of Nations.

Wilson was the first to create guarantees of peace based on the principles of collective security. According to him, the world should function on principle, not power, it should function according to law, not interests. The American president tried to establish a world order in which resistance to

4 Rosputinský Peter: Úvod do štúdia medzinárodných organizácii. Banská Bystrica, Fakulta politických vied a medzinárodných vzťahov Univerzity Mateja Bela v Banskej Bystrici, 2011, 9.

5 Bystrický, Valerián: *Organizovanie bezpečnosti v rokoch 1918 – 1939. Medzinárodné vzťahy a nádeje na zabezpečenie mieru*. http://www.historiarevue.sk/historia-2001-06/nato/bystricky.htm (August 20, 2021)

aggression was based on moral and not on geopolitical reasons. The acceptability of a state's conduct should have been judged on whether its conduct was fair and not on whether it endangered the interests of the Great Powers.[6] In his speech to Congress in January 1917, he said: "*there may not be a balance of power, but a community of power, not organized rivalry, but organized peace*."[7] Wilson's vision was not a universal world of democracies, but the system of liberal-democratic states who understand each other and accept arbitration and disarm, the world of national self-determination, diplomacy, the mechanism of peaceful change, and alliances of all against any aggressor.[8]

At the plenary session of the Paris Peace Conference on January 25, 1919, the victorious powers approved a resolution according to which the Covenant of the League of Nations became an integral part of the peace treaties. The Covenant of the League of Nations, which also became its legal basis, was incorporated into the text of the Treaty of Versailles on June 28, 1919, as well as the Treaty of Trianon, the Treaty of Saint-Germain and the Treaty of Neuille. The Treaty of Versailles entered into force on January 10, 1920, after its ratification by Germany and the three major powers. Thus, on the basis of the decision of the states participating in the Paris Peace Conference, which ended the First World War, the League of Nations, the predecessor of the United Nations (UN), was established. The headquarters of the League of Nations was Geneva. The first meeting of the Council of the League of Nations was convened by President Wilson on January 16, 1920 in Paris.

The basic principles of the League of Nations were stated in the Preamble of the Covenant:

„*In order to promote international co-operation and to achieve international peace and security*

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honourable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and

6 Chmelár, Eduard: *Vznik spoločnosti národov*. In: Weiss, Peter: Zrod myšlienky kolektívnej bezpečnosti a príčiny neúspechu jej aplikácie prostredníctvom spoločnosti národov. *Medzinárodné vzťahy,* 2006, 4(1), 19-36.

7 Weiss o. cit. 19-36.

8 Ibid.

by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another,

agree to this Covenant of the League of Nations".

As follows from the Preamble and all the articles of the Covenant of the League of Nations, the basic principles of this international organization were: the prohibition of wars, justice, and respect for international law. The members of the League of Nations were committed to respecting the territorial integrity and independence of the policies of all Member States against any external aggression. The League of Nations was to represent the so-called „*general association of nations*". This was the first attempt by the international community to establish an international organization with permanent institutions to ensure world peace and the so-called collective security and the institutionalization of international cooperation.

The idea of collective security was based on the principle of "*one for all and all for one*". This idea first appeared in the 15th century, when this form was already promoted on a legal basis by the Czech King George of Poděbrady. Subsequently, this idea developed in other countries, and the modern understanding of collective security is usually derived from the Treaty of Osnabrück of 1648, which was part of the Peace of Westphalia. The idea of collective security presupposes the fulfillment of several attributes:

a) in ensuring the security interests of states, the natural balance of power is replaced by a system of their cooperation,
b) power relations are in principle managed from a single common center, but the power potentials remain in the hands of national governments,
c) an attack against any State shall be considered as an attack against all[9].

As already mentioned, the main reason for the creation of the League of Nations was to prevent further wars, to maintain peace and guarantee international security on the basis of the principle of collective security, and to develop international cooperation in various fields. The members of the Society were committed to respecting and defending the territorial integrity and political independence of all members of the Society. Based on the above, the main goals of this organization can be established and defined as follows:

- maintaining world peace through collective security,
- protection of the territorial integrity and independence of states,

9 KREJČÍ, Oskar: *Mezinárodní politika*. Praha, Ekopress, 2001, 164.; WEISS op. cit. 19-36.

- support for diplomacy,
- arms restrictions,
- social, political and economic cooperation.

Maintaining world peace through collective security

The main impetus for the creation of an international institutionalized organization after the First World War in the form of the League of Nations was the maintenance of world peace and stability in international and political relations, as well as in economic relations between countries, which were important for trade re-development. The League of Nations was to provide a forum for resolving and settling disputes peacefully and to prevent disputes from going to war.

Protection of the territorial integrity and independence of states

The territorial integrity and independence of the state is a basic precondition for the existence of the state as a territorial unit. The territorial integrity or integrity of states is generally expressed in their Constitutions. For example, in the Constitution of the Slovak Republic, territorial integrity is expressed in Art. 3, which states that "*the territory of the Slovak Republic is uniform and indivisible"*. Paragraph 2 of this Article states that "*the borders of the Slovak Republic may be changed only by constitutional law"*. After the First World War, new states were formed, also on the basis of the disintegration of great empires. The borders of these newly created states were firmly defined and these states were declared independent. The tense political situation, which was also caused by this new European order, could have resulted in disputes and the disruption of the territorial integrity and independence of the newly created states. For this reason, it was essential not only to maintain peace during the states, but also to protect and preserve the territorial integrity of new states and their independence. This was also one of the reasons for the creation of an organization such as the League of Nations. President Woodrow Wilson is one of the greatest protagonists of a commitment to territorial integrity for all states. His well-known Point 14 of peace programme was about commitments to guarantee political independence and territorial integrity for both large and small states. This revolutionary proposal took the form of Article 10 of the

League of Nations Agreement, the approval of which meant formal support for the territorial integrity of states.[10] Pursuant to Art. 10: "*The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.*" Pursuant to Art. 16 of the Covenant of the League of Nations enshrines collective security and measures against any aggressive force and was extended by Article 17 of the Covenant of the League of Nations to non-member countries. Art. 16 of the Covenant ordered Member States to apply an economic and financial blockade to an attacker in the event of an unprovoked attack. Article 16 of the Covenant of the League of Nations also provided that aggressive conduct would have the effect of exclusion by the Council from the League of Nations. Following a unanimous decision, the League of Nations could also recommend its members to help the victims of aggression, even militarily.

After the First World War, the territorial integrity was supported by several declarations and international multilateral agreements. In 1931, the League of Nations supported the Stimson Doctrine,[11] which denied legitimacy to the territorial changes brought about by force and aggression.

Diplomacy support

In general, the term 'diplomacy' is the activity of negotiating, maintaining relations between nations. It is also an activity regulating relations between states or resolving disputes arising between countries on an international scale. The League of Nations was created to solve the lack of diplomacy and to promote dialogue other than militarism in resolving disputes. All legal matters between states were to be referred to the International Court of Justice, which was the highest court of appeal, and its purpose was to promote and defend the concept of international justice.

10 Zacher, Mark: The Territorial Integrity Norm: International Boundaries and the Use of Force. *International Organization*, 2001, 55(2), 219.

11 Named after US Secretary of State Henry Stimson, who served in 1929–1933.

Arms restrictions

The League of Nations aimed to limit the production of dangerous weapons and to promote disarmament. The defeated and victorious states were to be disarmed to the lowest level corresponding to internal security. In support of this goal, a Disarmament Commission was set up to carry out an arms survey. It also acted as an advisory body to the Council on military, maritime and air issues.

Social, political and economic cooperation

During the First World War, social, political and economic cooperation between countries was disrupted. The First World War left problems such as inflation, unemployment, hunger, social disintegration, distrust of smaller states against larger states. After the end of the war, the establishment of peace and on the basis of the signing of peace agreements, relations between the countries were gradually renewed. The League of Nations was also to contribute to this, one of the aims of which was to promote social, political and economic cooperation between countries, on a global scale. The above mentioned was supported and implemented by Art. 23 of the Covenant of the League of Nations, which states that:

„Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(a) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations;

(b) undertake to secure just treatment of the native inhabitants of territories under their control;

(c) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;

(d) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind;

(f) will endeavour to take steps in matters of international concern for the prevention and control of disease."

3. The League of Nations – its internal organization

When it was founded, the League of Nations originally had 42 members, consisting of states, dominions and colonies that governed independently. Gradually, the number of members increased, and in 1935 the League of Nations had 60 members. Even though the American president was the creator of the idea of the birth of the League of Nations, the United States refused to join the organization. One of the reasons was that the United States refused to participate in and get involved in disputes between European states. They tried to avoid armed conflict and refused to take on guarantees to defend Europe's post-war order on the basis of the Versailles peace treaties. The United States pursued a policy of isolationism in the postwar period. It is interesting to note that it was the United States, on the one hand, that developed the concept of the League of Nations and the principles of collective security, and on the other hand, it ignored these principles, thus avoiding accepting responsibility and making commitments against aggression.[12]

The Soviet Union was not invited to this organization until 1934, when it became a member, but in 1939 he was expelled from the League of Nations at the suggestion of France and Great Britain. Japan, Germany and Italy withdrew from the League of Nations in 1930. This fact also confirms critical interstate relations, an overall unfavourable situation that did not favour world peace for a long time.

The Czechoslovak Republic, which was an original member of the League of Nations, played a significant role in its functioning, and representatives of the Czechoslovak Republic held important positions within its organization. In addition, the Czechoslovak Republic was a member of the Council of the League of Nations.

The main bodies of the League of Nations were the Assembly and the Council. The Permanent Secretariat was also a body. The meeting consisted

12 Bystrický op. cit.

of representatives of all members of the League of Nations. Each member had one vote. The Assembly met at least once a year, in September, and could meet more frequently if it was necessary. The Assembly was made up of several commissions, namely the Legal Commission, the Technical and Intellectual Commissions, the Arms Reduction Commission, the Budget Commission, the Social Commission, the Political Commission, the Mandate Commission and the Slavery Commission. One of the basic powers of the Assembly was the power to deal with all important issues concerning the League of Nations, especially those relating to world peace. The Assembly adopted resolutions, recommendations, elected non-permanent members of the Council. The Assembly had the exclusive right to admit new members, make changes to the founding treaty, revise other treaties, approve the budget, etc.

The Council of the League of Nations was composed of permanent and non-permanent members. Permanent members included the powers listed in the Pact, namely France, Great Britain, Italy and Japan. The permanent members also included countries designated by the Council, such as Germany (from 1926 until 1933, when it left the League of Nations at its own discretion), and the Soviet Union from 1934 to 1939. The Council also had 11 non-permanent members elected by the Assembly. Each member of the Council had one vote. Until 1933, the Council met three times a year, then four times a year. The functions of the Council were functions in the field of peaceful dispute resolution. The Council could make recommendations for member states to adopt common measures against the aggressor in the event of aggression. The Council was responsible for formulating arms proposals and restrictions. With the consent of the Assembly, it could expel individual members from the League of Nations.

Another body of the League of Nations was the Secretariat, which was the only permanently active body consisting of the Secretary-General and his two deputies. The League of Nations had three Secretaries-General: the British diplomat of Scottish origin James Eric Drummond (1876–1951), in office between 1920 and 1933, the French senior civil servant and diplomat Joseph Louis Avenol (1879–1952), in office between 1933 and 1940, and the Irish diplomat Seán Lester (1888–1959), in office between 1940 and 1946.

The Secreteriat also included three Undersecretaries and a number of officials, who were divided into different sections, e.g. legal, political, disarmament section, section for minorities, economic section, financial section,

etc. In essence, the Secretariat performed, in particular, the administrative and technical tasks of the Council and the Assembly, engaged in research activities and was based in Geneva.

The League of Nations also initiated the establishment of a judicial body called the International Tribunal of Justice, based in the Peace Palace in the Hague. The legal basis for the creation of a judicial body was Art. 14 of the Covenant of the League of Nations, which instructed the Council to prepare a proposal for the establishment of a Permanent Court of International Justice. The Statute of this Court and the Signatory Protocol were adopted by the Member States. The Statute entered into force on October 8, 1921 and the Court started its operations in 1922. The main requirements in establishing this judicial body were that the court should have jurisdiction not only to hear and decide any dispute of an international nature submitted by the parties to the dispute, but also to issue an advisory statement on the dispute or the issue submitted by the Council or the Assembly.[13] The authors differ on the question of whether or not the International Tribunal for Justice was a body of the League of Nations. Some of the authors state that it was an internal body of this international organization,[14] while others state that although the League of Nations played a significant role in initiating the establishment of this tribunal, it has never become part of it in the form of an official body.[15] However, whether it was an official body or not, it is undeniable that the International Tribunal for Justice played an important role in the functioning of the League of Nations and in the fulfillment of its goals. The existence of this tribunal was also presupposed by the Covenant of the League of Nations itself, and an important fact is that the Permanent Court of International Justice, in addition to performing the function of resolving international disputes, also played an advisory role in relation to the Council and the Assembly. The connection between the League of Nations and the Permanent Court of International Justice is undeniable on the basis of the facts mentioned above.

The auxiliary organization of the League of Nations was the International Labour Organization (ILO), which was established on June 28, 1919 at the Paris Peace Conference as an autonomous organization based in Geneva

13 Čuchračová, Martina: *Historický vývoj pokusov o vytvorenie medzinárodných súdov*. In: Giertl, Adam–Gregová Širicová, Ľubica: Medzinárodné súdnictvo a medzinárodné právo. Košice, Pavol Jozef Šafárik University in Košice, 2012, 16.

14 For example: Weiss op. cit. 2.

15 For example: Čuchračová op. cit. 16.

and was later annexed to the League of Nations. Currently, it is a specialized United Nations employment agency. In addition to these bodies and organizations, there were a number of other subsidiary bodies and advisory commissions, such as the International Institute for Intellectual Cooperation, the main interest of which was libraries.

Expenses that incurred in connection with the functioning of the League of Nations were covered by national membership contributions. The official languages were English and French.

4. The fall of the League of Nations – the reasons for its disintegration

The League of Nations, as conceived in the Covenant of the League of Nations, was a groundbreaking 'project' to ensure the world peace, of course, under the condition that all Member States (permanent and non-permanent) should adhere to the principles on which the League of Nations was founded and guided. Woodrow Wilson's intention to secure global peace based on the principle of collective security, to help smaller countries from the aggression of larger ones, would also be fulfilled if the founders and Member States themselves did not resign to peacekeeping, mainly because of their economic interests and inconsistent approach against the gradually rising tensions between countries. However, soon after the start of its activities, it became apparent that the League of Nations would not meet the set goals. The main reason for the failure of this organization was that the founding powers saw in this organization only a means to ensure their military victory over Germany and a tool to pursue their world-class goals or at least attempts to control Europe.[16]

The fall of the League of Nations was caused by many circumstances. Its shortcomings were due to the weaknesses of the Covenant of the League of Nations itself. The Covenant did not contain a total ban on war and did not give this organization the power to apply effective sanctions for violations of peace and international security.[17] Also, the arms control efforts of the League of Nations envisaged by the Covenant were unsuccessful. Aggressive efforts to occupy smaller countries with larger ones continued to emerge. For example, the first serious disturbance of peace was the Japanese occupation

16 Potočný, Miroslav: *OSN 1945-1960.* Praha, SNPL, 1960, 11.

17 See also: Klepacki, Zbigniew M.: *Slovník medzinárodných organizácií*. Bratislava, Pravda, 1979, 546.

of Manchuria in 1931. Although the League of Nations morally condemned the aggression, under the influence of the Great Powers, it refused to use even economic sanctions. It was clear that the world organization would not be able to provide protection and assistance to the victims of aggression in the event of a conflict. These concerns were allayed only by the fact that armed conflict arose far from the European continent. Italy's attack on Ethiopia in October 1935 already directly threatened peace in Europe. Although the League of Nations declared economic sanctions against Italy, the way in which it organized aid to victims of aggression had no effect. Small states lost confidence in the League of Nations and naturally doubted that the League of Nations would help them in the event of an attack. The principle that the Great Powers did not intend to use the positives contained in the Covenant of the League of Nations and even weakened the effectiveness of collective action against the aggressor in order to promote their goals and plans began to be strongly affirmed. It turned out that not all states had the same interest in collective resistance to a specific aggression and are not willing to take a potential risk. By applying the principles of collective security, the League of Nations was not able to create the conditions to prevent the aggression of the Great Powers and to provide effective protection and assistance to the victims of the attack. The Great Powers, even within the League of Nations, promoted in particular their power interests and never used the provisions of the Covenant of the League of Nations to defend small countries when there was aggression against them.[18]

The League of Nations was not able to achieve greater success in other areas of activity either. The system established by the Convenant did not help to eliminate colonialism at all. Economic and social cooperation also yielded modest results. The activities of the League of Nations were limited to some proactive steps in concluding several multilateral agreements. The League of Nations did not achieve much success in the field of codification of international law either.

Even the internal organization of the League of Nations was not set up properly. The competencies of the Assembly and the Council were not significantly differentiated. The voting system, which was based on the principle of unanimity, meant that in many cases one state could defeat any action. Following the appearances of Japan, Germany and Italy, the League of Nations could not take an active part in reconciliation, much less in resolv-

18 Bystrický op. cit.

ing the conflicts that were growing between the imperialist states. When the Second World War broke out as a result of these conflicts, society found itself in the role of a silent witness to the events. It did not function during this period at all.

The League of Nations disappeared sequentially. At the 21st ceremonial sitting on April 8 to 18,1946, it transferred its mission to the United Nations, the Charter of which was signed on June 26, 1945 by representatives of 50 member countries, and on October 24, 1945, this new organization began its activities. The League of Nations legitimately ceased to exist on July 31, 1947.[19]

5. Conclusion

As stated in the introductory part of this article, after the First World War, which caused the disintegration of society, as well as the disruption of political and economic relations, it was desirable to create an independent international organization that could re-establish and regulate relations between countries in a neutral and peaceful manner. The League of Nations, as the first international organization with permanent institutions, initially sought to maintain peace and favourable economic relations, but the power interests of its members were a huge obstacle to achieving its goals set out in the Covenant. The power interests of some countries, the policy of isolationism, and the organization's neutral position in sanctioning aggressors disrupted international relations and strengthened the position of aggressors, which resulted in the Second World War. The next world war had much more catastrophic consequences than the previous one. Only after the establishment of peace after the end of the Second World War did the powers that pursued only their own interests and the policy of isolationism begin to understand that peace could only be maintained if all states accepted each other and cooperated with each other. An important means of achieving this goal is organized cooperation on the ground of an international organization, namely the United Nations. The United Nations 'took over' the mission of the League of Nations and many of its goals, and it is commendable that it still exists and operates today.

19 See also: Bujnová–Privalinec op. cit. 17.

Roman diplomacy in ancient Rome[1]

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Abstract

The terminus technicus "diplomacy" applies to a number of instruments by which states and nations manage their relations and communicate with each other – including a lot of international mechanisms and institutions the role of which is to facilitate above all peaceful coexistence. There was nothing to assure the existence of most of these institutions in the Roman world, where there were no permanent diplomatic missions or delegations of individual states abroad to protect their geopolitical interests and provide the necessary assistance to citizens in an emergency situation abroad. With a "lack" of permanent diplomatic missions in ancient Rome, ad hoc Roman diplomats were sent abroad et vice versa in order to negotiate specific peace treaties to ensure the undisturbed development of Rome's economic, trade and cultural relations with surrounding cities, nations or more distant powers.

Keywords

diplomacy, ius fetiale, international, treaty, diplomatic mission

"*Quod bonum, felix, faustum, fortunatumque sit*"[2] – a well know, longer Roman formula, ceremonially, conservatively and rigidly observed within indisputable historical traditions during many centuries, opening any official act of Roman kings and *pontifices*, from the times of the kingdom trough the solemn acts of higher republican magistrates until the fall of the *res publica*. In the middle of the 2nd century B.C., the Greek historian Polybios[3], combining the admiration, but also the criticism of the Romans, highlighted

1 „This work was supported by the Slovak Research and Development Agency under the Contract no. APVV-19-0419."

2 Abbreviated Q.B.F.F.F.Q.S.: "May the outcome be good, propitious, lucky and successful".

3 Between c. 200 and c. 188 B.C., he dealt in his works with Roman history in the period of 220–146 B.C., i.e., until the end of the third and last Punic War.

particularly the Roman "constitution", laws, morals and principles, and the allegiance of the citizens to the leaders of the state. One hundred years later, his 'colleague' and successor in the line of Roman historians, Sallustius[4], who was also a relatively successful person in political life, described the Roman reality, unfortunately, completely differently – the Roman nobility is corrupt[5] and Rome is literally "a city of sale"[6]. The outlined historical trend in the 1st century B.C. was 'underlined' by Livy[7], stating that he considered his times to be a period "when we can endure neither our vices nor the remedies to cure them [...]". The Roman state had the sixth century of its existence behind it, and its proudest era – the period of the republic – began to show inevitable tendencies and effects of decay. However, the particular reasons were complex, and stemmed from the very foundations of the Roman state. While the 'constitution' of the republic was referred to by historians as the Rule of Law, during the 2nd and 1st centuries B.C. it turned into a free play of political forces. The once famous Roman people became indifferent, available to any political adventurer who wanted to use them. The Senate was fragmented into a lot of political cliques and fractions that put their selfish interests above the public interest. The impossibility of a flexible administration of the large empire – especially after the successful end of the Punic Wars[8] – and the lack of unity of the central government allowed strong, self-made individuals to grow who, either lawfully or unlawfully, gradually began to establish themselves vigorously in political life. Let us go back and focus primarily on Rome's foreign policy towards allies, Latins, and foreign powers. Before moving on to the period investigated by us, we will make a short stop with a reference to a historical excursion into the Roman annals concerning the creation of legislation

4 Full name Gaius Sallustius Crispus (86–35 B.C.), a political member of the popular party, like M. T. Cicero – the so-called *homo novus*.

5 See also the infamous statements of the Numidian king Jugurtha that if he had more money during his stay in Rome, he would buy the entire Senate; or the scandalous accusation of G. Sempronio Gracchus, similarly addressed to the Senate, in the infamous division of the Roman province between Nicomedes, the king of Bithynia, and Mithridates, the king of Pontus – see also BRUNT, Peter, Astbury: *Italian Manpower, 225 B.C.–A.D.* 14, Oxford 1971, 145 *et seq*.

6 See also: Fico, Miroslav: *Vybrané aspekty trestania a jeho a jeho účelu v rímskom a uhorskom práve*. Košice, Univerzita P. J. Šafárika, 2010, 183-191.

7 See the comprehensive works: Livy, Titus: *Dějiny I–VII*., Prague, Svoboda, 1971.

8 On slavery question see: Dobrovič, Ľuboš: *Otroctvo v rímskom práve*. Košice, 2015, 185-189.

among 'nations'. Historical sources mention that the knowledge of things, divine and human, *divinarum atque humanarum rerum notitia*, was already well known to Numa Pompilius, to some extent the creator of the first Roman laws, although about a hundred years later, during the reign of Servius Tulius, the right to interpret the law in Italy belonged, perhaps paradoxically for someone, to the famous mathematician Pythagoras of Samos[9]. Historically, the first documented Roman treaty between Rome and another Italian city after the founding of the City was concluded during the reign of Tullus Hostilius through a special priestly college of the Fetiales with Alba Longa[10] – "these conditions the people of Rome will not be the first to go back from without a false, malicious intent", and as also stated by Livy, "however, the memory of no other treaty is older"[11]. Another example of the ancient application of the rules of *ius inter gentes* and in general the rules of natural law – today we could also say the rules of diplomatic law – was the situation that occurred after an obvious, flagrant conspiracy against the Roman Republic by the envoys of the exiled king Tarquinius Superbus from the Italian cities of Veii and Tarquinii, in order to overthrow the newly created republican establishment of Rome. In this context, Livy uses the phrase "there was some hesitation in dealing with the envoys", and although the envoys had evidently been guilty of a hostile act, the consuls respected the long-held custom that the envoys of a foreign power enjoyed an unassailability even in such a case; however, there was also a possibility, albeit probably theoretical, to request their extradition after their return to the home community/state in order to punish them.[12] In today's modern world, the term 'diplomacy' mostly refers to a number of means by which sovereign states and nations manage their relations and communicate with each other –including a lot of international mechanisms and institutions

9 See Alonso, Victor: *War, Peace, and International Law in Ancient Greece*. in: Raaflaub, Kurt A. (ed.): War and Peace in the Ancient World. Oxford, Wiley-Blackwell, 2007, 212-225. These were speeches near the cities of Heraklion, Croton, and Metapont.

10 Which resulted in the famous battle of the Horatii and Curiatii and the domination of the city of Rome over Alba Longa. Cf. Watson, Alan: *International Law in Archaic Rome*. Baltimore–London, Johns Hopkins University Press, 1993, 25 *et seq*.

11 Although some historians mention as the oldest peace treaty the one that, according to legends, Romulus concluded with the Italian (formerly Etruscan) city of Veii – mainly because of the trade interests of Rome competing with that of Veii.

12 Cf. the case described in Stein, Peter: *Roman law in European history*. Cambridge, Cambridge University Press, 1999, 94 *et seq*. It deals with the involvement of a Spanish ambassador in the conspiracy against Elizabeth I, Queen of England.

the role of which is to facilitate peaceful coexistence, cultural exchanges, economy, and trade. Of course, most of these institutions undoubtedly had no parallel in the 'Roman world', where there were no permanent diplomatic missions or delegations of individual states abroad to protect their geopolitical interests and provide the necessary assistance to citizens in an emergency situation abroad. And yet... With a 'lack' of permanent diplomatic missions in ancient Rome, *ad hoc* Roman diplomats were sent abroad *et vice versa* in order to negotiate specific peace treaties to ensure the undisturbed development of Rome's economic, trade and cultural relations with surrounding cities, nations or more distant powers, because without such 'missions' communication between Rome and its foreign partners would not be possible at all. Contemporary scholars, when addressing the topic of relationships between Rome and other ancient communities, have emphasised the Roman perspective. Roman empire has always been considered the leading figure in economic, diplomatic and cultural exchanges in the Mediterranean area; and every kind of relationship that arose in this context has been seen as an expression of the Roman hegemonic plan. If we wish to analyse the alliances and friendship between Rome and other communities we have to examine evidence on treaties entered into between the Romans and other communities concerning military cooperation and good relations. In the earliest period, Rome was a hegemonic power at the helm of the federation of the Italic peoples – Latins (*Latinum nomen*) and Italic *socii* – united in permanent military alliances concerning the supply of troops and ships to allies. This uniformity of alliance relations changed when Rome entered the Mediterranean area. As from the third century B.C., in the treaties concluded between Rome and non-Italic peoples, terms like *amicitia* and *societas* frequently appear. Sometimes the term *amicus*, sometimes *socius*, and sometimes even *socius et amicus* were used to describe the same situation. In the latter case (*socius et amicus*), the meaning of the hendiadys must be examined.[13] The phenomenon has not gone unnoticed: from an initial simplification of *amicitia et societas* to mere „*amicitia*" in the monumental structure of Mommsen,[14] the more recent scholarly interpretation has come to evaluate the specific meaning of the hendiadys in connection with the political development of Rome. Mommsen, on the

13 Cursi, Floriana Marina: International relationship in the Ancient World. *Fundamina,* 2014, 20 (1), 186.

14 Mommsen, Theodor: *The History of Rome (Volume 2.)*. Cambrige, Cambridge University Press, 2010, 68 et seq.

basis of a formal similarity, examined the two categories of people *amici* and *socii et amici*. Although he introduced a tripartite scheme of international relationships – *amici*, *socii* and *socii et amici* – Mommsen did not explain the nature of this intermediate category between *amici* and *socii*. However, when he draws attention to the affinity between *socii et amici* and *amici*, it permits us to view *societas et amicitia* as a form of collaboration, not a form of subjection. At the beginning of the last century, interest in the topic emerged in two almost contemporary contributions, those of Matthaei[15] and Sands[16] . Matthaei, relying on Mommsen, considers the term *socius et amicus* to be nothing more than an official title bestowed by the Romans on their friends, assuming that when a treaty of friendship was revised, the term *amicus* obliged the Romans to provide their friends with military aid, adding *societas* to *amicitia* . The treaty of *amicitia* and *societas* would be devised as a compromise between the Roman need to establish perpetual relationships (*amicitia*) and the need for foreign peoples, especially the Greeks, to conclude temporary alliances (*societas*). The hendiadys would be used with increasing frequency from the second century BC onwards, in connection with the growth of political and military power of Rome, to highlight the status of inferiority of their friends, until their final transformation to socii. This last consideration is based on the power relations in the Mediterranean area. Some authors point to the transformation of the original relation of friendship to one more onerous for foreign people, because it included the duty to cooperate in the military campaigns of the hegemonic power. This last duty, while it did not compromise the sovereignty of the community friend and ally of the Romans, politically placed the people under Roman influence. To sum up, some scholars have denied the specificity of the relation of alliance and friendship, referring to its coincidence with friendship. Others have emphasised the technical character of the hendiadys developed when Rome came to the Mediterranean area and its relationship to its political weight. It is certain, however, that the perspective from which the phenomenon has been studied is Roman: Rome expanded into the Mediterranean area and built relationships with foreigners according to its own patterns that sometimes suited the needs of the people with whom it came into contact.The framework of the relationships

15 Matthaei, Louise Emmanuel: On the Classification of Roman Allies. *Classical Quarterly*, 1907, 1(2–3), 185.

16 Sands, Percy Cooper: *The Client Princes of the Roman Empire under the Republic*. Cambridge, Cambridge University Press, 1908, 10.

among the people in the Mediterranean area before the coming of Romans seems so uniform that it enables us not only to reconstruct the contents of the Roman treaties of *amicitia et societas*, but also to re-interpret the Roman imperialist approach. From the Roman perspective, the hendiadys *amicitia et societas* used in the treaties with non-Italic people during the third century B.C. is certainly unusual, considering that in its early relations with the Italic people Rome built its hegemony on military alliances by treaties of *societas* (Italic *socii*). But if we shift the perspective from the Romans to the people in the Mediterranean area, we realise that not only was there an intense exchange and sharing of cultural models even before the coming of Rome, but also that such models profoundly influenced the Roman approach in the Mediterranean area, forcing Rome to rethink its scheme of international relations[17]. When Gruen[18] in a revisionist study of Roman imperialism considers the use of the Roman model of Italic societas to modify the new relationship with the Greeks, he warned that "we enter slippery terrain" considering that the terms used in the *foedera*, and in particular the *clausula maiestatis*, rarely come to light and that their examination will be conditioned by the dichotomy of *foedus aequum/foedus iniquum* improperly used by scholars to interpret the phenomenon of Roman international relationships. This perplexity about the terms used in the treaties as well as the presence of the *clausula maiestatis* leads Gruen to conclude that Rome could not use the *clausula maiestatis* as a standardised tool of its hegemonic policy, so that Rome did not create politically unequal treaties. Gruen believes rather that the Romans used the flexible tool of φιλία or *amicitia* to create "informal associations", reinterpreting the Hellenistic patterns for their own purposes, leaving aside the treaties that according to Gruen would have played a small role in history of relations between Rome and Greece. In other words, before the third century B.C. *amicitia* was not a diplomatic tool used by the Romans. It was taken from the Greeks, as was the expression *amicitia et societas*. For the Greeks, however, friendship described a relationship lacking the element of power: "*amicitia* was a presumption of cordiality, not an imposition of duties". Even after the Peace of Apamea in 188 B.C. between Rome and Antiochus III, after the Roman victories at Thermopylae in 191 B.C. and at Magnesia in the following year,

17 Cf. Cursi, cit.op., 187.

18 Gruen, Erich Stanley:*The Hellenistic World and the Coming of Rome*. Berkeley–Los Angeles–London, University of California Press, 1984, 25.

Rome would have changed the meaning of the terms *amicitia* and *societas*. Although the heavy defeat of Antiochus had removed any doubt about the superiority of the Roman army, the *amicitia* would still not have involved mutual obligations, while remaining as flexible a tool as ever. During this period, Gruen adds, the authority of Rome in the Mediterranean area started to be undisputed, and many of its friends were actually subservient dependents. Nevertheless, *amicitia* retained its original meaning according to Greek traditional practices. The Romans did not rely on friendship, says Gruen, to justify their wars: Roman propaganda took another form, such as the proclamation of Greek freedom. The hypothesis developed by Gruen is an original one and even if not accepted by all, it opens a new perspective on relationships between people in the Mediterranean area, with friendship viewed as a diplomatic tool pre-existing the arrival of Rome in this area. However, let us take it step by step. There is no doubt that the dichotomy *foedus aequum/foedus iniquum* cannot be applied to the Roman experience. Indeed, the category of *foedus iniquum* did not originate in Roman experience but is based on the contribution of Hugo Grotius who reconsidered the Roman sources on unequal treaties, introducing the notion of *foedus inaequale*, semantically similar to *foedus iniquum*, and contrasted with situations where *summum imperium* (*foedus aequum*) was fully preserved. This does not mean, however, that the Romans did not conclude treaties based on a range of unequal relationships, tending towards the gradual standardisation to *deditio*. If we want to fix dates, we can note that even before Roman expansion after the Second Punic War, special clauses were inserted that made provision for conditions of inferiority. This was done as from the signing of the Treaty with the Aetolians in 189 B.C. until the insertion of the *clausula maiestatis*, conceived as a general clause that formalised the inferiority of the peoples allied with Rome. But we can go even further and suggest that there was no specific clause, but that the condition of inequality between the parties was made evident by the onerous conditions imposed by Rome, for example about military cooperation. It seems to me that in the light of what has been said above, an analysis of the different types of foedera gives evidence of the growing hegemony of Rome when it came to the political and military standardisation of international relations. Although the dichotomy *foedera aequa/foedera iniqua* was not formalised, the Roman jurists distinguished between various foreign peoples; a factor which we must consider in the relations between Rome and the other peo-

ple in the Mediterranean area. This type of approach is also reflected in the use of the term *amicitia*. In a famous fragment Pomponius[19] describes the criteria for the application of *postliminium* in pace, highlighting how the absence of good relations does not make enemies of people: "*In pace quoque postliminium datum est: nam si cum gente aliqua neque amicitiam neque hospitium, neque foedus amicitiae causa factum habemus: hi hostes quidem non sunt ...*". Describing these relationships, the jurist distinguishes the ancient *hospitium*, on the one hand, and *amicitia* and *foedus amicitiae causa*, on the other. In the absence of a treaty, *amicitia* could be identified as a state of good relations, probably no different from the Gruen interpretation of the Greek φιλία. Conversely, the *foedus* of friendship might be seen as a Roman adaptation, from the perspective of their ritualization, of the good relations between communities and their effects. Livy informs us about this, in a source that assumes a strongly paradigmatic role[20]. Menippus, the leader of the delegation sent in 193 B.C. by Antiochus III, king of Syria, to the Romans *amicitiam petendam iungendamque societatem*, explains the three forms 47 Pomp. 37 ad Q. Mucium D 49,15,5,2. The root of the distinction is certainly political and military: the war, or rather the ending of the hostilities or failure to do so, is the crux of the classification. Here, the first two cases refer to *foedera* into which two warring people may enter at the end of hostilities. In the first case, when it is clear who the winner and the loser are, the winner imposes his own conditions on the loser: Livy, in fact, writes that the winner has the right to determine what is to be restored to the defeated people and what is to be confiscated from them. However, Livy qualifies this statement by adding: "*dicere leges*". There is provision for restitution not only where one community defeats another, but even where people have showed the same valour in war: in this case the people ask for restitution on the basis of an agreement, and, if there is any change of ownership as a result of the war, the original positions are

19 See D 49,15,5,2.

20 Liv. 34.57.8: „Esse autem tria genera foederum quibus inter se paciscerentur amicitias civitates regesque: unum, cum bello victis dicerentur leges; ubi enim omnia ei qui armis plus posset dedita essent, quae ex iis habere victos, quibus multari eos velit, ipsius ius atque arbitrium esse; alterum, cum pares bello aequo foedere in pacem atque amicitiam venirent; tunc enim repeti reddique per conventionem res et, si quarum turbata bello possessio sit, eas aut ex formula iuris antiqui aut ex partis utriusque commodo compo ni; tertium esse genus cum qui numquam hostes fuerint ad amicitiam sociali foedere inter se iungendam coeant; eos neque dicere nec accipere leges; id enim victoris et victi esse".

restored according to the ancient law, or according to a formula that benefits them both. This is the second *genus foederum*, in which enemies may conclude a pact of friendship with *reciperatio* following the war. The third kind of treaty is entered into, not after a war, but when the community wishes to enter into a treaty of friendship. The *foedus* is defined as sociale, distinguished from *leges* because there are neither winning nor losing parties, but the people wish to conclude a pact of friendship. If we compare the three types of treaties, the first two undoubtedly have a military-political background, unlike the third kind. The main distinction is between *foedera amicitiae causa* concluded after the war and those concluded in the absence of war. The first ones, then, are distinguished by agreements between winners and losers (*leges*) and agreements for the restitution of booty obtained in a war in which there was neither a loser nor a winner. War or its absence therefore affects the form of the treaty, which reflects a precise legal status that is friendship, the objective of the treaty, as evidenced by the Livian source. Now, if we look at the three types of treaties, the *sociale foedus*, which was concluded in the absence of war, recalls the *societas* required for the establishment of *amicitia*. Is this a reference to the treaties of *societas et amicitia*? It is not impossible. Livy certainly emphasises the technical structural aspect of international relationships that support the function of the archetype of the source. In the passage by Livy, there is no evidence to suggest a classification in the development of international relations, unbalanced in favour of Rome. On the contrary, Livy offers a syntax of international relations to better explain the fluidity of the real balances. Unlike Livy, Proculus places Roman hegemony in international relations at the centre of the juridical debate[21]. Proculus provides a concept of freedom of the *populus* that is expressed in two ways: either as the absence of another people's power or as the relationship established by a *foedus*. He distinguishes the *foederati* who have concluded a *foedus aequum* from the *foederati* who must respect the maiestas of other people, as clients must respect their patrons. The jurist pays more attention to this last kind of trea-

21 See D 49,15,7,1: „Liber autem populus est is, qui nullius alterius populi potestati est subiec tus, sive is foederatus est: item sive aequo foedere in amicitiam venit, sive foedere comprehensum est, ut is populus alterius populi maiestatem comiter conservaret. hoc enim adicitur, ut intellegatur alterum populum superiorem esse, non ut intellegatur alterum non esse liberum: et quemadmodum clientes nostros intellegimus liberos esse, etiamsi neque auctoritate neque dignitate neque viri boni nobis praesunt, sic eos, qui maiestatem nostram comiter conservare debent, liberos esse intellegendum est".

ty in order to emphasise that the people who had accepted the *clausula maiestatis* did not appear to be free. And Proculus adds, taking as an example the relationship between patron and client in which the client, while honouring the patron, retains his freedom, that the clause embodied only the obligation to respect the superiority of Rome, which Cicero had already affirmed was the meaning of the *clausula maiestatis* in the treaty between Rome and Cadiz. It seems that Proculus has explained the political criterion of equity or iniquity in international relations, in the perspective of the Roman expansionism. *Amicitia* is the content of the treaty, but its value depends on the political weight of the people with whom Rome established the relationship.This is the best proof of the change in political terms of the Greek concept of friendship – always assuming that Roman *amicitia* is born of the cast of Greek φιλία[22]. One of the Roman religious colleges, the Fetiales, and their powers and competencies could be rightly included in the concept of diplomatic law and diplomatic relations, because it was their task to conclude and submit to the Roman Senate and people's assemblies treaties with or without an international element and ceremonially declare, under a mandate from the Roman Senate, the so-called *bellum iustum* against the enemy of the City[23]. The expansion of diplomatic envoys of Rome and to the centre of the increasingly ambitious empire was evident in the entire range with an increase in the number of Roman provinces. From Roman epigraphic and other sources, we have records of the correspondence of hundreds of "envoys", including Roman historians, such as Polybios, Josephus Flavius, Philon of Alexandria, and Plutarch[24]. Not negligible parts of international negotiations, which were to result in the conclusion of peace or the facilitation of trade relations, included mediation in active war conflicts, settlement of basic disputable issues between two entities – within or beyond the same nation – with the participation of a third, impartial party, respected by the parties to a dispute, a conflict. Rome increasingly participated in these international mediations, whether as an active mediator in or an active party to a conflict. The most important of them are listed below: immediately before the period investigated, the 3rd and 2nd centuries B.C.:

22 Cf. CURSI, cit.op. 188 *et seq*.

23 See Ogilvie, Robert Maxwell*: A Commentary on Livy*. Oxford, Clarendon Press, 1965, 110-111.

24 See also Bederman, David Jeremy: *International Law in Antiquity*, Cambridge, Cambridge University Press, 2001. 323.

a) The siege of the Sicilian city of Syracuse by Rome (212 B.C.), when the representatives of individual Sicilian city states, as mediators, attempted to arrange and convene peace negotiations between the besieged Syracuse and the Roman military leader Marcus Claudius Marcellus – but the subsequent domestic political developments in the city became later the main reason why the peace negotiations failed;
b) The First Macedonian War (209–207 B.C.), when certain Greek city states attempted to be mediators in the escalating war conflict between Macedonia (Philip V, King of Macedonia) and Rome, supported by the Aetolian League; however, the Roman military leader Publius Sulpicius Galba finally claimed that he (alone) did not have the power to make peace, and in the meantime he sent a secret diplomatic message to the Roman Senate stating that it would be disadvantageous for Rome to make peace at the time of *status quo* and that it would be better to continue the war[25];
c) The conclusion of peace in the city of Phoenice in Epirus (205 B.C.); the Greek city of Epirus met Rome's demand to agree a final peace treaty ending the First Macedonian War with the participation of numerous allies on both sides[26];
d) The meeting between the Roman consul Titus Quinctius Flaminius and the Macedonian king Philip V in the city of Aous[27] during the Second Macedonian War, initiated by the Epirotians;
e) The successful intervention of Athens and Achaia in mediating the meeting of the parties to the dispute in the emerging conflict between the Romans and the Boeotian League – their envoys (196 B.C.); the consul Flaminius threatened the Boeotians that Rome would declare *iustum piumque bellum* against them; the decisive argument was the statement of the Achaeans that if the Boeotians did not meet the Roman requirements, the Achaeans – an impartial observer until then – would side with the Romans in the dispute[28];

25 See Gruen, Erich Stanley: *Studies in Greek Culture and Roman Policy* (Cincinnati Classical Studies, new series 7.). Leiden, Brill, 1990.
26 Today, we could say in a historical perspective that it was a kind of 'ancient Versailles peace treaty'.
27 A city located in present-day Albania.
28 Cf. Eckstein, Arthur Maryland.: *Conceptualizing Roman Imperial Expansion under the Republic: An Introduction*. In: Rosenstein, Nathan–Morstein-Marx, Richard (eds.): A Companion to the Roman Republic. Oxford, Blackwell Publishing Ltd., 2006, 567-589.

f) The Athenian mediating intervention (192 B.C.) at the request of the consul Flaminius in the dispute between Rome and the Aetolians, strongly reminding the Aetolians of their *societas* with the Romans and the need to resolve the dispute by peaceful means, and not by a war;
g) Heraclea Pontica encouraged Rome and the Seleucid king Antiochus III to agree on the spheres of influence in Asia, which resulted in a friendly declaration by the Romans and the signing of a treaty of friendship and cooperation between Rome and the Kingdom of Pontus;
h) In the dispute between the Romans and the Aetolians (190–189 B.C.), Athens and Rhodes promoted and spoke for the Aetolians before the Roman military leader and the Roman Senate; their effort was successfully completed by a declaration that Rome "does not feel hatred" towards the Aetolians and by the signing of a peace treaty with the Aetolians;
i) The successful intervention of the city of Troy in favour of the province of Lycia before the Roman Decemviri, again in order to achieve the declaration that Rome "does not feel hatred" towards Lycia due to its previous "desertion" to join the side of the Seleucid king Antiochus III[29], and the resulting mitigation of its punishment by Rome;

In Roman history, the terms "diplomacy" and "diplomatic" often seem to have been confused; they did not necessarily mean the same thing, but brought very effective results. Of course, everyone immediately imagines the representatives of the states concerned communicating to reconcile their conflicting interests, but someone else imagines diplomacy as a way of cultivated dialogue to avoid an unnecessary outburst of uncontrolled anger and violence – and in this understanding, diplomacy may be useful in any social relationship. The fact that these two terms may not always be identical is best seen in the fact that although a diplomat acts as the official representative and in the service of a state, his own conduct may be highly undiplomatic – whether or not intentionally and knowingly. A typical example of this distinction is the conduct of the Roman ambassador Gaius Popilius Laenas[30] in 168 B.C., when he was sent by the Roman Senate to end peacefully the war conflict – undesirable for Rome – between the Seleucid

29 The war ended definitively with the conclusion of a peace treaty with the Romans in the city of Apamea, under which the Romans gained the entire territory of *Asia Minor*.
30 A Roman politician, praetor, consul, censor, as stated elsewhere, a consular "colleague" of L. Postumius Albinus.

king Antiochus IV and the Egyptian king Ptolemy; the demand that the former should withdraw from Egypt with his army immediately could be technically described as an act of official "communication" between the representatives of states, powers, and from this point of view as a form of diplomacy, but no one could describe the conduct of the Roman envoy against his counterpart as diplomatic[31]. In the 2nd century B.C., a lot of Roman ambassadors, *legati*, travelled to the East, to the territories under the patronage of Rome, and reciprocally, ambassadors travelled from these territories, as well as from 'allied' Greek city states, *poleis*, to Rome to ensure undisturbed diplomatic communication of their home states and to present possible requests before the Roman Senate. It may seem strange to someone that diplomatic activities in the Apennine Peninsula between Rome and Italian cities were also subject to these rules. The Italian *socii*, who regularly, as allies, supplied the Roman legions with their heavy and light infantry, could, like all other nations defeated by Rome (*peregrini dediticii*), carry out international communication with the empire only through their envoys. Mommsen[32] considers that these Latin communities did not always have their "permanent diplomatic representations", but most of the agenda was communicated through official diplomatic letters. A number of official sources[33] inform us of such an official diplomatic letter of 173 B.C. and of its unusual consequences – perhaps we could use the phrase "a diplomatic precedent"; the letter was sent by the consul L. Postumius Albinus[34] to the Campanian city of Praeneste. Following a decision of the Senate, Albinus was to personally oversee the division of newly-gained land into *ager publicum et ager privatum* in Praeneste, since the Senate had evidence that the locals illegally expanded their land to the detriment of state-owned land. In addition, the consul had a grudge against the denizens of Praeneste because he believed that he, as the official representative of Rome, would not be treated both by the public officials and by private individuals at the required, protocol level, upon his arrival in Praeneste (the reason was quite

31 See also Adcock, Frank–Mosley, David: *Diplomacy in Ancient Greece, Aspects of Greek and Roman Life*. London, Thames and Hudson, 1975, 68 *et seq*.

32 Cf. Mommsen, Theodor: *The History of Rome (Volume 4, translated by Dickson, W. P.)*. Cambridge, Cambridge University Press, 2010, 214 *et seq*.

33 See also Barton, Carlin Arthur: *The Price of Peace in Ancient Rome*. In: Raaflaub, Kurt August (ed.): War and Peace in the Ancient World. Oxford, Wiley-Blackwell, 2007, 398. Among Roman historians, e.g., Livy op.cit. 42,1,6-12.

34 He held the consular office together with his colleague M. Popilius Laenas in 173 B.C.

justified); for this reason, before leaving Rome, he sent a letter to the magistrates of Praeneste, a city which numbered among *socii nominis Latini*, containing detailed instructions on his arrival in the city and the provision of material and technical support for his official visit. As mentioned above, the reason was partially justified because shortly before he had visited the city of Praeneste in a private capacity in order to make a sacrifice in the temple of Fortuna and had been treated shabbily both by the public officials and by private individuals of the city. Livy remarks that this was the first incident of this type. To ensure that Roman envoys were not a burden on another community or people, they were provided with sufficient materials and equipment necessary to carry out their diplomatic missions. In terms of Roman customs, it was a clear *faux pas* of the Roman consul – even if the consul had such a right after previous 'bad' experience with the denizens of Praeneste, such an indecent, hostile act towards Praeneste had not been customary for diplomats before. Until then, the practice of Roman officials was to burden the treasury as little as possible with their foreign expenses; all their relations were based on the principle of reciprocity – they stayed with their guest-fiends in other cities just as their guest-friends stayed with them in Rome. However, as Livy continues, the fearful silence and full acceptance of the consul's demands by the Praenestines established, as by an approved precedent, the right of the Roman officials to make demands of this sort on their diplomatic missions, which grew more burdensome day by day[35]. In 173 B.C., if we believe Livy, Roman political culture contained, as a minimum (if no legal regulations were established in the sphere of powers assigned to the Senate), diplomatic customs governing the rights and duties of Roman officials going abroad for their diplomatic posts. A few years later, all mutual rights and duties of Roman officials operating abroad, in the provinces, but especially the excesses in their fulfilment – undoubtedly due to the growing number of cases, were regulated by special legislation initiated and adopted at the initiative of the plebeian tribune Lucius Calpurnius Piso[36] (Frugi), on the basis of the *lex Calpurnia de*

35 On the other hand, an example of the opposite behaviour was the case of Marcus Porcius Cato the Censor, while holding the post of governor in Hispania Citerior (194 B.C.), in order to reduce the state's expenditure associated with his office, he sold all his slaves in Hispania, to save the state's expenditure – travel expenses.

36 By the way, Livy's predecessor, "colleague" in the field of history and historiography, although according to most Roman historians, Piso did not have a credible reputation among them.

repetundis of 149 B.C., which established the first standing jury court (*quaestio perpetua*) in order to deal with a new crime, *crimen repetundis* – generally the crime of extortion by Roman officials in the provinces. This legislation became stricter over time, perhaps due to its (intentional) inefficiency and actual unenforceability, and a total of ten laws – the so-called *leges repetundarum* – were adopted, while the most comprehensive and precise law regulating this crime was the law passed by Gaius Julius Caesar (59 B.C.), which was still in force in the Code of Justinian. In this context, it should be noted that several legal Romanists and historians attached great importance in particular to the exalted, superior behaviour of the Romans towards both the Latins and the ethnically close communities and cities in Italy[37], which resulted in the deterioration of the political situation and climate, culminating in the inevitable outbreak of the so-called war of the allies with Rome's nearest neighbours. The total enumeration, summary of diplomatic correspondence, exchanges of envoys between Rome and its Italian allies in the 2nd century B.C. was not very extensive. If we use credible sources[38] as starting points, at least as regards the presence of foreign envoys "accredited" in the Roman Senate, which is also mentioned by the historian Livy in several occasions, there were three cases of Latin colonies requesting the Senate for reinforcements in the shape of new settlers; two cases of ambassadors of the *sociini Latini nominis* demanding the repatriation of their citizens who had settled in Rome or in the Roman territory; a call upon the Senate to decide a boundary dispute between a Roman colony and a foreign community, and a report that the Tiburtines had sent their envoys to apologise to the Senate for something or to clear themselves from some suspicion and that the Senate had 'mercifully' accepted such an apology. However, we must also include in the above enumeration the request of the Campanians, who asked the Senate for *ius conubii* in 188 B.C. and got an affirmative Roman answer[39]. However, in the past, the Romans

37 One of these consequences was the adoption of the *lex Minicia* (90 B.C., just before the outbreak of the war in question, which disqualified Latinos in acquiring Roman citizenship – in the absence of *ius conubii*, children were granted the citizenship of the inferior parent. That law was repealed much later – on the basis of SC Hadriani.

38 See also BADIÁN, Ernst: *Hegemony and Independence: Prolegomena to a Study of the Relations of Rome and the Hellenistic States in the Second Century BC*, in: HARMATTA, János (ed.), Budapest, 1983, 399–411.

39 See also JEHNE, Martin: *Diplomacy in Italy in the Second Century BC*, in: *Diplomats and Diplomacy in the Roman World,* (ed.) Eilers, Claude, Boston 2009, 171 *et seq*.

– as the addressed, requested arbitrators – did not always treat the parties, that had asked them to decide a dispute, in a fair, just manner. Unfortunately, very infamous was their decision on the boundary between the Italian cities of Aricia and Ardea[40], where they flagrantly violated the fundamental principle of *lex duodecim tabularum – "Nemo debet esse iudex in propria"* (no-one should be a judge in his own case), adopted shortly before. Despite the dissenting opinion of the Senate, the people's assembly decided, paradoxically, that the territory in question should be considered the public property of the Roman people. Livy[41] states that the Senate argued that, by that decision, so much would by no means be acquired by keeping the land, as would be lost by alienating the affections of their allies by injustice; for that the losses of character and of reputation were greater than could be estimated. For "what judge in a private cause ever acted in this way, so as to adjudge to himself the property in dispute"? After a certain time, the envoys of the city of Ardea revisited the Roman Senate with a complaint of wrongdoing, saying that they would maintain their treaty of friendship with Rome, provided that the illegally seized territory was returned to them. The Senate's response was again legally and politically correct – a judicial decision of the people's assembly cannot be annulled by a decree of the Senate, as it would be an act of no equivalent or legal justification; according to them, the tribunes of the people, who can almost always be ruled by the crowd, instead of being ruled by themselves ... but if the envoys wait for the right opportunity and entrust the decision to alleviate the injustice to the Senate – the dispute would be settled to their satisfaction, which actually happened... From the end of the Second Punic War until the outbreak of the war with the allies, i.e., especially the Latins, Rome had "wrinkles on its forehead" because of another problem – relatively uncontrollable migration, movement of the Latins to the centre of the empire to look for better economic opportunities. After several diplomatic negotiations with the envoys of the Latin cities and colonies concerned[42] – paradoxically initiated not by Rome but by the Latin allies, in 187 B.C. the Senate authorised the praetor Q. T. Culleo to compare the censuses made in Rome and in Latin cities in or after the censorship of G. Claudius and M. Livius and to forcibly return the Latins who (or their fathers) were also registered outside the city

40 From 446 B.C.

41 Livy op.cit. 3, 72.

42 Cf. also the interesting paper by Ridley, Ronald Timothy: The Extraordinary Commands of the Late Republic: A Matter of Definition. *Historia*, 1981, 30(3), 282–291.

of Rome to their hometowns. The number was relatively high – 12,000 Latins had to leave. In principle, we can state that during that period, complete freedom to change the *domicile* (the so-called *ius migrandi*) existed only in the *coloniae latinae*, on the basis of the rights granted by Rome individually[43]. This involved their reciprocal duties towards Rome – in particular, to provide sufficient auxiliary military corps. The foreign policy of the Latin allies was limited by treaties concluded with Rome and by its power influence. The possibility of enforcing these requirements by military intervention could be expressed *expressis verbis* by a clause in a respective treaty or, in its absence, *via facti*. However, diplomacy was always the most effective tool how to achieve its requirements, while pursuing its geopolitical interests in the first place. From this point of view, it is not surprising to find out that Rome enjoyed its role as an arbitrator in the usual scenario of conflicting territorial claims by its Latin allies. For example, in 168 B.C., the Italian cities of Pisa and Luna sent their ambassadors to Rome to this end. Cicero[44] reports another "curious" case where the consul Q. Fabius Labeo was appointed by the Senate as an arbitrator to settle the boundary dispute between Nola and Naples in 183 B.C. The consul "cleverly" preferred interviewing both parties separately, especially stressing to each of them that they should be ready to make compromises, rather than immediately accepting a confrontational course. After accepting the reduced demands of both parties to the dispute, he allocated the so-called buffer zone – land unclaimed by any of the parties, to Rome. Cicero described the consul's procedure as cunning, perfidious and bending the law.[45] Similar cases documented from that period, when a Roman magistrate was appointed by a decree of the Senate to decide a boundary dispute between two Italian cities, are a dispute between Ateste and Patavium[46], decided by a Roman proconsul, between Ateste and Vicetia[47], also decided by a proconsul, and between Genua and Vituria Langenses[48], decided by two commissioners

43 The opinion is also expressed by the American civil law historian Lintott, Andrew, William: *Imperium Romanum: Politics and Administration*. London–New York, Routledge, 1993.

44 Cicero, Marcus, Tullius: *De* officiis *(Slovak translation).* Bratislava, Tatran Publisher, 1980. 1. 33.

45 *In fraudem legis*.

46 141 B.C.

47 135 B.C.

48 117 B.C.

appointed by the Senate. In 173 B.C., the Roman censor (*sic!*) Q. Fulvius Flaccus went beyond all bounds of decency and respect for the allies: since during the previous war in Hispania, where he served as a praetor, he promised the gods to build a temple for the goddess Fortuna in Rome for the victory of Roman weapons, shamelessly and sacrilegiously[49] ordered the removal of the marble roof tiles of the temple of Juno[50] Lacinia in Bruttium and taking them to Rome to complete 'his' temple[51]. The authority of Rome's top Republican official and the fear of possible sanctions intimidated the citizens of both Praeneste and Bruttium. After a certain time, however, an investigation into the case before the Roman Senate began in Rome at the instigation of consuls. On the one hand, the outraged Roman senators sharply criticised the censors' reckless conduct, pointing out that neither the king Pyrrhus of Epirus nor the Carthaginian military leader Hannibal had committed such an act against the Bruttian temple in the past, but on the other hand, apart from the obvious, logical *restitutio in integrum* (which was not successfully completed in the end because no one was found in Bruttium to repair the temple roof!), the senators did not punish the censor[52] in any way, nor was there any official apology of the Roman state to Bruttium. Nevertheless, even during this period, it is not possible to generalise any hostile, negative attitude of Rome and the Senate to requests from their Italian allies, as evidenced by the gradual adoption of relevant legislation through *leges repetundarum*, punishing the excesses of individual provincial Roman magistrates. However, it is questionable to what extent the legislation in question removed the reluctance and doubts of the Italian allies in submitting their requests to the Roman Senate. In practical life, however, it could happen that an obstacle to the fulfilment of their requests was not the Roman Senate itself, but a successful lobby to ensure that the matter could be submitted to the "Fathers".

49 *Sacrilegium* was one of *crimina publica*, which was closely related to the theft of holly, sacred things. Its comprehensive legal regulation was provided in the *lex Iulia peculatus et de sacrilegiis*, which was adopted at the initiative of Augustus and aggravated the sanctions of previous laws punishing the perpetrators of this crime.

50 Roman equivalent of the Greek goddess Hera.

51 In Greek, referred to as Pandosia, today located in the region of Calabria, in the south of Italy.

52 There is no written record in Roman sources confirming this, and no action was brought against the censor after the end of his term of office.

A jog és a vallás normarendjei Trianon idején

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Összefoglalás

Tanulmányunkban bemutatjuk, hogy a Trianoni békeszerződés idején nem csak a nemzetközi jog, vagy az egyes – esetenként kialakulófélben lévő – nemzeti jogok, hanem az egyházjog és az egyházi társadalmi tanítás szabályai is jelentős szerepet játszottak a térség nehéz politikai és szociális helyzetének megoldásában.

Kulcsszavak

Trianoni békeszerződés, I. Világháború, Codex Iuris Canonici, konkordátum, vatikáni diplomácia

The norms of law and religion at the time of Trianon

Abstract

In our study we show that during the period of Trianon Peace Treaty, not only international law or national laws – sometimes in the process of being established – but also canon law and the rules of church social teaching played a significant role in resolving the difficult political and social situation in the Central European region.

Keywords

Trianon Peace Treaty, World War I, Codex Iuris Canonici, concordat, Vatican diplomacy

A frontkatona a felszabadító és igazságos megoldást nem a győzelemben látja, hanem a békében. Győzelem, hogy valamely nép a másikat letiporja. Mire a legyőzött erőt gyűjt és újra támad. Ez történt 1918-ban és nagyon valószínűnek látszik, hogy ezt a háborút 1919-ben Versailles-ben írták alá.

Bármelyik nép győz, csak újabb háború következhetik. A béke szelleme a kiegyenlítődés, sőt ennél sokkal több: az, hogy az emberek egymást komolyan veszik. A győzelem jelentősége katonai és politikai. A béke jelentősége morális és szellemi. A győzelem gyökere az anyagi világban van. A béke gyökere a vallásban van. S ezzel a frontkatona legmélyebb lénye bontakozik ki. Közmondás, hogy a háborúban mindenki megtanul imádkozni. A tapasztalat azt mutatja, hogy ez alól nincs kivétel. A katona közvetlen érintkezésbe jut az emberfölöttivel. Mialatt az anyaországbeli kitart az anyag mellett, a katona elkezdi sejteni a metafizikai világ valóságát. S ezért kívánja nem a győzelmet, amely csak rövid időre szól, ha nagyszerű is, hanem a békét, amelyben a rezesbanda sokkal kevesebb, de örök.

(Hamvas Béla: A háború nagysága és az ember kicsinysége)

1. Bevezetés

Magyar olvasatban a trianoni békediktátum valamiféle magyar megsebzettséget takar. A helyzet azonban ennél jóval bonyolultabb.[1]

A katolicizmus értékei mentén szerveződő, azonban a vallások békés együttélését aktívan támogató, Osztrák–Magyar Monarchia több európai, jellemzően liberális állam számára is problémát jelentett. Az egyre élénkebben terjeszkedő liberalizmus (francia forradalom eszméi) és kommunizmus (Marx eszméi) valóban kísértetként járták be Európát, szem előtt továbbra is a legfőbb ellenséget, a jól azonosítható katolikus egyházat tartva. XIII. Leó pápa ugyan megkésve, de reagálni próbált ezekre a kihívásokra, az eredmény azonban megkérdőjelezhető maradt (akkor még). Szintén szerény eredményt tudott elérni az I. Vatikáni Zsinat is – legalábbis nemzetközi politikai szempontból.

A katolikus egyház középkorban kialakított társadalmi szerkezetei tarthatatlannak tűntek. Ugyanígy tarthatatlanná vált a sokszínű 'katolikus biro-

1 „This work was supported by the Slovak Research and Development Agency under the Contract no. APVV-19-0419."

dalom' a 'Duna-Monarchia' eszméje is. Az I. világháborút lezáró szerződések látszólag olyan halálos sebet mértek mindkét szerveződésre, amelyeket mind a mai napig nem sikerült kiheverni. Az I. világháborút gyakorlatilag nyitva hagyó szerződések nem csak országok sorsát hagyták bizonytalanságban, hanem a katolicizmus ellen is nyílt támadást jelentettek.

Bíztató azonban, hogy a térség közös kultúrájának, a keresztények közti vallási elköteleződésből is táplálkozó együttműködési készségnek köszönhetően, napjainkban nyílik újra remény arra, hogy a térségünkben ismét jelentős gazdasági fellendülést érjünk el, és újra világossá váljon, a kereszténység nélkül nem lehetünk képesek arra, hogy konstruktív, a saját érdekeinket is megvédeni tudó párbeszédet folytassunk más kultúrákkal.

Tanulmányunkban rámutatunk, hogy a monarchia örökségét nem csak a szétrobbant birodalom tette egyre jobban tönkre, hanem a katolicizmus gyengülése is, Csehszlovákiában a huszitizmus, Romániában és a Szerbiában pedig az ortodoxia előretörése miatt. Trianon így egy csapással szétszaggatta a területi és a vallási egységet is a korábban gazdaságilag olyannyira erős és a sokszínű kooperációra képes térségben.

Minderről – a román konkordátum vonatkozásában – így ír Csernoch bíboros 1921. április 3-án Gasparri államtitkár bíborosnak a Vatikánba:

Az egyházmegyék új beosztásában a lelki kötelék széthullását is látjuk, amely Magyarország katholikusait ezer éven át összetartotta, a Magyarországot Közép-Európa keletén a latin katholicizmus utolsó erősségévé tette. A régi hierarchikus kötelék fenntartását nem is annyira nemzeti, mint inkább katholikus érdekből szükségesnek tartottuk és tartjuk. Nemzeti szempontból a magyar katholikus egyház Erdélyben nem hódított s nem is foglalkozatott ily szándékkal. Hívei kizárólag magyarok és részben németek. De katholikus expanzív erejével megteremtette a román uniót, amely a katholikus dinasztia, a magyar főpapok – különösen Kollonits prímás – a magyar egyházi vagyon érdeme. Most egy példátlanul igazságtalan s hosszú időre alig fenntartható békekötés következményeként a Szentszék végleg elzárja a magyar egyház lelki kommunikációját a Románia államterületéhez csatolt részeken lakó katholikusokkal. Ezeket egy balkáni bizantinikus, skizmatikus, nemzeti egyházzal bíró államba szorítja, ahol ezer veszély fenyegeti őket. Jól tudjuk, hogy a Szentszék nem saját jószántából teszi ezt, hanem a román állam sürgetésére. Mégis nagy vigasztalódásunkra szolgálna, ha a Szentszék részéről nem hangsúlyoztatnák az egyházi beosztásnak az államhatárokhoz és a nemzeti igényekhez való alkalmazása szüksége. Éppen mostani idők-

ben, mikor a túlzó nacionalizmus harcba állítja a népeket, s amikor a nemzetiségi igazság címén olyan békekötést létesítettek, amely az egyes nemzeteket sokkal jobban elnyomja, mint azelőtt történt, a katholikus egyháznak internacionalizmusát előtérbe kellene állítani a Krisztus földi országában az állami és nemzeti érdekeket minél jobban kiküszöbölni.[2]

Ezt a tendenciát, ha azonnal nem is, de lépésről lépésre meg tudja fordítani az a folyamat, amelyet katolikus oldalról az egyházi törvénykönyv megalkotása, továbbá a II. Vatikáni Zsinat jelentett, vagy amelyet állami oldalról a keresztény szellemiségben létrehozott Európai Unió, vagy a közép-európai közös kultúra alapoz meg. Hatalmas előrelépés az is, hogy a keresztény vallások is egyre nyitottabbak a közös útkeresésre. Éppen ezért történelmi pillanat, amelyben vagyunk, hiszen a Trianon okozta sebek akár be is gyógyulhatnak, felismerve, hogy a sebzettségünk és a sorsunk közös.

Ennek a küzdelemnek a szinte halálos sebet ejtő első ütközetét, a húszas éveket mutatja be dolgozatunk.

Munkánk során abból a korábban megállapított tényből indulunk ki, hogy különösen is összetettebb helyzetekben a jog, a vallás és az erkölcs normarendjei bonyolult hálózat formájában alakítják a történelmi eseményeket. Mindegyik normarend a maga szabályai szerint 'szűri-osztályozza', azaz szabályozza az eseményeket, döntéseket. Természetesen ezek a normarendek kapcsolatban is állnak egyúttal, ami azt is jelenti, hogy az egyik normarend működését nem lehet a másik normarend tevékenysége nélkül megítélni.

Különösen is izgalmas a normák ezen kapcsolati rendszere a Trianon utáni Közép-Európában.[3] A vallási szabályok biztosítanak egy közös alapot, amely a társadalom működőképességnek az egyik alapfeltétele. A 'modus vivendi'-t jelentősen meghatározza ez az összetartó erő. Más kérdés, hogy számos kulturális, nyelvi, erkölcsi különbség adódik a trianoni szerződéssel szétszabdalt területeken, és még több a részletekbe menő jogi probléma.

A térség sorsát azonban nem a jogi kérdések oldják meg, akkor sem, ha a jogot a legtágabb érelemben vesszük, ahogy azt a kánonjogászok teszik: A törvény Szent Tamás szerint „ordinatio rationis ad bonum commune ab eo, qui curam communitatis habet promulgata".[4]

Sőt még csak nem is a politikai próbálkozások. Sokkal inkább az a látens közös értéktudat visz előre, amelynek egyik nagyon fontos alapja a vallá-

2 Hivatkozza: Bertalan Péter, Trianon szorításában, kiadatlan kézirat.

3 Komáromi László: The Question of Territorial Plebiscites after the First World War with Special Regard to Hungary. *Kisebbségvédelem 2020*, 2021, 169-187.

4 Sum. Theol. I-II. q. 90. art. 4.

sosság. Különösen is jól látszott a vallási meggyőződés szerepe például a vatikáni cseh, illetve szlovák politikával kapcsolatban.

Más kérdés, az eleai Zenón utolsó szavaival élve, amelyek a megkínoztatása végén mondott: „Az életben az erény önmagában nem elég, kell hozzá a sors kegye a szerencse".[5]

Tanulmányukban bemutatjuk, hogy a katolikus jogalkotási folyamat hogyan kapcsolódik össze a térség két világháború közti politikájának alakulásával. Rámutatunk arra is, hogy a – különösen is egyházi kérdésekben – a térségi politika alapját nem az egyes nemzetek érdekei, hanem a katolicizmus szempontjai jelentették. Így volt lehetséges, hogy a kifejezetten jó egyházi magyar – vatikáni személyes kapcsolatok mellett is az 1920-as évek közepére nagyobb jelentősége lett a szlovák katolikusok szempontjainak, mint a magyar nemzeti érdekeknek.

Trianon körzővel és vonalzóval szabdalta szét a térség kényes, és a háborútól amúgy is sebzett, kapcsolati rendszereit. Az államhatárok véglegesítését követően élhetővé kellett tenni a mindennapokat. Ebben, illetve egyáltalán a folytonosság megőrzésében az egyházaknak hatalmas szerepe volt. Éppen emiatt évekig húzódott a kérdés egyházjogi rendezése.

Az egyházi élet szervezése ugyan konfliktusok forrása volt, de az egyházigazgatás elrendezését követően az azonos vallási kultúra meg is tartotta valamelyest élhető közösségként a különböző nemzetiségű polgárokat. Ebben az időben kezdett világossá válni, hogy a vallási identitás túlmutathat a nemzeti identitáson. Kár, hogy ezt a közös vallási identitásból fakadó vallási értéket a II. világháború és az azt megelőző majd követő kommunizmus megpróbálta 'végképp eltörölni'.

Tovább színesíti a kérdést, hogy Közép-Európában gyakran egy-egy vallási csoport egy-egy sajátos nemzetiséghez kötődött.

Katolikus szempontból mindezt még különlegesebbé tette, hogy a nagy háború idején készült az egyházi törvénykönyv, a Codex Iuris Canonici.

2. A Codex Iuris Canonici

Az egyházjog egy nagyon sajátos jogi terület. Megközelítésünk szerint itt érhető tetten egyik legtisztább formájában a jog, erkölcs, vallás normarendjei-

5 De Cresenczo, Luciano: *A görög filozófia rendhagyó története*. Budapest, Tercium Kiadó, 1995, 119.

nek a közvetlen kapcsolata.[6] Különösen is érdekes a katolikus egyház egyházjoga, hiszen – kicsit megkésve, de követve a nagy kodifikálási törekvéseket – a katolikus egyház is elkészítette a maga törvénykönyvét. Talán nem is véletlen, hogy elsősorban a francia bíborosok követelték az I. Vatikáni Zsinat (1870) során a közel két évezred alatt hatalmasra bővülő joganyag rendszerezését. Fontos szempont volt ezen a zsinaton a pápai tévedhetetlenség kérdése is, amelyik közvetve kapcsolódott a pápa egyházkormányzati primátusához mint az egyetemes jogalkotás forrásához is. Ebben az értelemben a pápa az egész katolikus egyház püspöke (nem csak Rómáé), így jogosult a teljes törvényhozói, bíró és kormányzati hatalom gyakorlására az egész egyházban. Érdekes figyelembe idézni, hogy a pápai tévedhetetlenség kérdésében a franciák által támogatott állásponttal szemben foglaltak állást a Monarchia bíborosai és – érdekességképpen jegyezzük meg – a neves német filozófus, pap, Franz Brentano, aki emiatt a kérdés miatt lépett ki az egyházból.

Ehhez a feszültségektől nem mentes időszakhoz vezethetjük vissza tehát az első egyházi törvénykönyv megjelenését is.

Maga a kodifikációs folyamat X. Pius pápa alatt, 1904. március 19-én kiadott Arduum sane munus kezdetű motu propriójával kezdődött. A szövegezést három csoport végezte, akik egymás munkáját is ellenőrizték. Érdemes röviden áttekinteni a kodifikációs munkát, hiszen az nem csak széleskörűen vont be szakembereket, hanem valódi szakmai vitákat generált az egyház teljes szervezetén belül. Az első munkacsoport a konzultorok voltak, olyan teológusok és kánonjogászok, akik a szövegváltozatokat kidolgozták, illetve egymástól függetlenül véleményezték azokat. A collaboratores-ek az egyházi hatalommal bíró megyéspüspökök és más, az egyetemes zsinaton részvételi jogosultsággal bíró személyek voltak. Ezek a személyek – és később az egyetemi oktatók is – jogosultságot kaptak arra, hogy megküldjék a véleményüket és kérésüket a tervezettel kapcsolatban. A legjelentősebb testület azonban a 16 tagú kodifikátorok testülete volt. A pápa felügyelete

6 „Az Egyház jogát elsősorban a természetjog és a tételes isteni jog határozza meg. Különösen pedig azok az intézkedések, amelyeket Krisztus, mint az Egyház alapítója és feje az egyházi alkotmány és az egyházi közösségi élet tekintetében adott. Minden isteni jog egyházi jog akkor is, ha nincsen is jogi formába öltöztetve; – és pedig a legmagasabb rendű jog, amely az egyházi írásos jogalkotást (pápa, püspök, zsinatok, testületek) és a szokásjogot is messze felülmúlja. Szorosan véve az egyházi jog (ius obiectivum) a törvényes egyházi hatóságtól alkotott vagy szankcionált olyan cselekvési (magatartási) szabályok összessége, amelyek az egyházi közösség társadalmi rendjének és céljának biztosítása végett az egyháztagok jogait és kötelességeit pontosan meghatározzák.” Bánk József: *Kánoni jog.* Budapest, Szent István Társulat, 1960, 61.

alatt ők összesítették az előző két munkacsoport által elkészített anyagokat. A testület elnöke Pietro Gasparri bíboros volt, aki meghatározó szerepet töltött be a Vatikán Közép-európai diplomáciájában Trianon után. Gasparri a klasszikus vatikáni karrierutat járta be, először a Rendkívüli Egyházi Ügyek Kongregációjának titkára volt, majd 1907-től bíboros, 1914-től pedig a nemzetközi politikáért is felelős államtitkár.

A testületek tíz éves működésük alatt minden kánont többször is (esetenként akár tizenkétszer) megvitattak, amíg a végleges szövegváltozat elkészült.[7]

Az így elkészült szövegváltozatot ismét megküldték a bíborosoknak, püspököknek, mígnem 1917 májusában XV. Benedek ki nem hirdette a 1918. május 19-én, Pünkösdkor hatályba lépő törvénykönyvet.

Ez a kódex jelenti egyébként az alapját a ma is hatályos, 1983-as Egyházi Törvénykönyvnek is. Abból a szempontból is nagyjelentőségű volt a kódex, hogy a kánonjogot (1365 k. 2. §) a kötelező teológiai tárgyak közé sorolta a felsőoktatásban, szemináriumokban.

A kódex öt könyvből áll, a könyvek részekből, a részek szekciókból, a szekciók titulusokból, a titulusok pedig kánonokból állnak. A kódex így követi (kissé ugyan kényszeredetten) a Lancelottustól eredő felosztást: Personas nos prima docet, resque secunda Tertia dat iudices, crimina quarta premit.[8]

Az I. könyv, Normae generales az általános szabályokat (1–86 kánon) rögzíti. Itt találhatjuk a jogelméleti alapvetést, az alapvető jogelvek értelmezését, valamit az egyházi törvényekről, a szokásjogról szóló részeket, az időbeli hatály kérdéseit, a leiratok, privilégiumok és felmentések szabályozását. A II. könyv a De personis címmel a személyeket és azok szerepét mutatja be az egyházban, kezdve a klerikusokon, általános és különös szempontok szerint, egyúttal bemutatva az egyházi szervezetrendszert is. Ezt követik a szerzetesek, majd a laikusok (világiak) szabályai. (87–725 k.)

A III. könyv, a De rebus, a dologi joggal foglalkozik (726–1551 k.). Itt nem egyszerűen az általunk a Ptk.-ban megszokott dologi jogra kell elsődlegesen gondolni, hanem sokkal inkább a 'lelki dolgokra', mint például a szentségekre, ezeken belül is különös részletességgel a házasságra. Ide tartoznak továbbá a szent helyek és idők is, vagy akár az egyházi tanítóhivatal küldetése is, beleértve például a prédikációt vagy a katekizmust, illetve az egyházi oktatási intézményeket. Csak az 1409 kánontól kerülnek szabályozásra az egyházi anyagi javak.

7 Bánk i. m. 223-226.

8 Bánk i. m. 229.

Fontos megjegyezni, hogy ezeknek a javaknak a kezelése inkább hasonlít a haszonélvezet gyakorlására, mint a klasszikus értelemben vett tulajdonjogra. Külön érdekesség, hogy az esetlegesen feleslegessé váló javakat (nyereség) a szegények számára kell fordítani (1472–1474 kk.). Az 1518. kánon szerint minden javak legfőbb vagyonkezelője a római pápa. A De rebus könyvben kerülnek nagyon röviden szabályozásra a szerződések is, amelyeket a kódex szorosan köt a helyi polgári jogi gyakorlathoz is (1529. k.).

A IV. könyv, a De processibus az eljárásjogot (1552–2194 kánon) tárgyalja. Talán leginkább itt találhatjuk a legnagyobb hasonlóságot a megszokott polgári perjoggal. A bíróságok hatáskörének és illetékességének felsorolását a keresetlevéltől kezdve a megszokott eljárásjogi szabályozás követi. A kódex külön tárgyalja a büntető eljárásokat és a házassági pereket és a szenté avatási eljárást is.

Az V. könyv, De delictis et poenis a büntetőjog anyagi részét tartalmazza (2195–2414 k.). Követi a büntetőjog klasszikus felosztását általános és speciális traktátusra.[9]

Önmagában azonba az egyházi törvénykönyvnek nem lett volna közvetlen politikai hatása a térségünkre. Egy véletlen azonban úgy hozta, hogy éppen egy magyar szerzetes volt az, aki a törvény szövegének összeállításában oroszlánrészt vállat, ezáltal jól megismerte a vatikáni döntéshozók, bíborosok, pápák személyét is. Ahol sem a nemzeti, sem az egyházi jog nem tudott eredményt elérni, ott a közös kultúra, erkölcsi meggyőződés került előtérbe. Ez a kapcsolati háló nagymértékben meghatározta a Trianon utáni időszak Közép-Európa politikáját egészen a II. világháború végéig.

3. Serédi Jusztinián

Serédi a mai Szlovákia területén, Deákiban (Diakovce) született Szapucsek György néven 1884-ben. Apai részről szlovák származása miatt sokszor mondták róla, hogy egyes vitás helyzetekben a szlovákoknak kedvez, de valójában teljes egészen magyarként határozta meg hovatartozását, anyanyelve magyar volt. Más kérdés, hogy a Vatikánban járatos emberként tisztában volt azzal a ténnyel, hogy a nemzeti érdekeket megelőzik az egyház érdekei, hiszen az egyház az, amelyik békében tud minden nemzetet egységeségbe fogni.

„A felvidéki területek visszacsatolásakor a Felsőházban mondott beszédében kiemelte, hogy Isten akarata, hogy a Kárpát-medence a magyar nem-

9 Card. La Puma, Vincenzo: *Sommario del Codice di Diritto Canonico 1917.* Torino, é.n.

zet birtokában maradjon. Szerinte, akik kitartanak a »keresztény hazaszeretetben«, akármilyen nyelven beszéljenek is, magyarok. A hercegprímás nem etnikai alapú, hanem kulturális nemzetben gondolkodott."[10]

Serédi már ifjú korában Rómában, nemzetközi környezetben, a San Anselmo bencés kollégiumban tanult mint a Pannonhalmi Bencés Apátság szerzetese. 1908-ban doktorált egyházjogból, a püspöki hatalom kérdéséből, majd hazatért a monostorába. Tehetségére azonban felfigyeltek Rómában is, és tanárai kérésének engedelmeskedve visszaengedték Pannonhalmáról kánonjogászi feladatok ellátására Rómába. A kodifikációs munkára tanára és rendtársa, a belga Bastien ajánlotta, aki Gasparri kérésére keresett munkatársat a konzultorok csoportjába. A húszas évei közepén járó Serédire aprólékos, komoly nyelvi és jogi ismereteket feltételező munka várt. Az ő dolga volt, hogy a készülő kánonok összhangját biztosítsa a korábbi, közel kétezer év alatt keletkezett, részben kiadatlan jogforrásokkal. A munka nagyságát érzékeltetik a számok:[11] az Egyházi Törvénykönyv 2414 kánonja közül csak 854 kánon nem rendelkezik forrásokkal, mivel teljesen újak, előzmény nélküliek. A többi 1560 kánon régi forrásokra támaszkodik. A jogforrások száma, amelyre hivatkozás történik körülbelül 10500. A kódexben mindösszesen nagyjából 26000 hivatkozás van jogforrásokra.[12] (Figyelembe kell azonban venni, hogy ez már a végleges szöveg, valójában a tervezetekhez jóval több hivatkozást kellett összegyűjteni.)

Ez a munka kétséget kizáróan jelzi, hogy Serédi nagyon alapos jogi és egyházjogi ismeretekkel rendelkezett. Látni fogjuk majd azonban, hogy a térség lényeges kérdései kezelése során nem a jognak, hanem a jogi munka során kiépített kapcsolati rendszernek lett igazán nagy szerepe. A kapcsolati rendszer megszilárdulásában nagy jelentősége volt annak a ténynek, hogy 1915-től, a központi hatalmak hadüzenetétől Serédi Olaszország területéről a Vatikánba kényszerült. A helyzet súlyát mutatja, hogy a pápa, XV. Benedek kérésére

10 Csíky Balázs: *Serédi Jusztinián, Magyarország hercegprímása* (Collectanea Studiorum et Textuum, I/3. – Magyar Történelmi Emlékek. Értekezések). Budapest, MTA BTK TTI – MTA-PPKE Fraknói Vilmos Római Történeti Kutatócsoport, 2018, 29.

11 Amikor Serédi a kódex 5 könyvéhez az összes jogforrásokat hivatkozás formájában 10 éves fáradságos munkával összeállította és kéziratban Gasparrínak bemutatta. Az utolsó lapra a régi szerzetesek befejező fohászát írta. Finis, I. O. Gl. D. „(In omnibus glorificetur Deus) D. Justinianus Serédi, Roma in Aedibus Vaticanis. XIII. Kal. Nov. 1917." Gasparri ugyancsak sajátkezűleg írta e sokat mondó és elismerő sorokat a kézirat végére: „Tibi gratulationes meas porrigo, etsi indigne P. C. (Petrus Cardinalis) Ad multos annus. Vale." Bánk i. m. 223.

12 Bánk i. m. 222-223.

gépkocsin kellett szállítani a fiatal bencést a Vatikánba úgy, hogy alig volt ideje még arra is, hogy a ruháit összeszedje. A Vatikánban Serédi Gasparri lakosztályában kapott helyet, ami azt is jelenti, hogy szinte állandó kapcsolatban voltak, Serédi pontosan láthatta az államtitkár tevékenységét és a hétköznapjait is. Szintén gyakorlatilag állandó volt a kapcsolata a pápával is, de találkozott a következő időszak pápáival is, így Achille Rattival, a Vatikáni Könyvtár vezetőjével, a későbbi XI. Piusz pápával, sőt, Eugenio Pacelli is részt vett a kodifikációs munkában. Ő lett később XII. Piusz pápa. Mindez egy olyan erős kapcsolati hálót jelent, amelyik folyamatosan meghatározza Serédi sorsát, aki mindösszesze 33 éves amikor befejezte az egyházjog történetének egyik legjelentősebb munkáját, az első kódex megalkotását. Fontos azonban arról is megemlékeznünk, hogy Serédi a Vatikánban sem felejtette el hazáját. Kiemelt gondolt fordított a magyar hadifoglyok lelkigondozására, számukra imakönyveket szerzett, szerkesztett[13] és osztott szét. Végül is istenhite és embersége volt az a legmélyebb szint, ahol a térségünkre is ható döntései is megszülettek. 1917-ben elkészült a kódex, már csak a kihirdetés és a hatályba léptetés volt hátra, így Serédi is hazatérhetett Svájcon keresztül Magyarországra. Otthoni élete korántsem a vatikáni allűrökkel teli főpapi élet volt. Még a rendi főiskolán való oktatást is elcserélte arra, ami akkor fontosabb volt: a katonalelkészségre. Katonaként szolgált a pozsonyi katonai parancsnokság alatt 1918-tól Esztergom mellett. Különös fordulata a sorsnak, hogy hazájában az olasz hadifoglyok lelkigondozása volt a feladata. Első pasztorális tapasztalataként érzékelhette, hogy az emberek függetlenül a nemzetiségüktől lényegében egyformák. Hatással volt rá az is, amikor a háború elvesztése után a lázadozó, lincselésre készülő katonákat le tudta csillapítani.[14]

A háború utáni zavaros időkben gyorsan felvetődött egyházi részről annak az igénye, hogy Serédi segítsen a Vatikánnal való diplomáciai kapcsolatok újraépítésében. Mindez azonban húzódott, hiszen még az is kérdésessé vált a Tanácsköztársaság idején, hogy egyáltalán a pannonhalmi apátság megmarad-e? A helyzet némi konszolidációját követően Csernoch János hercegrímás a vatikáni kapcsolatok újraépítése során számított Serédire, tovább Serédi a kódexel kapcsolatos tudományos tevékenységét is folytatni kívánta Rómában, megkezdődött ugyanis a forráskiadás munkája. Persze a bencések is örültek volna, ha Serédi lett volna az új főapát, de ezt a jelölt

13 Serédi Jusztinián: *Keresztény katholikus imádságok*. Vatikán, Ex Typis Vaticanis, 1916.

14 Csíky i. m. 37.; Meszlényi Antal: *A magyar hercegprímások arcképsorozata.* Budapest, Szent István Társulat, 1970, 402-403.; Bánk József: Serédi *bíboros fiatal évei Rómában 1908–1927. Nemzeti Újság*, 1927. december 18., 5.

semmiképp sem szerette volna vállalni tudományos kötelességeire való hivatkozással. Rómába visszatérve többszörös feladat várta Serédit, megkezdte a Gasparri nevében kiadott Codicis Juris Canonici Fontes összeállítását. Az első hat kötet 1923-ban jelent meg, az ezt követő köteteket saját nevében publikálta, az utolsót, a kilencediket 1939-ben.

3.1. Diplomácia 1927 végéig

„Különben jól volnék, de néha annyi minden dolgom összejön, hogy ha nem volna eszem, meg kellene bolondulnom. De azt én nem teszem. Igen sok jogi kérdéssel zaklatnak minden oldalról, aztán még a sok veszett fejsze nyelét kell megmentenem. Most is 4 db. kétségbeesett ember ügye van nálam. Azt akarják, hogy intézzem el a Szentszéknél, de az ügyek természete ezt lehetetlenné teszi." (Róma. 1923. febr. 15)[15]

Serédi olyan időben élt, amikor az ügyek többségének elintézése „az ügyek természete miatt" valóban lehetetlen volt. A káosz idején a rend tűnik rendellenesnek. Nagy jelentőséggel bírt Serédi életében a bíborosi kinevezésig vezető út. Mikor Csernoch bíboros 1927-ben meghalt komoly diplomáciai egyeztetetés kezdődött, hogy ki legyen az új bíboros. Kleberberg, Serédi személyes ellensége a kormány részéről mindent elkövetett, hogy ne a bencés kerüljön a prímási székbe (beleértve azt is, hogy inkább a szintén megüresedett székesfehérvári püspöki székbe javasolta). Mégis, XI. Pius 1927. november 30-án Serédit nevezte ki érsek-hercegprímásnak Esztergomba. A püspökszentelést is maga a pápa végezte.

Serédi diplomáciáját tekintve inkább volt az egyházának és a lelkiismeretének a követője, mint hazája kormányáé. Természetesen mindezt úgy tette, hogy egy pillanatra sem tagadta meg a hazaszeretetét, csak képes volt nagyobb kontextusban is gondolkodni.

A háború utáni római tartózkodás évei a Rómában élő szerzetesek 'szokásos' feladataival teltek. Más kérdés, hogy ezek a feladatok Serédi esetében jelentős mértékben kibővültek diplomáciai feladatok ellátásával is. Az 1920-as években tanított San Anselmo-n, zarándokcsoportokat vezetett, a hozzá forduló magyaroknak igyekezett segíteni, a jogi megkereséseknek eleget tenni. Többször fordultak hozzá különböző nemzetiségű püspökök is jogi segítségért. Ő volt a magyar püspökök és a magyar bencés kongregáció római ügyvivője 1925-től a Zsinati Kongregáció konzultora lett, és részt

15 BÁNK i. m. 224.

vállalt más kongregációk munkájában is. Mindemellett végezte forrásszerkesztői munkáját és vett részt a kódexmagyarázó bizottság munkájában. A diplomáciai tevékenységében nagy jelentőséggel bírt, hogy a vatikáni magyar követség kánonjogi tanácsosi feladatát is ellátta.

A diplomácia alapkérdése az egyházi-világi működés helyreállítása volt, a kapcsolat csatornáinak kialakítása az Osztrák-Magyar Monarchia szétesését követő időkben. Mindenki tisztában volt vele, hogy a megoldások átmenetiek lehetnek csak, hiszen olyan sebességgel váltották egymást a politikai események egy kifejezetten kedvezőtlen gazdasági környezetben. Mégis biztosítani kellett a mindennapi élethez szükséges alapfeltételeket – békés módon. Serédi és a politikai kérdésekben, a Monarchia vallásügyét jól ismerő, Csiszárik János működésének is köszönhetően 1920-ban létrejött a Szentszék és Magyarország közti diplomáciai kapcsolatfelvétel. Csiszárik segített az új nagykövetnek, Somssich Józsefnek a követség megszervezésében, majd ezt követően hazarendelték. Ekkor vette át a feladatát Serédi. A püspökkar is támogatta Serédit, így ő lett a magyar egyházmegyék ügyeinek ágense is a Szentszéknél. Serédi jó kapcsolatrendszerét felhasználva hatékonyan tudott közvetíteni a felvidéki[16] és az erdélyi ügyekben, tárgyalt a Vatikánban Batthyányi Vilmos nyitrai püspök lemondásáról, Fischer-Colbrie Ágost kassai püspök helyzetéről,[17] továbbá a román konkordátumról is.[18]

16 A 6525/19 „rendeletben szereplő szlovákiai püspökségek birtokai a főpásztoraikat érintő fejlemények miatt jutottak a magyarországi egyházi intézmények birtokaihoz hasonló sorsra. Batthyány Vilmos nyitrai és Radnai Farkas besztercebányai püspököt ugyanis 1919 elején kiutasították Szlovákia területéről, míg Párvy Sándor szepesi püspök ez év márciusában Budapesten elhunyt. Később a rozsnyói és kassai püspöki javakra is kiterjesztették a zárlatot, Balás Lajos 1920-as és Fischer-Colbrie Ágoston 1925-ös halála után. Mikor azonban 1920 végén a nyitrai, besztercebányai és szepesi püspökségeket a Szentszék szlovák főpásztorokkal töltötte be Karol Kmeko, Marián Blaha és Ján Vojtaššák személyében, az új javadalmasoknak az őket megillető lefoglalt birtokokat átadták. Rozsnyó és Kassa esetében viszont erre nem került sor, mivel főpásztoraik halála után a Szentszék és Csehszlovákia nem tudott az utódok személyében megegyezni, ezért Róma csupán apostoli adminisztrátorokat nevezett ki e helyekre. A kormány válaszképpen úgy mutatta ki neheztelését, hogy a püspökségi birtokokat a kinevezett adminisztrátoroknak nem adta át, fenntartotta rajtuk a zárlati kezelést, és Kassa valamint Rozsnyó a kezelő bizottságtól a javak jövedelméből csupán éves támogatást kapott." Rácz Kálmán: Esztergomi érsekség kontra csehszlovák állam – egyházi birtokperek a hágai bíróság előtt. *Fórum: Társadalomtudományi Szemle*, 2004/3, 26-38.

17 Csíky i. m. 39.

18 Marchut Réka: A román konkordátum a magyar diplomáciában (1920-1929). *Pro Minoritate,* 2014/Tél, 3-22.

Megszerezte a magyar kormány számára a Román Királyság és a Szentszék közötti konkordátum szövegének tervezetét, továbbá maga is írt egy tervezetet, amelyiket azonban nem fogadták kitörő lelkesedéssel.

Az 1920-as évek második felére valamelyest konszolidálódott hazánk politikai és gazdasági helyzete, bevezették a pengőt, megkezdődött a szociális rendszer szervezése, illetve elindult a nagyjelentőségű oktatási reform. Elérkezett az idő arra is, hogy az egyházmegyék kérdését is rendezzék a szétszabdalt területeken. Ez a rendezés azonban már egyáltalán nem volt kedvező Magyarország számára, de valójában nem is volt végleges megoldásnak tekinthető, hiszen már mindenki a területi revízió kérdésével és lehetőségével foglalkozott.

A vatikáni diplomácia – érzékelve a politikai változásokat – felismerve, hogy a stabilizálódó államokkal egyezségre kell jutni, a helyzet jogi-vallási megoldását előmozdító, a Codex Iuris Canonicin alapuló eszközével a konkordátumokkal és megállapodásokkal dolgozott. Ebben a munkában is nagy szerepe volt Serédinek, aki tudta, hogy a kérdések többsége a döntéshozók előszobájában dől el. Igyekezett hazája érdekeit úgy érvényesíteni, hogy közben az egyház és a katolicizmus érdekei se sérüljenek. Ezekben az időkben komoly súllyal vetődtek fel a cseh huszitákhoz való viszony, vagy éppen a román ortodoxokkal való kapcsolatnak a kérdései.

4. Konkordátumok és modus vivendi

Serédi bizonyára maga is aktívan részt vett a harmadik kánon megfogalmazásában, amelyik a konkordátumok kérdésével foglalkozik. Eszerint a Szentszéknek az egyes államokkal a kódex hatálybalépése előtt kötött ünnepélyes megállapodásai, az ún. konkordátumok továbbra is érvényben maradnak akkor is, ha a kódex szabályaival kifejezetten (abrogatío) vagy hallgatólagosan (aequivalenter) ellentétben vannak. A kódex hatálybalépése után kötött konkordátumok a kódex ellentétes szabályait – konkrét helyen és időben – hatályon kívül helyezik (lex posterior deregat priori).[19] Jól látszik ebből, hogy a jogalkotó jelentős szerepet szánt a konkordátumoknak, amelyek pontos jogdogmatikai körülírása még hiányos volt. Bánk még 1960-ban is a következőket írta: „A konkordátum jogi természete erősen vitatott mind a kánonjogászok, mind a nemzetközi jogászok között."[20] A konkordátumok

19 Bánk i. m. 231.
20 Uo. 317.

természetét illetően (figyelemmel arra, hogy egy ősi jogintézményről van szó) jelentősen eltérőek a vélemények. A történelmi szemléletet[21] tükrözi a privilégium elmélet, amely szerint a konkordátum nem más, mint a pápa vagy a szentszék privilégiuma egy adott ország számára. Éppen ezért ez nem jelent jogi (ex iustitia), hanem csak erkölcsi (ex fidelitate) kötőerőt a pápa számára. Ez egyben azt is jelenti, hogy a privilégium egyoldalúan módosítható vagy visszavonható. Ennek az elméletnek az az alapja, hogy az egyház az államnál magasabb rendű társaság, így számára az állam nem is jelenik meg szerződő félként, hiszen az államnak a jogai is magától az egyetemes egyháztól származnak. Ezt az elméletet támasztják még alá azzal a gondolattal is, hogy lelki dolgokban nem lehet szerződést kötni, illetve a pápa a legfőbb törvényhozó, ezért a „törvény fölött áll".

A legalis elmélet a privilégium elmélet fordítottja. Ennek lényege, hogy az állam az egyház felett áll, így az állam nem szerződhet a neki alárendelt egyházi féllel. Jellemzően német területeken dolgozták ki, az egyházat tisztán államon belüli – ma úgy mondanánk – civil szervezetként értelmezi.

A két elmélet között helyezkedik el a kontraktuális elmélet, amely szerint két egyenlő fél köt egymással szerződést. Itt a pápa mint a nemzetközi jog személye köt szerződést más nemzetekkel egy adott témában. Ezt támasztja alá az a tény is, hogy maga a Vatikán is megjelenik államként a nemzetközi diplomáciában is.

Könnyedén fogadjuk el a szerződés elméletet, azonban nem szabad megfeledkezni arról a közel ezer évről sem, amelyik a másik két konkordátum elmélet alapját jelenti, és amelyik sajátos hatását mind a mai napig kifejti, hiszen valóban nagyon nehéz lelki dolgokról szerződni, vagy éppen a világ lakosságának tekintélyes részét képviselő, legnagyobb vallás, egységes és szervezett entitásként jogokat gyakorolni. Serédi jól ismerte ennek a helyzetnek a bonyolultságát, és döntéseit ennek fényében hozta meg. Ennek lett az egyik eredménye, hogy Csehszlovákiával nem is jutottak el a tárgyalások a Konkordátumig, csak egy modus vivendi-t sikerült elfogadni 1927. szeptember 17-én. Más kérdés, hogy a csehszlovákok számára már ez is a trianoni békeszerződés vatikáni elismerését jelentette. Ez volt az ára annak,

21 VIII. Bonifác „Unam sanctam" (1302) „Uterque ergo, (sc. gladius) in potestate ecclesiae: spiritualis gladius et materialis sed is quidem pro ecclesia, ille vero ab ecclesia exercendus, Ille sacerdotis, is manu regum et militum, sed ad nutum et patientiam sacerdotis [...]" „Porro subesse Romano Pontifici omni humanae creaturae declararnus, dicimus, díffinirnuset pronuntiarnus omnino esse, de necessitate salutis." (c. l. Extrav. com. 1, B.) Idézi Bánk i. m. 318.

hogy a két évvel korábban megszakadt vatikáni diplomáciai kapcsolat visszaállhasson Csehszlovákiával. Ugyan a modus vivendi kialakítása megmaradt csehszlovák és vatikáni belügynek (az előkészítésről a magyar diplomácia nem is értesült), azonban valójában hazai olvasatban leginkább időhúzásnak minősült, ami csak rögzítette az időközben de facto kialakult helyzetet.

Az érdemi kérdésekről ugyanis nemzetközi bizottság kellett volna, hogy döntsön, de ahogy azt Rómában az akkorra más esztergomi prímás Serédinek is jelezték: „nincs ok a túlzott sietségre".[22] Ezt a helyzetet támasztotta alá a Hágai Nemzetközi Bíróság előtt folyó birtokper is.[23] Jól látszott, hogy a hosszan elnyúló birtokper részben aktivitásra kényszeríti a Vatikánt, hiszen meg kell óvnia az egyházi birtokokat a Csehszlovák államtól, részben pedig hosszú időre megakadályozza a területi kérdések jogi rendezésének a lehetőségét. A Vatikán szempontjából a legnagyobb veszély ugyanis az volt, hogy sem a magyar, sem a szlovák katolikusok nem fogják megkapni a földeket, hanem azokat kisajátítja az állam.

Esztergom számára persze létkérdésnek is tűnt a földek ügye, hiszen a költséges intézményei megmaradtak, például Budapesten, azonban a finanszírozáshoz szükséges birtokok közel kétharmadát nem tudta használni.

Érdemes egy pillantást vetni a korabeli egyházi birtokok helyzetére. Jól látszik, hogy a birtokok tekintélyes részben idegen országba kerültek. Alapvetően a következő kérdések merülhettek fel: a birtokok ugyan másik államban, de a magyar katolikusok kezében maradnak (nem a 'magyar katolikus egyház', hanem egyes magyarországi katolikus jogi személyek tulajdonában és használatában). Ilyenre példa volt például az olmützi és prágai érsek joghatósága bizonyos német területeken a birtokok a másik állam katolikus szervezeteihez kerülnek (esetleges kárpótlás, használati díj fizetése mellett) Ehhez szükséges volt az egyházmegye vatikáni átalakítására, a diszmembrációra. Mindez csak az egyházi törvénykönyv szerint a Szentszék által történhet a 215. kánon szerint, és a vagyonelosztás is a Szentszék kizárólagos hatásköre az 1500. kánon szerint.

22 Csíky i. m. 196.

23 Rácz i. m. 30. 1923 végén az esztergomi érsek, a székesfőkáptalan, az eszergomi és a budapesti szeminárium, továbbá öt másik katolikus intézmény keresetet adott be a Hágai Magyar-Csehszlovák Vegyes Döntőbírósághoz az ingatlanon csehszlovák részről 2019-ben bevezetett zár alá vétel ellen. A zár alá vétellel a tulajdonosok mindennemű rendelkezési joga megszűnt. A perlés jogalapján a trianoni diktátum 250. szakasza adta, ami lehetővé tette a választottbírósághoz való fordulást.

Ezen kérdések mentén jól azonosíthatók az egyes szereplők érdekei is, amelyeket a nemzetközi jog vagy politika szabályai szerint kellett ütköztetni.[24] Látható, hogy ebben az erőtérben az egyes nemzeti jogoknak viszonylag szűkek a lehetőségei, azokat – például a csehszlovák állam – leginkább kényszerítési pozíció megszerzésére használta fel.

Jogtörténeti szempontból kuriózum, hogy a zár alá vétel jogalapjának a megtalálásához a csehszlovák állam a létrejötte előtti joganyaghoz nyúl vissza.

Az 1918. december 10-én kiadott 64. sz. törvény viszonylag egyszerű abban az értelemben, hogy az felhatalmazást ad a szlovák felelős miniszternek a tárgyban rendelet kiadására. Érdekes viszont, hogy a zárlat kérdésében a jogalkotó az 1723: LXX. törvénycikkre hivatkozik, amely szerint amennyiben az egyházi javadalmas a javadalma használatát elhanyagolja, akkor a király mint legfőbb kegyúr a birtokokból származó jövedelmet zárlat alá helyezheti és maga járhat el a helyzet rendezésében. Jól érzékelhető, hogy ez a hajánál fogva előrángatott jogszabály még csak nem is hasonlít arra a jogi helyzetre, amelyben a magyar egyházi javadalmasok találták magukat. Abszurd már a feltételezés, hogy a főkegyúri jogok a csehszlovák államra szállnának át.

Hasonlóan életidegen az módszer is, amellyel a szlovákiai püspökségek birtokait vették zár alá, arra hivatkozva a magyar kultuszminiszternek 1867. szeptember 27-én 10165 szám alatt kelt rendeletének 11. pontja szerint a püspöki szék megüresedése esetén a zár alá vétel a jogszerű eljárás. Ebben az esetben a jogi kérdéseken túlmutatóan a püspöki székek megüresedésének a ténye is vitatható volt.

A felek a hágai per megkezdése előtt abban maradtak, hogy az érintett egyházi vezetők, a magyar és szlovák püspökök egyeztetnek első körben, az így kidolgozott javaslatokat a kormányaik elé terjesztik, majd a Szentszék hagyja azt jóvá. A nemzetközi politikai helyzet alakulása viszont minden másként alakult, a konszenzus sohasem jött létre.[25]

Ennek részben az is oka volt, hogy Csernoch bíboros a végsőkig ragaszkodott a birtokokhoz, amelyek az állami jog szempontjából a magánvagyonának számítottak. „Az Esztergomi Érsekség nevében kijelentem, hogy a birtokok utolsó darabjához teljes tulajdonjoggal, teljes rendelkezési joggal ragaszkodom, a bizottság idegen hivatalnokait nem ismerem el, minden sze-

24 Bartók Béla: A rozsnyói egyházmegye magyarországi kormányzása 1937-1939 között. Acta Academiae Paedagogicae Agriensis Nova Series: Sectio Historiae, 2009, 39(1), 19-28.

25 EPL Cat. D/c. 3. doboz, Felvidéki birtokügyek, Lepold Antal levele, 1922 október 24., idézi Rácz i. m. 32.

mélyi és üzemi változtatást, ami hozzájárulásom nélkül történt, jogtalannak tartom, és követelem, hogy a birtokok kezelése újból visszaálljon a javadalmasokra. A magam személyében pedig kijelentem, hogy az érsekségi birtokon lévő élő és holt felszerelés, termény és anyagkészletek magántulajdonomat képezik, és azok elidegenítését minden lehető eszközzel meg fogom akadályozni."[26] Masaryk és Benes ezzel szemben a liberális állam ideológiája szerint legszívesebben állami tulajdonban látta volna a vitatott ingatlanokat. Az ingatlanok tehát egy bonyolult diplomáciai, nemzetközi jogi vitában az adu szerepét játszották. A Vatikán hozzájárulása nélkül a tulajdoni kérdéseket és ezzel együtt a szlovák egyházmegyék helyzetét nem lehetett rendezni, viszont csehszlovák részről mindig fennállt a kisajátítás lehetősége.

1926-ban a szlovák püspökök ajánlatot tettek Esztergomnak. A javaslat szerint a birtokokat két részre osztanák, és az Esztergomra eső részt értékesítenék, a vételárat pedig Esztergomnak kifizetnék. Mivel a diszmembráció feltétele volt a birtokviták rendezése ezért a csehszlovák fél erősen érdekelt volt a rendezésben, és ekkorra már a magyarok is egyre jobban hajlottak a kompromisszumra, illetve az időközben kialakult tényleges helyzet jogi rendezésére. A Szentszék számára is kívánatos lett a mielőbbi megegyezés a szlovák katolikusok támogatása érdekében. Az 1926-ban megindult folyamatnak lett aztán az az eredménye, hogy 1927 decemberében létrejött a modus vivendi, amely az államhatárokhoz kötötte az egyházmegyék határait, tehát kimondta a diszmembrációt. A tényleges megvalósulásnak viszont feltétele lett volna a vagyoni kérdések végleges rendezése, ami a gyakorlatban soha nem történt meg, illetve az első bécsi döntés után okafogyottá vált a kérdés.

Először ugyanis a birtokok kérdését kívánták rendezni, illetve újra felvetődött annak a kérdése is, hogy legyenek-e túlnyomórészt magyar lakta egyházmegyék? Jól látszott, hogy gyors megoldás nem várható, ami kedvezett a magyar félnek, aki joggal bízhatott valamiféle revízióban. Teljesen egyértelműen ezt a megoldást képviselte a Gasparri és vele a vatikáni politikai is, noha jelentős szerepe volt annak, hogy a huszitákkal szemben[27] a katoliciz-

26 Rácz Kálmán: *Az Esztergomi Érsekség és Csehszlovákia vagyoni vitája, 1919-1938.* https://www.uni-miskolc.hu/~egyhtort/cikkek/RACZ.HTM (2021. 09. 04.)

27 Malagyi József: *Az 1. Csehszlovák Köztársaság és az Apostoli szentszék (Vatikán) diplomáciai kapcsolatainak alakulása (1918–1938*). https://dfk-online.sze.hu/images/egyedi/doktori/%C3%A1ll_%C3%A9s_jog_alap_%C3%A9rt%C3%A9kei_2010/1.%20k%C3%B6t/malagyi.pdf (2021. 09. 04.) „A törvénynek minden társadalmi réteg érdekeit kellett volna figyelembe vennie. Meghagyta a hagyományos katolikus ünnepek többségét azzal, hogy

mus kérdését is jól kezeljék.[28] Az 1920-as években ugyanis az a helyzet állt elő, hogy Csehszlovákiát az ország kb. 20%-át kitevő evangélikusok vezették, akik nem szimpatizáltak túlzottan a katolikusokkal. Az ingatlanok viszont komoly adut jelentettek a katolikus egyház kezében. Persze az időmúlásnak voltak hátrányos következményei is, az ingatlanok állaga romlott, továbbá az Esztergomi Főegyházmegye is elesett bevételei jelentős részétől.[29]

átvette az akkori Egyházi Törvénykönyvből. A köztársaság emléknapjai közé a törvény október 28-át, május 1-jét, Szt. Cirill és Metód napját, Szt. Vencel napját, de ugyanúgy Husz napját is besorolta, amely jelentőségét a törvényhez kapcsolódó, a prágai egyetem államosítása és a cseh nemzet fenntartása érdemeiről szóló indokjelentés emelte ki.1 A törvény elfogadása ellen főleg a Szlovák Nemzeti Párt lépett fel, amely Andrej Hlinka révén a parlamentben követelte, hogy Szlovákiában Husz János ünnepe helyett Nepomuki Szt. János ünnepe legyen ünnepelve. A jelen kérdés nem volt sikeres és az említett ünnepi törvény 1925. március 21-én a parlament által elfogadásra került. A törvény elfogadása, amely a Husz János ünneplése emléknapja bevezetését jelentette a megégetése évfordulóján negatív reakciót idézett elő az Apostoli Szentszéknél, amely diplomáciai jegyzékkel tiltakozott. […] Masaryk elnököt annyira befolyásolták, hogy engedett a diplomáciai tartózkodásából és nyilvánosan kimutatta véleményeit azzal is, hogy utasítást adott a huszita zászló prágai vár feletti kifüggesztésére. Amikor tehát Msgr. Marmaggi meggyőződött az elnök és miniszterelnök ünnepségen való részvételéről és az ünnepségek teljes lefolyásáról, július 6-án este elutazott Prágából."

28 A csehszlovák katolikusok helyzete 1924 és 1927 között nem volt egyszerű, hiszen állami oldalról megerősödtek az egyházellenes, különösen is a katolikus egyház ellenes kezdeményezések. Jelentősége van annak is, hogy jellemzően a szlovákiai területeken voltak katolikusok. Az 1924. november 26-án kiadott és a templomokban felolvasott pásztorlevél a szlovákiai katolikusokhoz szólt, és tételesen felsorolta az egyházellenes, jellemzően az állami hatalomhoz kötődő társulásokat. A másik oldalon a Csehszlovák kormány kibocsátotta a huszita mozgalmat támogató „Csehszlovákia ünnepei törvényt" /65/1925/. Ebből keredett a„Marmaggi casus", 1925. július 6-án, amelyik a vatikáni kapcsolatok megromlásához vezetett. Ez viszont azt is jelentette, hogy a katolikus szlovákok előtérbe kerültek a Vatikán szempontjából.

29 A 1919-től a főpásztor nélküli egyházmegyékben a felelős miniszter Vavro Šrobár gondnokokat nevezett ki. Ellenőrző szervként létrehozták a pozsonyi székhelyű központi gondnokságot. A Tanácsköztársaság 'elsöpörte' ezeket az intézményeket, majd azt követően egyszerűen csak zár alá vették a területeket. 1919. április 16-án kelt 215/1919 sz. törvénnyel lefoglalta az állam a nagybirtokokat (150 ha. felett). „A 6525/19. szám alatt kelt jogszabály a magyarországi székhelyű egyházi javadalmasok – esztergomi érsekség, esztergomi székesfőkáptalan, váci káptalan, vallás és tanulmányi alap, esztergomi és pesti papnevelde, pannonhalmi bencés rend, a lekéri, jászói és zirci apátság – valamint a nyitrai, besztercebányai és szepesi püspökségek Szlovákia területén fekvő minden ingó és ingatlan vagyonát zár alá helyezte, és gazdaságaik igazgatását a pozsonyi székhellyel felállított Római Katolikus Egyházi Javak Központi Bizottságára (Centrálna správa katolických cirk. veskostatkov) bízta (Pálesch é·n.). 1921-ig újabb rendelkezések következtében

A modus vivendi első szakaza így szólt: „A Szentszék és a csehszlovák kormány megegyezett abban az alapelvben, hogy a Csehszlovák Köztársaság semmilyen része nem lesz alárendelve olyan megyés – püspöknek, akinek székhelye a csehszlovák állam határain kívül van, és ugyanígy semmilyen egyházmegye határa nem lépi át az államhatárokat. A Szentszék és a csehszlovák kormány új határokban és az egyházmegyék támogatásában egyeznek meg. Ezen egyezmény előkészítésére két hónapon belül két, egymástól független bizottság alakul: az elsőt a Szentszék alakítja meg minden érintett egyházmegye képviselőiből, a Szentszék prágai képviselőjének elnökletével, a másodikat a csehszlovák kormány az érintett egyházmegyék képviselőiből és szakértőkből."

Jól látszik, hogy itt egy olyan keretmegállapodásról van szó, amelynek érdemi tartalommal való megtöltése még sok munkát igényelt volna.

A második szakasz az ingatlanok helyzetét kívánta legalábbis részben tisztázni: „A Csehszlovák Köztársaságban az egyházi ingatlan és ingó vagyon kezelése, amelyek jelenleg kényszerigazgatással vannak biztosítva, ideiglenes egészen az előző cikkelyben érintett egyezményig, és egy bizottságra van bízva az érintett területen működő püspöki kar elnökletével."

Ma már tudjuk, hogy ennek a szakasznak a tartalommal való megtöltése szintén nagyon sokáig húzódott, és soha nem is valósult meg teljesen. Szempontunkból érdekes a helyi jogásztársadalom egyes tagjainak véleménye a kérdéssel kapcsolatban: „Antonín Hobza professzor írja: »A Modus vivendi egyházi vagyonról szóló záradéka a mi jogi köreink számára bizonyos szenzáció volt. Nem található ugyanis egyetlen értelmes ok sem arra, hogy az ún. egyházi vagyon tárgyában feladjuk állami szuverenitásunkat – az érvényes állami törvényekkel megalapozott szuverenitást. Elismeri-e a Vatikán az egyházi vagyonról szóló törvényeinket vagy sem, ennek a jogi élet számára nincs semmilyen jelentősége.« Tiszta jogi szempontból az utolsó mondat befejezésével biztosan egyet lehet érteni. Hobza azonban elfelejti, hogy a Modus vivendi politikai dokumentum, aminek célja az volt, hogy az Apostoli Szentszékkel való további kapcsolatok alapjául szolgáljon, amelyeknek minősége a Csehszlovák Köztársaság számára fontos volt."[30]

A harmadik cikkely a rendekre vonatkozott, a negyedik pedig arra, hogy püspökök csehszlovák állampolgárok lehetnek, a jelöltek személyét pedig a

a Pázmány Péter Tudományegyetem, a csornai premontrei rend és a győri káptalan vagyona is zárlat alá, ezzel együtt a központi igazgatóság kezelésébe került." RÁCZ i m. 33.

30 MALAGYI i. m. 101.

Vatikán az állam elé terjeszti, amely állam bizonyos esetekben ellenvetéssel élhet. Ezzel szemben Hobza úgy érvelt, hogy az állam joga a püspökök kinevezése. Az ötödik cikk pedig egy szintén vitatott hűségeskü formulát tartalmazott.

Látható tehát, hogy a modus vivendi egy olyan keret volt, amelyik a vitatott kérdések közül egyet sem tudott megoldani. Ennek legfőbb oka az lehetett, hogy az egyházi és világi politikusok okkal bízhattak a helyzet jelentős megváltozásában. A rossz döntések ugyanis jellemzően hosszútávú rossz hatásokkal járnak.

5. Összegzés

Tanulmányunkból látható, hogy a Trianon okozta mesterséges káosz orvoslására nem volt elég néhány esztendő. A megoldások vagy meg sem születtek, vagy csak átmenetiek voltak. A kivárás talán jó taktikának tűnhetett, azonban a helyzet valójában csak egyre rosszabbá vált a térségben, egészen a rendszerváltásig. Most jutott el a térségünk oda, hogy a megoldás lehetőségét újra gondolja. Ebben a megoldásban egészen biztosan nagy szerepe lehet a közös keresztény múltnak ugyanúgy, mint a közép-európai kultúrának és az egységesülő jogi környezetnek.

Észrevételek a választottbíráskodás fejlődéséről szlovák, kárpátaljai területeken az I. világháború után[1]

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Összefoglalás

A tanulmány röviden áttekinti a választottbíráskodás fejlődésének egyes kérdéseit a szlovák – kárpátaljai területen az I. világháború után. A magánjog jogfejlődésének rövid elemzését követően kerül sor a választottbíróságra irányadó jogi változások bemutatására, összevetve a régióban részben mintaként szolgáló osztrák szabályozásra, bemutatva a korabeli magyarországi vonatkozó szabályokat is. A tanulmány hangsúlyt fektet a vizsgált régióban tapasztalható egyes eltérésekre, továbbá részletesen bemutatja az ún. különválasztottbíróságok szerepét.

Kulcsszavak

választottbíráskodás, Trianon, Szlovákia, Kárpátalja, magánjog fejlődése

Remarks on the Development of Arbitration in the Private Law of the Slovak-Subcarpathian Territory after the 1st World War

Summary

The study provides a brief overview on the development of arbitration on the Slovak and Subcarpathian territory after the 1st World War. After a short analysis on the development of private law the paper discusses the changes regarding on the law of arbitration, comparing the rules with the

1 A szerző ezúton fejezi ki hálás köszönetét Prof. Dr. Halász Ivánnak, a Nemzeti Közszolgálati Egyetem Alkotmányjogi és Összehasonlító Közjogi Tanszéke tanszékvezető egyetemi tanárának a tanulmány elkészítésében nyújtott önzetlen segítségéért, ideértve a szlovák és cseh nyelvű forrásanyag lefordítását, értelmezését is. A jelen tanulmány megírását a Slovak Research and Development Agency a APVV-19-0419. sz. szerződés szerint támogatta.

Austrian regulation, which can be partly regarded as a model for the region, also taking into consideration the solution of the Hungarian law in the same period. The paper discusses the differences of the regulation in the Slovak and Subcarpathian territory, also highlighting the roles of the special arbitration courts, as well.

Key words

arbitration, Trianon, Slovakia, Sub-Carpathia, development of private law

1. Bevezetés, általános megjegyzések a választottbíráskodásról

Mint ismeretes, az első világháborút lezáró trianoni békeszerződés nyomán létrejövő új államok – egyebek mellett – a jogrendszer átalakulásának, átalakításának kérdésével is szembesültek. A közjogi berendezkedés nyilvánvaló átalakítása mellett érdemes figyelmet fordítani a magánjogban bekövetkezett változásokra. A magánjogi változásoknak – elsődlegesen a magánjogi jogérvényesítés vonatkozásában – álláspontunk szerint igen jelentős részét képezi a választottbíráskodás.

Az elsődlegesen magánjogi igények egyik lehetséges – a véglegesség igényével bíró – jogérvényesítési formája a választottbíráskodás. Miként az elnevezésből is kitűnik, a választottbíráskodás bírói, azaz peres útja a követelések érvényesítésének, azonban – ahogyan az alábbiakban bemutatásra kerül – a választottbíráskodás az állami igazságszolgáltatási fórum előtt történő jogérvényesítéssel összehasonlítva számos sajátszerűséggel rendelkezik.

A magánjogi és eljárásjogi intézmények jelentős részéhez hasonlatosan a választottbíráskodás egyes előzményeit is a római jogban lehet megtalálni. Maga a kifejezés, az arbiter[2] is latin szó. Az arbiter eredeti jelentésében a római peres eljárásban olyan bírát jelentett, akinek olyan esetekben kellett eljárnia, amikor speciális szakértelemre, például földmérési ismeretekre vagy közös vagyon felosztásához szükséges vagyonbecslési tudásra volt szükség.[3] Ebben a vonatkozásban az arbiter az állami igazságszolgáltatási

2 Az *arbiter* szó az *arbitror* igéből származik, amely többek között 'gondolkodik', 'dönt', 'bíráskodik' jelentéssel bír. Ezzel kapcsolatban lásd továbbá: Boóc Ádám: Comments on the Concept of Arbiter in Roman Law. *Journal on European History of Law,* 2019/2, 133-138.

3 Földi András – Hamza Gábor: *A római jog története és institúciói*. Budapest, Nemzeti Tankönyvkiadó, 2006[11], 161.

szervezetrendszer tagja, és különös szakértelemmel rendelkező szakértő bírónak mondható. A választottbíró mai értelméhez ez abban a tekintetben hasonlít, hogy a mai választottbíróságok esetében is igen gyakori, hogy a testületben esetlegesen nem jogász, hanem különleges – például műszaki-gazdasági – szakismerettel rendelkező szakemberek is helyet foglalnak. A ma használatos választottbíró-fogalomnak számos vonatkozásban az arbiter ex compromisso intézménye felel meg. Az arbiter ex compromisso a felek megállapodása (compromissum) folytán választott olyan bíró, aki döntésének a felek – vagyonjogi vitában – alávetik magukat. Ennek a megoldásnak – miként a modern választottbíráskodásnak is – az a célja, hogy a résztvevő felek jogvitájukat a rendes peres eljárástól eltérő úton rendezzék. Fontos kiemelni, hogy az arbiter ex compromisso számos esetben nem is feltétlenül a törvények, hanem jogelvek és az általános igazságérzete alapján ítélkezik.[4]

A választottbíráskodás mai értelmében – tág megközelítésben – a felek alávetésén, megegyezésén alapuló nem-állami jogérvényesítő fórum, amelynek során a jogvitát a nagyrészt a felek által jelölt választottbírák döntik el a választottbírósági eljárás szabályszerű lefolytatása után olyan ítélettel, amely ellen a fellebbezés rendszerint igen szűk körű és jórészt eljárási kérdésekre koncentrálódik.

A tág megközelítésű meghatározással egyidejűleg röviden utalni kell a választottbíráskodás lehetséges kategóriára. Így megkülönböztetünk kereskedelmi, azaz magánjogi, illetve nemzetközi közjogi választottbíráskodást.[5] A jelen tanulmányunkban a vizsgált földrajzi területen és korszakban a magánjogi – kereskedelmi választottbíráskodás kérdéseivel foglalkozunk. A választottbíráskodás egyik hagyományos felosztási módja az ad hoc, illetve az állandó (intézményesített) választottbíráskodás. Ad hoc választottbíráskodásnak tekinthető, ha a felek jogvitájuk eldöntésére egy eseti választottbírósági testületet hoznak létre, amely testület feladata gyakorlatilag arra

4 FÖLDI–HAMZA i. m. 542-544. Említést érdemelnek ezzel összefüggésben UJLAKI László fejtegetései: *„A választottbírósági szerződés bölcsője — mint megannyi más jogintézményé — Rómában ringott. Már a fejlődés korai szakaszában mód volt arra, hogy a felek az állami bíróságok mellőzésével választottbíró vagy választottbírák* döntése alá *bocsássák jogvitájukat, hacsak a vita tárgya nem státusügy vagy popularis actio volt. A felek erre vonatkozó megállapodásukat compromissum-ba (megegyezésbe) foglalták.*" Lásd: UJLAKI László: A választottbírósági szerződés jogági elhelyezettsége és tipológiája. *Jogtudományi Közlöny,* 1991, 46(9–10), 217.

5 A nemzetközi közjogi választottbíráskodással kapcsolatban a terjedelmes szakirodalomból lásd különösen: MALANCZUK, Peter: *Akehurst's Modern Introduction to International Law.* London – New York, Taylor & Francis Ltd. 1997, 273-306.

korlátozódik, hogy egy adott ügyet eldöntsön. Kiemelést érdemel Ujlaki László véleménye, aki szerint „a választottbíróság történetileg és eszmeileg alap-megjelenési formája az egyetlen arbiterből álló, egy konkrétan felmerülő jogeset elbírálására vonatkozó ún. eseti választottbíróság mint igazságszolgáltató fórum."[6]

Ezzel szemben állandó (intézményesített) választottbíráskodásnak az a választottbíráskodási szervezet tekinthető, amely meghatározott székhellyel, rögzített – költségjegyzéket is magában foglaló – eljárási szabályzattal, választottbírói névjegyzékkel rendelkezik.[7] Ez a fajta magánjogi, szerződéses bíráskodás (Magyary Géza) önálló szervezetrendszerrel, rendszerint a gazdasági-kereskedelmi kamarákhoz kapcsolódóan létező intézmény, amelynek rendeltetése, hogy az ezen választottbírósági fórumot választó felek számára választottbírósági jogszolgáltatást nyújtson.

A választottbíráskodás tekintetében – tanulmányunk témájára, a vizsgált korszakra és földrajzi területre is figyelemmel – fontosnak tartjuk azt, hogy a választottbíráskodás előnyeit az állami jogérvényesítéshez képest tömören összefoglaljuk. Gellért György a választottbíráskodás előnyeit az alábbiak szerint határozza meg:

1. A feleknek a választottbíróságba vetett nagyobb bizalma;
2. A választottbírósági eljárás gyorsasága az állami jogérvényesítéshez képest;
3. A nyilvánosság kizárása;
4. A formalizmus jelentős csökkenése;
5. Az egyezségi rendezés nagyobb aránya.[8]

A feleknek a választottbíróságba vetett nagyobb bizalmát alapvetően két tényező indokolhatja. Egyfelől az eljáró tanács tagjainak többségét rendszerint a felek jelölhetik, így a felek tisztában vannak azzal, hogy ki fogja az ügyet tárgyalni. A jelölés egyik módja a választottbírói névlistáról történő kiválasztás, de általában lehetőség van arra, hogy egyéb személyt jelöljenek. Másfelől a bíró kijelölése pedig szakmai garanciát is jelenthet. Nem csupán

6 Lásd: Ujlaki László: Az állandó választottbíróság rendhagyó jegyei. *Jogtudományi Közlöny*, 1997, 52(2), 79.

7 Az intézményesített választottbíráskodás egyes kategóriáival kapcsolatban lásd különösen: Redfern, Alain – Hunter, Martin: *International Commercial Arbitration*. London, Sweet & Maxwell, 1991[2], 159.

8 Lásd: Gellért György: Új törvény a választottbíráskodásról. *Magyar Jog,* 1995, 42(8), 451-452.

jogászi szakmai felkészültségről lehet szó, hanem igen gyakran előfordulhat olyan eset is, amikor az adott ügyben a jogi tudás mellett egyéb szakismeret is szükséges lehet.

A választottbírósági eljárás alapvető értéke a gyorsaság. A választottbírósági eljárás gyorsaságát jelenti az a nem elhanyagolható körülmény, hogy fellebbezésre lehetőség nincsen, a perorvoslat nagyobbrészt az eljárási szabálytalanságok miatti érvénytelenítésre szűkül.

A polgári peres eljárásnak egyik garanciális sajátossága a nyilvánosság. Szemben a polgári peres eljárással, amelyben a főszabály a nyilvánosság, és a kivétel a zárt tárgyalás, választottbírósági eljárás esetében a tárgyaláson az eljárásban részt vevő személyeken (eljáró választottbírósági tanács, peres felek, peres felek képviselői, szakértők, tanúk, stb.) rendszerint más nincs jelen, illetve általában csak olyan személyek lehetnek jelen, akiknek jelenlétéhez az eljáró választottbírósági tanács, és a felek is egyaránt hozzájárultak. A választottbírósági tárgyalás tehát zártkörű. A választottbíróság rendszerint a határozatait sem teszi közzé, illetve azt csak úgy teheti meg, hogy a felek érdekei a legkisebb mértékben sem szenvedhetnek sérelmet. Tekintettel arra, hogy a választottbírósági eljárásokban rendszerint jelentős pertárgyértékről van szó, a résztvevő feleknek – melyek adott esetben a gazdaság, az üzleti élet meghatározó jelentőségű szereplői – komoly érdekük fűződhet ahhoz, hogy az eljárás bizalmas jellegű és zárt legyen.

Habár az egyes választottbíróságok eljárási szabályzatai egymástól eltérhetnek, alapvetően elmondható, hogy az eljárás egy hagyományos bírósági eljárás szabályaihoz képest kevésbé kötött. Ebből következik, hogy a felek eljárásjogi autonómiája a hagyományos bírósági eljáráshoz képest lényegesen széleskörűbb. Ugyanakkor fontos figyelembe venni Ujlaki László alábbiakban idézett észrevételét: „Minthogy a választottbíráskodás azonban mégis csak – habár csupán az állam által átruházott hatáskörben, és állami törvényekben megszabott különös eljárási szabályok mellett gyakorolt – bíráskodás, az alkotmány megkívánta közszempontok szolgálata a felek által nem korlátozható jogosítványokat, kötelezettségeket tesz mellőzhetetlenekké az eljáró fórum számára. Ennek legpregnánsabb megnyilvánulása, hogy akárki is volt jogosult az eljárási szabályok megállapítására, azok valamennyi érdekeltre kötelezőek, így a választottbíróságra magára is, ha történetesen a felek is bízták rá az eljárási szabályok meghatározását.”[9]

9 Lásd: Ujlaki László: A fél és a választottbíróság eljárásjogi autonómiája. *Magyar Jog*, 1992, 39(12), 708.

A választottbírósági eljárásokban igen gyakran fordul elő az egyezségi rendezés, azaz a felek az eljárás során egyezséget kötnek, amely vélhetőleg mindkét fél számára megnyugtatóbb, és esetlegesen nyitva hagyja a későbbi gazdasági kapcsolatok kialakulásának lehetőségét. A legtöbb eljárási szabályzat expressis verbis is tartalmazza azt, hogy a választottbírák az eljárás bármelyik pillanatában felhívhatják a feleket az egyezségkötés lehetőségére (conciliation).

2. A csehszlovák magánjog fejlődésének háttere az I. világháború után

Ahhoz, hogy a szlovák-kárpátaljai területeken a választottbírósági eljárás szabályainak kialakulását megértsük, nagyon lényeges a magánjog fejlődésének egyes korabeli elemeit röviden áttekinteni.

Az első Csehszlovák Köztársaság 1918. október 28-án jött létre. A prágai Nemzeti Bizottság vezetői aznap este kikiáltották a csehszlovák állami önállóságot és elkezdték a többé-kevésbé békés hatalomátvételt. Aznap este egyúttal elfogadták az új állam első törvényét, amely később a recepciós törvényként vonult be a jogtörténetbe. E jogszabály értelmében az azzal ellentétes intézkedéséig mindenütt az a jogrendszer maradt hatályban, amely a függetlenség kikiáltásakor helyben éppen hatályban volt. Gyakorlatban ez azt jelentette, hogy a cseh tartományokban (azaz Csehországban, Morvaországban és Sziléziában) a korábbi osztrák, illetve a tartományi jogszabályok érvényesültek, Szlovákiában és Kárpátalján pedig a korábbi magyar jogszabályok.

A recepciós törvényt a megalkotói ugyan eredetileg ideiglenes megoldásnak szántak, de számos területen egészen az 1950-es évekig határozta meg a hatályos jog kérdését. Ez különösen volt igaz a polgári és polgári eljárási jog területén. Az új állam ideiglenes törvényhozói szervei (azaz először a Nemzeti Bizottságból kialakult Ideiglenes Forradalmi Nemzetgyűlés, majd 1920 után már a rendes kétkamarás csehszlovák Nemzetgyűlés) gőzerővel kezdték egységesíteni a csehszlovák közjogot (azaz mindenekelőtt az alkotmányjogot, választójogot, közigazgatási jogot stb.), de a polgárok és a gazdaság szereplőinek mindennapi életét meghatározó egységes polgári törvénykönyvet minden igyekezet ellenére csak az 1950-es években sikerült elfogadni.

Szlovákiában és részben Kárpátalján emiatt addig tulajdonképpen a korábbi magyar polgári jog szabályai és elvei érvényesültek, azok eljárásjogi vonatkozásaival együtt. Az új állam három jogi karán emiatt más-más polgári jogot oktattak. A középkor óta működő prágai székhelyű Károly Egyete-

men, valamint az 1919-ben Brnóban megalakult Masaryk Egyetemen a régi Osztrák Polgári Törvénykönyvből indultak ki, a szintén 1919/1920-ban létrejött pozsonyi Comenius Egyetem Jogi Karán pedig a polgári jog tanárai a korábbi magyar polgári jogi szabályokból indultak ki. A tankönyvek területén ez pedig sokáig azt is jelentette, hogy itt Szladits Károly könyveinek fordításai és azok csehszlovák kiegészítései (gyakorlatban a csehszlovák Legfelsőbb Bíróság idevonatkozó ítéletei) voltak az irányadók.

A csehszlovák polgári törvénykönyv előkészítésének munkálatait 1920-ban kezdték meg. A kidolgozásra került kódextervezet alapvetően az osztrák ABGB institúció-rendszeren alapuló szerkezetét követte, azzal a különbséggel, hogy a nemzetközi magánjog szabályait is tartalmazza. Az 1931-ben közzétett, osztrák hatást tükröző polgári törvénykönyv-tervezet hatályba léptetésére azonban nem került sor.[10]

A magánjog kodifikálásának kérdését némileg árnyalta az a tény, hogy a Szlovákiában és Kárpátalján működő bírói kar jelentős része a cseh országrészekből érkezett, mert 1920-as évek elején még csak viszonylag kevés szlovák identitású jogász volt az országban. A szlovákok a régi dualizmuskori Magyarországon a jogász szakmán belül a leginkább alulreprezentált nemzetiségek közé tartoztak. Ez főleg a korábbi intenzív értelmiségi és középosztálybeli asszimilációval függött össze. Ez a helyzet annak ellenére alakult ki, hogy az északi vármegyék a viszonylag urbanizált és fejlett régiók közé tartoztak, ahol a dzsentri hagyományok is erősek voltak. Az anyanyelvi statisztikai számok a szlovákok számára valóban ijesztőek voltak. Az 1910. évi népszámlálási adatok értelmében a 2646 bíró közül csak 1 volt szlovák anyanyelvű. A 6743 ügyvéd közül csak 92 fő határozta meg önmagát szlovák anyanyelvűként. A 4364 ügyvédjelölt közül pedig 43 volt szlovák. A 300 királyi jegyző között 1 vallotta magát szlovéknak.[11] Az első világháború előtt tehát csak körülbelül 90–100 szlovák érzelmű és nyelvű ügyvédről lehetett beszélni, kiegészítve hozzávetőlegesen 40 joghallgatóval.[12]

Ők alkották tehát a szlovák nemzeti jogi élet fő bázisát. Annál is inkább,

10 Lásd ezzel kapcsolatban: HAMZA Gábor: *Az európai magánjog fejlődése. A modern magánjogi rendszerek kialakulása a római jogi hagyományok alapján.* Budapest, Nemzeti Tankönyvkiadó, 2002, 164-165.; HAMZA Gábor.: *Entstehung und Entwicklung der modernen Privatrechtsordnungen und die römischrechtliche Tradition*. Budapest, ELTE Eötvös Kiadó, 2009, 347-349.

11 Smutná štatistika. *Právny obzor,* 1918/4, 100-101.

12 FAJNOR, Vladimír: Práca slovenských právnikov pred prevratom a v prvom desaťročí republiky. *Právny obzor,* 1928/1, 704-712.

mert a Monarchia fennállásának utolsó éveiben a szlovák források összesen három olyan bíróról tudtak, akik nyíltan és deklaráltan vallották magukat szlovákoknak. Ezek közül egyik volt az akkori legismertebb szlovák költő, Pavol Országh-Hviezdoslav Árva vármegyében, továbbá egy Stanek nevű albíró ítélkezett Vácott; és végül Augustín Ráth – akiből később első pozsonyi jogi kari dékán, majd egyetemi rektor lett – működött bíróként a háború kitörése előtti Újvidéken. Pavol Országh Hviezdoslav azonban 1918-ban már nyugdíjas volt. A volt osztrák-magyar bíró Ráth pedig 1918 végén ideiglenesen az alakuló Szerb-Horvát-Szlovén Királyság igazságügyi minisztériumának egyik unifikációs főtisztviselője volt, és csak 1919-ben tért vissza szülőföldjére.

Szlovák nyelvű tudományos jogi életről ilyen körülmények között alig lehetett beszélni, noha egyes ügyvédek időről időre a nemzeti sajtóban vagy a cseh lapokban publikáltak egy-egy jogi vonatkozású cikket. Azok többsége tematikusan főként a nemzetiségi törvény és a nemzetiségi jogok körül forgott. Emil Stodola művelt budapesti ügyvéd 1917-ben Budapesten emiatt létrehozta a Právny obzor című lapot, amely a mai napig a legnevesebb szlovák jogtudományi folyóirat. 1918-ban és 1919-ben a folyóirat egyik fontos feladata a szlovák jogi terminológia megteremtése volt. Ezt a feladatot egyébként viszonylag hamar sikerült megoldani.

Az úgynevezett fordulat előtti szlovák jogászok (döntően vidéki ügyvédek) fontos szerepet játszottak a szlovákiai impériumváltás jogi és igazgatási lebonyolításában. Először majdnem kivétel nélkül főispánok lettek, majd a helyzet konszolidálásával sokat átmentek a csehszlovák igazságszolgáltatásba. Különösen a legfelsőbb bírósági és legfelsőbb közigazgatási bírósági szinten volt rájuk szükség, mégpedig főleg a magyar nyelvismeretük miatt, amellyel a cseh kollégáik értelemszerűen nem rendelkeztek. Sokan dolgoztak továbbá az 1920-as évek elején létrejött jogegységesítő (unifikációs) minisztériumnak, amelynek emiatt az egész két világháború közötti időszakban szlovák származású vezetője volt. Itt zajlott ugyanis a kodifikációs munka jelentős része is. Az itt szolgáló jogászok közül sokan pedig kifejezetten a polgári jogi kérdésekkel foglalkoztak. Az élükön járt Vladimír Fajnor, a régi szlovák ügyvéd dinasztia egyik tagja, aki később a csehszlovák Legfelsőbb Bíróság elnöke lett, miközben folyamatosan építette tudományos karrierjét is, mégpedig éppen a polgári jogi területen. Pozsonyban ugyanis másodállásban ő volt a polgári jogi oktatás egyik meghatározó alakja.

3. A szlovák és kárpátaljai választottbírósági jog fejlődése az I. világháború után

A két világháború közötti választottbíráskodás problematikáját tehát a fenti tágabb kontextusban célszerű vizsgálni. Mindkét országrészben ugyanis erre a területre elvileg eltérő jogszabályok vonatkoztak, bár a gyakorlat a sok cseh származású bíró szlovákiai alkalmazása miatt mégiscsak inkább az egységesítés irányában fejlődött. A választottbírósági rendszer eltéréseivel akkoriban viszonylag sokat foglalkozott az 1924-ben publikált csehszlovák polgári perjogi tankönyvében Václav Hora prágai professzor.

A magyarországi szabályozás kapcsán kiemelendő, hogy – az egyes középkori jogforrásokat nem számítva – az újkorban a választottbíráskodás intézménye elsőként a polgári törvénykezési rendtartásról szóló 1868. évi LVI. törvénycikk 495–511. §-aiban nyert szabályozást. Itt a választottbíróság viszonylag széles hatáskörrel rendelkezett, mert a felek – a telekkönyvi (vagyis ingatlannyilvántartási), hitbizományi, házassági ügyek, továbbá a távollévő vagy gyámság és gondnokság alatt álló személyek kivételével kölcsönös szerződés folytán választottbíróságra bízhatták peres ügyeik eldöntését".[13]

Ezt követően pedig a Plósz Sándor nevéhez köthető perrendtartási kódex, a Polgári Perrendtartásról szóló 1911. évi I. törvény 767–788. §§-i tartalmaztak fontos szabályokat a választottbíráskodásról, amely rendelkezéseket lehet célszerű összevetni a korabeli szlovák joggal.[14]

Václav Hora fent idézett munkájában megállapította, hogy a választottbíráskodásra vonatkozó elvek és szabályok tulajdonképpen nagyon hasonlóak a cseh országrészekben és Szlovákiában, illetve autonóm Kárpátalján, bár mindkettő mögött más-más perjogi szabályozás áll – egyik oldalon állt ugyanis az osztrák perjogi szabályozás (Gesetz vom 1. August 1895, über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten, Zivilprozessordnung – ZPO), a másikon annak magyarországi megfelelője. A szabályozás néhány figyelemre méltó sajátosságát az alábbiak szerint mutatjuk be, összehasonlítva a szlovák és kárpátaljai szabályokat az osztrák hatást tükröző Plósz féle Pp-vel.[15]

13 Lásd: Gellért i. m. 450.

14 A Plósz féle Pp. választottbíráskodásra vonatkozó szabályainak részletes bemutatását lásd: Fabinyi Tihamér: *A választott bíráskodás.* Budapest, Szerzői magánkiadás, 1920, 37-261.

15 Az osztrák polgári perrendtartásnak a közép-európai államokra gyakorolt hatását összefoglalóan lásd: Rechberger, Walter: Die Ideen Franz Kleins und ihre Bede-

Szlovákiában és Kárpátalján a választottbírák megválasztásának tényét mindig írásba kellett foglalni úgy, hogy feltüntetésre kerüljön a kiválasztott személy neve, lakcíme, állása vagy foglalkozása. Azt a tényt is rögzíteni kellett, hogy elfogadta-e a felkérést.

A Szlovákiában érvényesülő – magyar hatást tükröző – szabályozás továbbá nem zárta ki, hogy aktív szolgálatban lévő bírák is elvállaljanak választottbírói megbízásokat. Ezt azért fontos megemlíteni, mivel a ma is hatályos 1895. évi ZPO eredeti szövegezése kifejezetten kizárta az 578. §-ban, hogy hivatásos bírák hivatali szolgálati idejük alatt választottbírói tisztséget betöltsenek: „Richterliche Beamte dürfen, solange sie im richterlichen Dienste stehen, die Bestellung als Schiedrichter nicht annehmen."[16]

Megjegyzendő e körben, hogy a magyar jog egyébként 1925. június 1. előtt nem tartalmazott tiltó szabályt arra nézve, hogy valamely hatóság vagy bíróság tagjai mint választottbírák ne járhatnának el. Az 1925. évi VIII. tc. 20. §-a fogalmazta meg ezt a tilalmat, figyelmet fordítva egyébként a visszaható hatály tilalmára: „Tényleges szolgálatot teljesítő ítélőbíró vagy ügyész választott bíróságnak sem elnöke, sem tagja, sem jegyzőkönyvvezetője nem lehet, kivéve, ha jogszabály rendeli, vagy ha a felek jelen törvény életbe lépése előtt kötöttek ítélőbíró vagy ügyész bíráskodását kikötő olyan választottbírósági szerződést, amelyben a személy megnevezését igazságügyi hatóságra vagy vezetőjére bízták."[17]

Fentiekkel kapcsolatban érdemes utalni a Plósz féle Pp. 769. §-ára, amely azt rögzíti, hogy amennyiben a peres felek megállapodnak a választás módjában, a bírák kiválasztásának tényét, továbbá a választottbírák részéről történt elfogadást írásba kell foglalni.

Szlovákiában és Kárpátalján a választottbírói felkérés elfogadásához mindig kellett az érintett (felkért) személy írásbeli elfogadása. Ehhez egyébként elegendő volt a kinevezés vagy a kiválasztás tényét rögzítő okirat aláírása is.

Az elfogadó nyilatkozat írásba foglalása a bizonyítás, illetve a választottbíróság legitimációja szempontjából lényeges kérdés. Kiemelendő, hogy a választottbírói elfogadó nyilatkozat kérdése egészen a római jogig mutat vissza. Az arbiter részéről a választottbírói quasi elfogadónyilatkozat

utung fur die Entwicklung des Zivilprozessrechts in Europa. *Ritsumeikan Law Review,* 2008, 25, 101-110. http://www.ritsumei.ac.jp/acd/cg/law/lex/rlr25/rechberger%81i101%95%C5%82%A9%82%E7%81j.pdf (2021. 09. 28.)

16 A ZPO eredeti, 1895. évi szövegét lásd: https://alex.onb.ac.at/cgi-content/alex?aid=rgb&datum=1895&page=405&size=45 (2021. 09. 28.)

17 Lásd: FABINYI i. m. 150-151.

megtétele, a receptum arbitrii megtétele volt a választottbírósági eljárás első jelentős lépése. A római magánjog rendszerében a receptum arbitrii a pactumok között kerül tárgyalásra.[18] A receptum arbitrii lényege, hogy a választottbíró ezen aktussal fogadja el a választottbírói tisztséget, azaz vállalkozik arra, hogy ellátja a felek felkérésének megfelelően arbiterként a jogvita elbírálását. Ennek megfelelően bizonyos tekintetben a receptum arbitrii a mai választottbíró elfogadó nyilatkozata előképének tekinthető.[19]

Szlovákiában és Kárpátalján lényeges szabály volt a választottbírák kiválasztása kapcsán az is, hogy az a fél, amely már megnevezte a saját jelöltjét és egyúttal felhívta az ellenérdekelt felet, hogy ő is nevezze meg saját jelöltjét, abban az esetben, ha az utóbbi ennek a felhívásnak nem tett eleget, visszaléphetett a választottbírósági szerződéstől. Emellett azonban arra is lehetősége volt, hogy a rendes bíróság előtt javaslatot tegyen, hogy az nevezze ki azt a választottbírót, akit az alperes elmulasztott megnevezni. Ez arra az esetre is vonatkozott, amikor az ellentétes fél ugyan megnevezte saját jelöltjét, de az nem vállalta a megbízatást.

Miután az elfogadás tényét közölték a másik (ellenérdekelt) féllel, akkor már csak mindkét fél egyetértésével vagy a fontos okokból lehetett visszalépni. Azt a választottbírót, akit nem teljesítette a kötelezettségeit, a rendes bíróság megbírságolhatta, továbbá meg kellett téríteni az általa így okozott károkat.

Ezzel kapcsolatban is érdemes utalni a Plósz féle Pp-re, a 773. § értelmében ugyanis amennyiben egy választottbíró alapos ok nélkül késedelmeskedik a választottbírói kötelezettségei teljesítésével, a rendes bíróság által – meghallgatását követően – megbírságolható. Ezen végzés elleni perjogi jogorvoslattal, felfolyamodással élhet a választottbíró.

A választottbíró kizárásáról a rendes bíróságnak kellett dönteni, amely illetékességét mindkét jogrendszer hasonló elvek mentén állapított meg. A döntés előtt szóbeli tárgyalás és esetleg a választottbíró meghallgatása is szükséges volt. A bíróság határozatát azonban meg lehetett fellebbezni. Különösebb indoklás nélkül el lehetett utasítani a női és fiatalkorú jelölteket, illetve a gondnokság alatt lévő személyeket, vakokat, süketeket és némákat. Ugyanaz vonatkozott azokra a személyekre, amelyek a közügyektől való eltiltás alatt álltak. Ezeket a személyeket tehát elvben az egyik fel megnevezhette, de az ellenérdekelt fél indokolás nélkül elutasíthatta őket.

18 Lásd ezzel kapcsolatban: Földi–Hamza i. m. 542.

19 Ezzel kapcsolatban lásd: Boóc Ádám: Észrevételek az arbiterről. *Állam- és Jogtudomány,* 2011, 52(2), 260.

Ahhoz, hogy a szerződés abból az okból hatályát veszítse, hogy nem sikerült többségi döntést hozni, illetve a két választottbíró esetében nem sikerült elérni az egyhangúságot, nem volt szükség a rendes bíróság végzésére. A Plósz féle Pp. a 774. §-ban hasonló szabályt tartalmazott, kimondva azt, hogy kizárhatók a nők, kiskorúak, gondnokság vagy csőd alatt állók, vakok, siketek és némák, valamint hivatalvesztésre vagy politikai jogok gyakorlatának felfüggesztésére ítéltek mellékbüntetésük ideje alatt.

Abban az esetben, ha a választottbíróság túlzottan elhúzta a döntéshozatalt, a rendes bíróság valamely fél javaslatára határidőt szabhatott ki a döntés meghozatalára.

A választottbírói határozatot mindig meg kellett indokolni, hacsak a szerződés nem rendelkezett volna másképpen, azaz a felek nem állapodtak meg ettől eltérően. A Plósz féle Pp. 782. §-a hasonlóan rendelkezik, vagyis kizárólag a felek azok, akik szerződésükben kiköthetik, hogy nem szükséges a választottbírósági ítéletet megindokolni.

Nemcsak a döntést, hanem a választottbírák előtt létrehozott egyezséget is minden választottbírónak alá kellett írnia. Ugyanez vonatkozott azokra a megkeresésekre, amelyekben a választottbíróságok a rendes bíróságok segítségét kérték. A döntés és az egyezség eredeti példányát mindig az illetékes rendes bíróságnál kellett elhelyezni.

A választottbírósági ítéletek érvénytelenítésének indokai kapcsán az alábbiakra szükséges rámutatnunk:

a) a panasz alapjául szolgálhatott az is, hogy a határozat nem tartalmazott indokolást vagy nem volt értelmezhető (közérthető);
b) a választottbírósági eljárásból kizárt választottbíró részvétele akkor is az érvénytelenítési kereset indokául szolgálhatott, amennyiben a kizárását a rendes bíróság szabályosan kimondta, de a választottbíró az ítélet meghozatalában részt vett, továbbá amennyiben az érintett fél a saját hibáján kívül nem tudta az érintett választottbírót az eljárásból kizárni az előtt, hogy megszületett a döntés.

Az érvénytelenítési kereset alapjául azonban nem szolgálhatott az, ha a választottbíró kizárását jogtalanul megtagadták a féltől. Ez azzal függött össze, hogy a kizárásról a cseh országrészekben maga a választottbíróság határozott, Szlovákiában pedig a rendes bíróság. A felek által létrehozott egyezség ellen is lehetett érvénytelenítéssel élni, de csak akkor, ha az a törvényileg meg nem engedett cselekményekre kötelezte volna a felet, illetve ha az

nem volt közérthető. Az a rendes bíróság, amely előtt panaszt emeltek a választottbírósági határozat érvénytelenítése miatt, az ide vonatkozó kérelem esetén elhalaszthatta a határozat végrehajtását, mégpedig akkor, ha a panasz pozitív eredménnyel kecsegtetett.

A Plósz féle Pp. az ítélet érvénytelenítése kapcsán igen részletes szabályokat tartalmaz az alábbiak szerint:

„783. § A választott bírósági itéletnek és egyességnek hatálya ugyanaz, mint a jogerős birói itéletnek.

784. § A választott bíróság itéletét keresettel érvényteleniteni lehet a rendes bíróság előtt:

1. ha választott bírósági szerződés nem volt, vagy ha nem érvényesen, vagy nem az eldöntött ügyre vonatkozólag lett kötve, valamint ha az itélet hozatala előtt hatályát vesztette;

2. ha a szerződésnek vagy a törvénynek a választott bíróság alakitására vagy a határozathozatalra vonatkozó rendelete meg lett sértve;

3. ha az itélet hozatalában oly biró vett részt, a kit a rendes bíróságnak jogerős végzése kizárt, vagy a kinek ily kizárását a fél a választott bírósági itélet meghozatala előtt hibáján kivül nem eszközölhette ki;

4. ha a fél meghallgatását a 776. § ellenére mellőzték;

5. ha az itélet a felek kérelmén túl terjeszkedik vagy a 782. § ellenére nincs indokolva;

6. ha a 782. §-nak az itélet eredetijének aláirására vonatkozó szabályait meg nem tartották;

7. ha az itélet a törvény szerint meg nem engedett cselekményre kötelez vagy rendelkező részében érthetetlen;

8. azokban az esetekben, a melyekben az 563. § 4., 5., 7., 8. és 9. pontja alapján perujitásnak van helye.

A választott bíróság előtt kötött egyesség a rendes bíróság előtt keresettel megtámadható e § 7. és 8. pontja alapján."[20]

Az ismertetett szlovák szabályokkal összevetve számos hasonlóságot fedezhetünk fel. Garanciális jellegű azon szabály megjelenése mindkét helyen, hogy az eljárásból kizárt választottbíró részvétele az ítélethozatalban érvénytelenítési ok, akárcsak az, hogy ha a választottbíró korábbi – a választottbírósági eljárás folyamán történő – kizárásának kezdeményezésére a fél önhibáján kívül nem kerülhetett sor. Ennek tipikus esete az, ha a kizárásra

20 Lásd: https://net.jogtar.hu/getpdf?docid=91100001.TV&targetdate=&printTitle=1911.+%C3%A9vi+I.+t%C3%B6rv%C3%A9nycikk&referer=1000ev (2021. 09. 28.)

okot adó körülmény a félnek csak később, esetlegesen az eljárás berekesztését követően jut tudomására.

Újlaki Géza a magyar gyakorlatból egy 1940-ben eldöntött jogesetet ezzel kapcsolatosan az alábbiak szerint ismertet: „Felperes beismerte azt, hogy a felek között a rendes bíróság előtt folyamatban volt perben hozott elsőfokú ítélet kihirdetése után, de még a választottbírósági ítélet meghozatala előtt tudomást szerzett arról, hogy K. választottbíró mint a felek között vitás vételár kezelésével megbízott pénzintézet jogutódjának, a V. Banknak igazgatója, a hivatali érdekeltségénél fogva választottbíróként nem járhat el. A fellebbezési bíróság a felperesnek a Pp. 784. § 3. pontjára alapított kereseti igényét jogszabálysértés nélkül utasította el, minthogy annak alapjául megjelölt kizárási okot a választottbíróság előtt tudomása ellenére, tehát saját hibájából nem érvényesítette."[21] Ezen esetjogi példából is jól látható, hogy a szabályozás – mindegyik vizsgált jogrendszerben – a visszaélésszerű joggyakorlást kívánja megakadályozni azzal, hogy nem tette azt lehetővé, hogy egy választottbírósági ítélet érvénytelenítését valamelyik fél olyan kizárási okra alapítsa, amely már ismert volt a választottbírósági eljárás folyamán is, és akkor a fél a kizárási kérelem előterjesztését elmulasztotta.

Fontos eljárási kérdés az is, hogy mindegyik vizsgált jogrendszerben lehetőség volt az érvénytelenítési eljárás kezdeményezésével az ítélet végrehajtásának felfüggesztését kérni, és az eljáró bíróság ennek megfelelően a végrehajtás felfüggesztéséről határozhatott is.

Kiemelendő továbbá, hogy miként megtalálható a szlovák-kárpátaljai jogban is az ítélet (vagy egyezség) aláírására vonatkozó kötelezettség, úgy a Plósz féle Pp pedig a választottbírók által alá nem írt ítélet esetén az érvénytelenítést lehetővé teszi, és hasonlóan rendelkezik az osztrák ZPO eredeti változata is.

A választottbírósági ítélet érvénytelenítése vonatkozásában feltétlenül rá kell mutatnunk a korabeli osztrák jog sajátos megoldására. A ZPO 594. §-ának korabeli szövegezése szerint ugyanis a választottbírósági ítéletnek a felek között egy jogerős ítélet joghatását eredményezi, kivéve, amennyiben a felek a választottbírósági ítélettel szembeni fellebbezés, jogorvoslat lehetőségét a választottbírósági szerződésbe nem kötötték ki. A választottbírósági ítélet érvénytelenítésére vonatkozó okok pedig ezt követően, az 595. §-ban kerülnek kifejtésre.

21 A IV. 348/1940. sz. jogesetet bemutatja: UJLAKI Géza: *A választottbíráskodás kézikönyve.* Budapest, Szerzői kiadás, 1944, 456.

Megítélésünk szerint az érvénytelenítési okok összevetésénél további érdekes sajátosság, hogy a vizsgált jogrendszerek mindegyikében érvénytelenítési ok az ítélet indokolásának elmaradása. Fontos kiemelni, hogy míg a vizsgált szlovák szabályozás akkor is lehetőséget ad az érvénytelenítés kezdeményezésére, ha az indokolás nem megfelelő, nem közérthető, addig a magyar jogban a Curia egy 1918. évi határozata szerint csak az indokolás teljes elmaradása lehet érvénytelenítési ok.

A Curia P.VII.6001/1918. sz. határozatát Fabinyi Tihamér az alábbiak szerint idézi: „Ha a választott bíróság ítéletének van oly része, amely az ítéleti indokolás fogalmának egyáltalában megfelel, és ennek a résznek a tartalma arra az ügyre vonatkozik, amely a választott bíróság előtt döntés alatt állott, a választott bíróság ítéletét az indokolás hiánya címén a Pp. 784. §-ának 5. pontja alapján keresettel érvényteleníteni nem lehet. A Pp. 782. §-ának abból a rendelkezéséből, hogy a választott bíróság – ellenkező szerződési intézkedés hiányában – ítéletét indokolni köteles, az indokolás kisebb-nagyobb kimerítőségének, sem pedig, már a dolog természeténél fogva sem, az indokolás belső kielégítőségének, meggyőzőségének kívánalmát levezetni nem lehet."[22] A fenti határozat tehát igen alapos okfejtéssel fejti azt ki, hogy abból a szabályból, amely az indokolás meglétét követeli meg a felek ellenkező megállapodása hiányában, nem teszi lehetővé az érvénytelenítés kezdeményezését abban az esetben, amennyiben az ítélet indokolással rendelkezik ugyan, de azt valamelyik fél sérelmesnek véli.

4. Különleges választottbírósági testületek

Külön szabályok vonatkoztak továbbá a tőzsdei választottbíróságokra. Ezt a területet sem sikerült ugyanis eljárásjogi vonatkozásban maradéktalanul egységesíteni. Csehszlovákiában ugyan 1922-ben elfogadták a 69. számú törvényt a pozsonyi terménytőzsdéről, amely tartalmazta a vonatkozó tőzsdei választottbírósági elveket is. Ezek az elvek megegyeztek a cseh országrészekben érvényesülő elvekkel, de azzal a kivétellel, hogy a tőzsdei választottbírósági határozatokat csak a határozat hatálytalanságára vonatkozó panasszal lehetett megtámadni, amely panasz feltételeire vonatkoztak a korábbi magyar perjogi szabályok.[23]

22 Lásd: FABINYI i. m. 249.

23 Ezekről a konkrét eltérésekről lásd HORA, Václav: Československé *civilní právo procesní. Díl I. Nauka o organisaci a příslušnosti soudů se stálým zřetelem ke Slovensku a Podkarpatskô Rusi. Nákladem vlastním.* Praha, 1922. 225-226.

A polgári perjogi szabályok alapján működő választottbírói fórumokon kívül a két világháború közötti Csehszlovákiában léteztek még egyéb specializált választottbírósági formák, amelyek egységes szabályait azonban többnyire már az új köztársaság hajnalán fogadták el. Főleg a munkajogi és szociális kérdéseket érintő fórumokról volt szó. Ez a terület pedig a forradalmi hangulatú első években annyira fontosnak és érzékenynek bizonyult, hogy a jogalkotó sietett a terület mielőbbi egységes szabályozásával.

Ezzel is csökkenteni akarta a szociális feszültségeket és kivenni a szelet a radikális mozgalmak vitorláiból.

Tipikusan ilyen célokat szolgált az 1921. évi 330. számú törvény, amely értelmében minden olyan, legalább fél éve működő keresőképes önálló üzemben, ahol legalább 30 fő dolgozott, létre kellett hozni üzemi bizottságokat. Mandátuma egy évre szólt, a tagjai száma pedig három és húsz között mozoghatott. Az üzemi bizottságokon kívül létre kellett hozni az ún. döntőbizottságokat is, amely illetékességi területi a politikai igazgatási járások területéhez igazodott. Az elnöke a kisipari és vállalkozási ügyek területén jártas hivatásos bíró lehetett, akit az illetékes járási bíróság elnöke nevezett ki. A helyettese a jogban jártas köztisztviselő is lehetett. A többi tagot (kettő-kettőt) a járási szintű igazgatási vezetők nevezték ki a munkáltatók és a munkavállalók közül. Az utóbbiakra szakszervezetek tehettek javaslatot. A testület mandátuma négy évre szólt.[24]

Régebbi hagyományokkal rendelkeztek a bányászok döntőbíróságai, amelyeket az új állam körülményei között először az 1920. évi 145. számú törvény szabályozott, amelyet nemsokára felváltott az 1924. évi 170. számú törvény. Ezeket a bíróságokat kilenc városban hozták létre, de közülük csak egy volt Szlovákiában – a pozsonyi testület. Egyebek mellett az első fokon dönteniük kellett a bányászati alkalmazottak bérezéssel kapcsolatos panaszok és jogviták ügyeiben, az üzemi tanácsok panaszairól, az elbocsátásokkal kapcsolatos jogvitákban stb. A bíróságokon 2–2–2 arányban képviseltették magukat vállalkozók, alkalmazottak és munkások. A testület élén elnök állt, aki csak a hivatásos bírák közül kerülhetett ki. A tagokat a közmunkák minisztere erősítette meg a tisztségükben, mandátumuk négy évre szólt. A tagok által választott elnököt az említett miniszter az igazságügyi miniszterrel való megállapodás után nevezhette ki. Az eljárások alapjául a régi osztrák polgári eljárási szabályok szolgáltak, de a pozsonyi

24 SCHELLEOVÁ, Ilona – SCHELLE, Karel: Vývoj právní úpravy rozhodčího řízení. Časopis pro právní vědu a *praxi,* 1995, 3(2), 134.

bíróság a régi magyar polgári perrendtartás alapján járt el.[25]

A bányászattal függött össze a bányász testvéri pénztárak (kasszák) döntő bíróságai, amelyek létrehozását az ausztriai országrészekben az 1890-es években elfogadott törvények tették lehetővé. Ezeket aztán a csehszlovák időkben először az 1919. évi 608. számú törvény szabályozta, de véglegesen csak 1922. évi 242. számú törvény rendezte a kérdést. Mindezt tovább gondolta az 1923. évi 197. számú kormányrendelet. Ezen jogszabályok értelmében minden egyes bányászati körzet területén működő bányásztestvéri pénztár illetékességi területén létre kellett hozni döntőbíróságot, amely az állandó elnökből és helyetteseiből, illetve négy ülnökből, illetve pótülnökből állt. Az utóbbiakat hároméves mandátummal a pénztár közgyűlése választotta meg, de úgy, hogy a vállalkozók és a pénztártagok külön szavaztak. Az elnököt és helyettesét pedig a közmunkák minisztere az igazságügyi miniszterrel való egyetértésben nevezte ki a hivatásos bírák közül. Ezen bírósági forma csúcsszerve a prágai székhelyű felső bíróság volt, amely öt tagból állt. Az elnök itt is csak a hivatásos bíró lehetett.[26] Az eljárási jogszabályként itt is a régi osztrák, illetve magyar polgári perrendtartás szolgált.

Az első Csehszlovák Köztársaság idején léteztek még a kisiparos testületek döntőbizottságai, amelyek létrehozását az 1859. évi 22. számú osztrák törvény tette lehetővé. A Monarchiában utoljára az 1907. évi 199. számú törvény szabályozta ezt a területet. 1919 decemberében aztán létrejöttek a vasipari munka- és szolgálati viszonyok vonatkozásában eljáró döntőbizottságok, aztán az 1919. évi 100. számú törvény létrehozta az építési ipart érintő bér döntőbíróságokat. Elnököt és helyetteseit itt a népjóléti miniszter nevezte ki a hivatásos bírák közül, tagokat a munkáltatók és a munkavállalók szervezetei delegálták. Az építésipari döntőbizottságokat és ún. bérbíróságokat az 1922. évi 45. számú építésügyi törvény hozta létre. Az 1920. évi 29. számú törvény a házimunkával kapcsolatos vitákról és azok fórumairól rendelkezett.[27]

Az 1919. évi 207. számú törvény lehetővé tette a munkás balesetbiztosítási döntőbíróságokat. Az 1919 évi 356. számú kormányrendelet révén aztán mellette létrehozták egy külön felső tanácsot, amely a bányászok balesetbiztosítási ügyeiben járt el. A vasúti alkalmazottak vonatkozásában hasonlókat hozott létre az 1919. évi 272. számú kormányrendelet.[28]

25 Uo. 136-137.
26 Uo. 139.
27 Uo. 138.
28 Uo. 139-140.

Az 1888. évi 33. számú törvény értelmében még a Monarchia idejében létrejöttek ez egészségbiztosítási pénztárak döntőbíróságai, amelyeket az első Csehszlovák Köztársaság idején az 1924. évi 221. számú törvény szabályozta újra. Minden egészségbiztosító mellett működtek és a háromtagú tanácsokban jártak el. A magán és közalkalmazottak döntőbíróságait végül – a korábbi osztrák szabályok alapján – az 1920. évi 89. számú törvény szabályozta.[29]

Végül meg kell említeni, hogy a két világháború közötti időszakban Csehszlovákia is aláírta a választottbírósági ítéletekről szóló 1923. évi genfi jegyzőkönyvet, amelyet aztán 1931-ben hirdették ki a csehszlovák hivatalos közlönyben. Ez a jegyzőkönyv a Protocol on Arbitration Clauses signed at a Meeting of the Assembly of the League of Nations held on the 24th Day of September, 1923, vagyis a Népszövetség 1923. szeptember 23-án tartott közgyűlésén elfogadott, a választottbírósági klauzulákról szóló egyezmény.[30] E jegyzőkönyv akként rendelkezett, hogy a szerződő államok érvényesnek ismerik el a joghatóságuknak alávetett személyek között létrejött választottbírósági kikötéseket akkor is, ha az eljárás olyan más országban zajlik, amelynek joghatósága alá egyik szerződő fél sem tartozik. Ezt a jegyzőkönyvet negyven, elsősorban európai ország ratifikálta, Magyarország azonban nem lett részese az egyezménynek.[31]

1931-ben szintén közzétették az idegen választottbírósági határozatok végrehajtásáról szóló 1927. évi Genfi Egyezményt, amely az előbb említett jegyzőkönyvből indult ki. Ez volt az 1927. szeptember 26-án elfogadott Egyezmény a Külföldi Választottbírósági Ítéletek Végrehajtásáról.

Csehszlovákia ezt a kérdést egyébként az Olaszországgal, Svájccal, Spanyolországgal, Portugáliával és Görögországgal kötött bilaterális szerződésekben is rendezte.[32]

Fontos megemlíteni, hogy a nevezett időszakban Magyarországon is léteztek különböző különleges választottbírósági fórumok. Magyarországon

29 Uo. 139-140.

30 A Genfi Jegyzőkönyv szövegét lásd: https://www.trans-lex.org/511300/_/protocol-on-arbitration-clauses-signed-at-a-meeting-of-the-assembly-of-the-league-of-nations-held-on-the-twenty-fourth-day-of-september-nineteen-hundred-and-twenty-three/ (2021. 09. 29.)

31 Lásd: Kecskés László – Kovács Kolos: *A választottbíráskodás XX. századi fejlődése a nemzetközi egyezmények és dokumentumok tükrében.* In: Kecskés László – Lukács Józsefné (szerk.): Választottbírók könyve. Budapest, HVG Orac, 2012, 72.

32 Uo. 141.

az osztrák-magyar kiegyezés után időszakra tehető a tőzsdei választottbíróság kialakulása. Habár a pesti áru- és értéktőzsde ünnepélyes megnyitására 1864. január 18-án került sor, a budapesti tőzsde szervezete a kiegyezés után vált véglegessé. A testületi önkormányzattal rendelkező budapesti tőzsde hatáskörébe tartozott a tagfelvétel és kizárás, az üzletforgalom szabályozása, a szokások megállapítása, a tőzsdeügynökök kinevezése, az árjegyzésről való gondoskodás, és az állandó választottbíróság kialakítása. A tőzsdei választottbíráskodást az 1868. évi LVI. törvénycikket módosító 1881. évi LIX. törvénycikk kodifikálta.[33]

Kiemelhető továbbá, hogy Magyarországon a XX. század elejétől léteztek olyan választottbírósági vitarendezést alkalmazó testületek, amelyek „nem, vagy nem kizárólag a felek magánrendelkezése alapján működtek, hanem tételes jogszabályi rendelkezés folytán voltak jogosítva és egyben kötelezve bizonyos jogviták elintézésére."[34]

Ilyen – lényegében – kényszerválasztottbíróságként (Zwangs-Schiedsgericht) működő testületek voltak: Budapesti áru és értéktőzsde különbírósága, a fiumei kereskedelmi iparkamara választottbírósága, a szombathelyi kereskedők társulata áru, termény és értékcsarnokának különbírósága, a Budapesti nemesfém- és drágakőcsarnok különbírósága, a munkásbiztosítási választottbíróság, a kereskedelmi és iparkamarai választottbíróság, a mérnöki kamarai állandó választottbíróság, a színházi bíróságok. A kényszerválasztottbíróság – jelleget ebben a vonatkozásban az jelentette, hogy a nevezett jogviszonyokkal – például a színházi bíróságok esetén fegyelmi ügyekben – csak az adott, lényegében választottbíróságként működő testület járhatott el, és hozhatott érdemi döntést.

5. Zárókövetkeztetések

Fentiek alapján jól látható, hogy a trianoni békeszerződés és történelmi következményei ellenére a választottbírósági joganyag korabeli fejlődése Magyarországon és a szlovák-kárpátaljai területeken számos hasonlóságot mutat, és mindegyik vizsgált jogrendszerben – részben osztrák hatásra,

33 Lásd: Mezey Barna (szerk.): *Magyar Jogtörténet.* Budapest, Osiris kiadó, 1996. 181.

34 Lásd: Kecskés László: *A választottbíráskodás jogi szabályozása Magyarországon* In: Kecskés László – Tilk Péter (szerk.) A választottbíráskodás és más alternatív vitarendezési eljárások jogi szabályozásának alapjai. Pécs, 2018. 67. lásd: https://ajk.pte.hu/sites/ajk.pte.hu/files/2021-02/a-valasztottbiraskodas-es-mas-alternativ-vitarendezesi-eljarasok-jogi-szabalyozasanak-alapjai.pdf (2021. 09. 28.)

részben a jogfejlődés eredményeként – észlelhetőek azon eljárási garanciák előzményei, melyek a későbbiekben a nemzetközi kereskedelmi választottbíráskodás alapvetői jellemzőivé fognak válni.

A vizsgált területeken ma már a választottbírósági joganyag az UNCITRAL Modelltörvény (UNCITRAL Model Law on Commercial Arbitration) rendelkezései alapján épül fel, ugyanakkor mindenképpen fontos és örömteli annak felfedezése és kimutatása, hogy számos lényeges eljárási garanciát már a korabeli – XX. század eleji – választottbírósági joganyag ismert és szabályozott.[35]

35 Az UNCITRAL Mintatörvényének autentikus szövegét észrevételekkel lásd: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf (2021. 09. 29.) Az ukrán választottbírósági törvény (1994), a szlovák választottbírósági törvény (2014), illetve a régi, már nem hatályos magyar választottbírósági törvény (1994. évi LXXI. törvény) és a jelenleg hatályos választottbírósági törvény (2017. évi LX. törvény) az UNCITRAL Modell törvény alapján került megalkotásra. Lásd ezzel kapcsolatban: https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status (2021. 09. 29.) Az UNCITRAL jogegységesítő tevékenységével kapcsolatban a választottbíráskodás területén lásd különösen: Kecskés László.: *A polgári jog fejlődése a kontinentális Európa nagy jogrendszereiben. Történeti vázlat.* Budapest – Pécs, Dialóg Campus, 2004, 475.; Mádl Ferenc – Vékás Lajos: *Nemzetközi magánjog és nemzetközi gazdasági kapcsolatok joga*. Budapest, Nemzeti Tankönyvkiadó, 2004[6], 465-466.

Ujlaki Miklós élete és munkássága Magyarországon[1]

Nagy Péter
adjunktus (KRE ÁJK)

Összefoglalás

A tanulmány célja, hogy bemutassa Ujlaki Miklós életét és munkásságát. Ujlaki, aki Szladits Károly egyik tanítványa volt. Tudományos karrierje elején a magyar magánjog bibliográfiáját kutatta, több évig kutatta a környező országokhoz csatolt egykori magyar területeken bekövetkezett magánjogi fejlődést. Az eredményeket több kötetben adta közre. Az 1947-ben alapított Összehasonlító Jogi Intézet igazgatóhelyettese volt. 1948-ban meghívást kapott „Svenska Instituteil"-be, melynek keretében két félévet Svédországban töltött, ahonnan azonban már nem tért haza: 1949-ben az Amerikai Egyesült Államokba emigrált és véglegesen letelepedett.

Kulcsszavak

Jogtörténet, magánjog, bibliográfia, életút, jogösszehasonlítás, jogtudomány

Life and Carrier of Miklós Ujlaki in Hungary

Abstract

The aim of the study is to present the life and carrier of Miklós Ujlaki, who has been one of the students of the well-known Hungarian law professor, Károly Szladits (1871–1956). At the beginning of his academic career, Ujlaki researched the bibliography of the Hungarian private law. He researched the development of the private law in the former Hungarian territories for several years, which had been came under the control of neighbouring countries because of the Treaty of Trianon. He has published his conclusions in several books. He was

1 This work was supported by the Slovak Research and Development Agency under the Contract no. APVV-19-0419.

the vice director of Institute of the Comparative Law, that had been founded in 1947. Ujlaki was invited to the „Svenska Instituteil" in 1948, therefore he spent two semesters in Sweden, wherefrom he never returned to Hungary. From Sweden he emigrated to the United States of America in 1949.

Keywords

Legal history, private law, bibliography, carrier, comparative law, jurisprudence

Ujlaki Miklósról, a Trianon utáni magyar magánjog utódországi továbbélését kutató legjelentősebb jogtudósról, viszonylag keveset tudunk. Itthoni tudományos munkásságának összegyűjtése, emigrációja emlékeinek felkutatása még várat magára. Jelen tanulmány ennek a fehér foltnak a kitöltéséhez kíván hozzájárulni azzal, hogy Ujlaki életének első, magyarországi tudományos pályafutásának legfontosabb állomásait és eredményeit gyűjti össze. Nem túlzó életének első felét említeni, mivel az 1906-ban született kutató, oktató és ügyvéd 1948-ban el hagyta az országot, ahova már nem tért vissza 1985 januárjában New Yorkban bekövetkezett haláláig.[2]

1. Pályaképe

Ujlaki Miklós 1906. május 18-án született Budapesten, családja izraelita vallású volt. Édesapja Ujlaki József 1901-től 1937-ben bekövetkezett haláláig Budapesten volt ügyvéd, aki maga is több tudományos munka szerzője volt főként pénzügyi jogi témában.[3] Tagja volt az egységes ügyvédi és bírói vizsgálóbizottságnak, majd több ülésszakon át a Kúria ügyvédi tanácsának is, valamint a Magyar Jogászegylet pénzügyi jogi szakosztályának alelnöke volt. Édesanyja Kiss Margit volt.[4]

2 A hatvanas években a Mormon Egyház által digitalizált anyakönyvek mikrofilmmásolatai 2019-től online kutathatók. Minden esetben az eredeti levéltári forrást is rögzítik: https://www.familysearch.org/search/. Ujlaki Miklós halálának helyről és időpontjáról: States Social Security Death Index, database; FamilySearch [https://familysearch.org/ark:/61903/1:1:JKLF-L6P (2021. 09. 10.7)], Nicholas Ujlaki, Jan 1985; citing U.S. Social Security Administration, Death Master File.

3 Például: Ujlaki József: *A csekktörvény (1908:LVIII. tcz.) magyarázata*. Budapest, Deutsch Zs. és Tsa., 1909, VII, 147.; Ujlaki József: *Az új adótörvények rendszere: a Budapesti Ügyvédi Körben 1917. február hó 22-én tartott előadás*. Budapest, Dick, 1917, 15.

4 Eötvös Lóránd Tudományegyetem Levéltára, 7.c. Állam- és Jogtudományi Kar. A Dékáni

Középiskolai tanulmányait a budapesti Kölcsey Ferenc főgimnáziumban végezte, érettségijét 1924-ben „jó" eredménnyel teljesítette. Diplomáját 1928-ban a Budapesti Királyi Magyar Pázmány Péter Tudományegyetem Jog- és Államtudományi Karán szerezte. Jogtudományi szigorlatai közül a tételest egyhangú kitüntetéssel, a vegyest egyhangúlag, a történetit szótöbbséges dicsérettel abszolválta.[5] Magántanári pályázatához csatolt életrajzában az egyetemi évek tudományos tevékenységéről is beszámolt. 1926 októberében került Magyary Géza és Szladits Károly mellé mint a per- és magánjogi szemináriumok könyvtárosa és szemináriumi segéd. Magyary Géza mellett 1928-ban bekövetkezett haláláig dolgozott, ahol a könyvtárosi feladatok mellett anyaggyűjtési és „egyéb tudományos munkát" is végzett. A Szladits Károly melletti magánjogi szemináriumi munkát egészen 1942-ig folytatta.[6]

Ujlaki Miklós 1929-ben pályázott az Országos Ösztöndíjtanács által meghirdetett ösztöndíjra.[7] Szladits Károly[8] kérelemhez egy támogató nyilatkozatott csatolt, amelyet a fontos életrajzi adalékok miatt egész terjedelmében idézek: *„Dr. Ujlaki Miklós magánjogi szemináriumomban három év óta jeles sikerrel dolgozik. Tevékeny részt vett a magánjogi birói gyakorlatot magában foglaló kötet összeállításában. 1928. szeptember óta nagy buzgalommal és körültekintéssel önállóan vezeti a szemináriumban a magyar magánjog bibliográfiájának rendszeres egybefoglalását 1861-től napjainkig. A kb. 30-35 ívnyi bibliográfiái szakmunka a magyar jogirodalom részére egyenesen hézagpótló s*

Hivatal iratai. (a továbbiakban ELTE Levéltér, 7.c.) 484/1944–1945. 1. számú melléklet, 1.

5 Budapesti Királyi Magyar Pázmány Péter Tudományegyetem Jog- és Államtudományi Karának ülései, 1928-1929 (ELTEL 7.a.29.) 1929. április 24. VI. rendes ülés, 239. Az ülések jegyzőkönyvei online is elérhetőek: https://library.hungaricana.hu/hu/collection/egyetemi_jegyzokonyvek_elte_AJTK/ (2021. 09. 02.) (a továbbiakban: ELTE Levéltár, 7.a.29.) ELTE Levéltár 7. c. 484/1944–1945. 1. sz. melléklet, 1. A Hivatalos Közlönyben csupán a történeti tárgyú (I.) vizsga szótöbbséggel kitüntetettek, és a tételes (III.) egyhangúlag kitüntetettek között szerepel. Vö: Hivatalos Közlöny, 1928. 36(25), 351.

6 ELTE Levéltár 7. c. 484/1944–1945. 1. számú melléklet, 2.

7 ELTE Levéltár, 7.a.29. 1929. április 24. VI. rendes ülés, 239.

8 Szabó Béla: Szladits, Károly. In: Michael, Stolleis (szerk.) *Juristen. Ein biographisches Lexikon von der Antike bis zum 20. Jahrhundert*. München, Verlag C. H. Beck, 2001, 618-619.; Hamza Gábor – Sándor István: Szladits Károly (1871-1956). In: Hamza Gábor – Siklósi Iván (szerk.): *Magyar jogtudósok IV*. Budapest, ELTE Eötvös Kiadó, 2014, 43-51.; Hamza Gábor: Emlékezés Szladits Károlyra (1871–1956), halálának évfordulója alkalmából. *Jogtörténeti Szemle*, 2016, 18(2), 86-89.; Vékás Lajos: Szladits Károly és magánjogi iskolája. *Jogtudományi Közlöny*, 2018, 73(2), 72-77.; Vékás Lajos: Szladits Károly (1871–1976) és Magánjogi iskolája. In: Vékás Lajos (szerk.): *Fejezetek a magyar magánjogtudomány történetéből.* Budapest, HVG-ORAC, 2019, 81-96.

ezért az Orsz. Bibliográfiái Központ szivesen vállalkozik kiadására. Dr. Ujlaki azonban szerzői tiszteletdijban nem részesül és azért méltányos, hogy a szerkesztés nagy és fáradságos munkájáért ösztöndíjban részesüljön. A munka a folyamodót még kb. egy évig fogja foglalkoztatni; szerkesztői működése a munka jelen stádiumában nélkülözhetetlen. Éppen azért nemcsak kívánatosnak, hanem okvetlenül szükségesnek is tartom, hogy a szemináriumban további tudományos munkássága belföldi kutatási ösztöndíj adományozásával biztosittassék. A folyamodó boldogult Magyary Géza professzornak is kedvelt tanítványa volt és tőle már megbízást kapott perjogi munkája III. kiadásának előkészitésére, ami a professor úr halála következtében egyelőre meghiúsult. Ujlaki Miklós jeles képzettségű, odaadó buzgalmú tudományos munkás. Szerény vagyoni viszonyok között él. Édes atyja nyugdíjas köztisztviselő, az országgy. gyorsirodának nyug. volt tagja, osztálytanácsosi rangban[!]; a kérelem erre való tekintettel is különös méltánylást érdemel. Mindezeknél fogva a folyamodó részére az ösztöndíj adományozását a legmelegebben ajánlom és a magam részéről közérdekben is kérem."[9]

Thewrewk-Pallaghy Attila honvédelmi minisztériumi fogalmazó pályázatával szemben a kar egyhangúan Ujlaki pályázatát fogadta el, és terjesztette fel az Ösztöndíjtanácshoz.[10] A vallás- és közoktatásügyi miniszter – többek között – Ujlaki részére is megítélte 1929–1930. tanévre az ösztöndíjat a magánjogi bibliográfiával kapcsolatos munkája folytatására.[11]

Még 1928-ban a Budapesti Ügyvédi Kamara ügyvédjelölti lajstromba vette, principálisa édesapja, Ujlaki József lett.[12]

Nemsokkal később már az Ügyvédjelöltek Országos Szövetségének választmányi üléséről szóló hírek adnak hírt az ifjú jogász pályájának emelkedéséről és a tudományos érdeklődés töretlenségéről. Az ekkor 22 éves Ujlaki indítványára a választmány egyhangúlag elhatározta, hogy azzal a felterjesztéssel fordul az igazságügyminiszterhez és az ország összes ügyvédi kamarájához, hogy a joggyakorlatra vonatkozó fennálló szabályokat úgy módosítsák, hogy a gyakorlati idő alatt annak, aki külföldi ügyvédnél, főiskolán vagy külföldi vállalatnál dolgozott vagy kutatott, az ott végzett tevékenységéből egy évet beszámítsanak az ügyvédjelölti gyakorlatba.[13]

9 ELTE Levéltár, 7.a.29. 1929. április 24. VI. rendes ülés, 239-243.

10 ELTE Levéltár, 7.a.29. 1929. április 24. VI. rendes ülés, 243.

11 Hivatalos Közlöny, 1929/14. sz. 228.

12 Budapesti Közlöny, 1928. 62(252) 3.

13 Az ügyvédjelöltek az ellenőrzési rendszer megváltoztatását kérik. *Budapesti Hírlap*, 1929. 49(23), 24.

Az 1929. május 19-én és 20-án Budapesten rendezett országos ügyvédjelölti kongresszuson már a továbbképzési szakosztály ülésén tartott előadást az egyetemi jogi oktatás reformjáról, az ügyvédjelölti továbbképzőtanfolyamokról, az ügyvédi vizsgarendszerről és a külföldi tanulmányok joggyakorlati időbe való beszámításáról.[14]

1930–1931. tanévre újabb lehetőséget kapott, amikor a Berlini Collegium Hungaricumba nyert ösztöndíjat a jogtörténeti tanulmányainak folytatására.[15] Ebben az időszakban főként a breslaui Osteuropa-Institutban dolgozott, ami a Weimari Köztársaság egyik legtekintélyesebb interdiszciplináris, a kelet-európai joggal és gazdasággal foglalkozó kutatóhelye volt.[16] Itt ideje egy részében az intézet számára a magyar jogi vélemények szerkesztését csinálta, többnyire azonban a Magyarországgal szomszédos államok magánjogát tanulmányozta.[17]

Az 1931/32. tanévre újabb állami ösztöndíjat nyert arra a célra, hogy a bécsi Collegium Hungaricumban folytasson összehasonlító magánjogi kutatásokat,[18] ez azonban nem valósulhatott meg, mivel abban az évben az ösztöndíjakat az általános gazdasági helyzet következtében visszavonták.[19] Végül az 1932–1933-as tanévre belföldi kutatási ösztöndíjat nyert.[20] A kutatói ösztöndíj lejártát követően, 1933. március 13-án az Budapesti Ügyvédi Kamara ügyvédként lajstromba vette.[21] Asztalos László szerint a gyakorlatban elsősorban adójogászként jeleskedett.[22]

Az ügyvédi munka azonban nem szorította háttérbe Ujlaki tudományos érdeklődését, és az ebben a közegben való szerepvállalást. Az International Law Association 1934. szeptember 6–10. között a Magyar Tudományos

14 Magyar Hirlap, 1929. 39(106), 14.

15 Budapesti Közlöny, 1930. 64(158)1-2.

16 A Jogtudományi Közlönytől egy ebben az időszakban született tanulmánya miatt helyreigazítást is kért, mivel ott breslaui ügyvédként tüntették fel. „Dr. Újlaki Miklóst, a lapunk legutóbbi, 5-ik számában megjelent «A magyar jog sorsa a Lengyelországhoz csatolt területeken című cikk szerzőjét, a tartalomjegyzék tévesen «breslaui ügyvéd»-nek tünteti fel. A cikk szerzője, akinek «Hetven év magánjogi irodalmai» című kitűnő munkáját lapunk ismertette és méltatta, budapesti ügyvédjelölt, aki jelenleg állami ösztöndíjjal a breslaui Osteuropa Institutnál dolgozik." *Jogtudományi Közlöny*, 1931/6. 60.

17 ELTE Levéltár, 7.c. 484/1944–1945. 1. sz. melléklet, 3.

18 *Hivatalos Közlöny*, 1931. 39(15) 148.

19 ELTE Levéltár, 7.c. 484/1944–1945. 1. sz. melléklet, 4.

20 ELTE Levéltár, 7.a.32. 1932. április 20. V. rendes ülés, 65.

21 *Budapesti Közlöny*, 1933. 67(67) 2.

22 Asztalos László: Grosschmid tanítványok - Szladits iskola. In: A jogászképzés a magyar felsőoktatás rendszerében 1984. 96.

Akadémián tartotta a 38. konferenciáját,[23] amelynek tagjai között találjuk Ujlakit is.[24]

Asztalos László úgy értékelte Ujlaki Miklós Szladits iskolában betöltött helyét, hogy míg Villányi (Fürst) László volt a szellemi helyettes, addig Ujlaki a szervező.[25] Ez a szervezőkészség jól tetten érhető Nyulászi János ünnepi beszédében *„Grosschmid Béni tanítványai körében Szladits Károly professzor kezdeményezésére mozgalom indult meg, amelynek célja, hogy fenntartsa és továbbvigye a nagy tudós tanításait és főkép az általa utolérhetetlen tökélyre emelt analitikus módszert. A szervezkedés a Magyar Jogászegylet keretén belül történik. A mozgalom vezetősége nevében Újlaki Miklós ügyvéd által kibocsájtott felhívásra százával jelentkeztek Grosschmid tanítványai és tisztelői. November 9-én a Magyar Jogászegylet teljes ülésén Osvald István, a kir. Kúria elnöke méltatta a megindult mozgalom jelentőségét […]"*[26]

A szervezést tekintve Ujlaki érdeme volt, hogy már 1937-ben megjelenhetett a Szladits Károly tanári működésének harmincadik évfordulójára készített kötet,[27] amely szerzői között joghallgatók és ügyvédjelöltek is vannak. Ehhez a munkához kapcsolódik az 1941-ben megjelent Szladits hetvenedik születésnapjára készített kötet, [28] amely a szemináriumakkori és volt tagjait is összegyűjtötte, és lényegében magán az egész iskolát testesítette meg.[29]

1936. február 8-án tartotta alakulóülését a Magyar Jogászegylet Összehasonlító Jogi Szakosztálya, amelyet Mendelényi László, a pestvidéki törvényszék elnöke vezetett. Beszédében kiemelte, hogy valódi összehasonlító jogtudományról csak akkor lehet szó, ha az egyes államok törvényeinek megismerésén felül beható vizsgálat tárgyát képezi az egyes törvények és jogintézmények társadalmi fejlődése is. Ennek kapcsán utalt arra a szoros összefüggésre, amely összehasonlító jogtudomány és jogbölcselet között

23 Nemzetközi Jogi Egyesület. – Az International Law Association budapesti konferenciája. Ügyvédi Közlöny, 1934. 4(19) 75-76.

24 The International Law Association. Report of the Thirty-eighth conference held at Budapest in the Hungarian Academy of Science, September 6th to 10th, 1934. 38. konferenciáját Budapesten, a Magyar Tudományos Akadémián tartotta 1934 szeptember 6-10 között. London–Reading, The Eastern Press LTD., 1935. CXXIX.

25 Asztalos i. m. 86.

26 Dr. Nyulászi János serlegbeszéde. *Polgári Jog*, 1935, 11(10), 1.

27 *Ünnepi dolgozatok: Szladits Károly egyetemi tanár működésének harmincadik évfordulója alkalmából*. Budapest, Móricz M. Ny., 1937. Budapest Móricz Ny. 112.

28 *Ünnepi dolgozatok: Dr. Szladits Károly egyetemi tanár 70. születésnapjára.* Budapest, Arany János Ny., 1941, 376.

29 Asztalos i. m. 87–88.

van.[30] A szakosztály az elnök javaslatára alelnökévé Szladits Károlyt, titkárának pedig Szászy Istvánt és Ujlaki Miklóst választották, a jegyzők ifj. Szladits Károly, Visky Károly és Degré Alajos lettek.[31]

Ujlaki a szakmai-közéleti és oktatói tevékenysége keretében az egyetemi előadások és szemináriumok mellett előadást tartott *„a pécsi egyetem nemzetközi jogi intézetében, a szegedi egyetem barátai egyesületének jog- és államtudományok szakosztályában, a Magyar Jogászegyletben, a Civiljogászok Vitatársaságában, a Budapesti Ügyvédi Kara által rendezett ügyvédjelölti gyakorló tanfolyamokon, stb.*"[32]

A magyar királyi minisztérium A zsidók közszolgálatának és közmegbizatásainak, továbbá ügyvédi működésének megszüntetéséről szóló 1944. évi. 1.210. M. E. számú rendeletének 5. §-a arról rendelkezett, hogy azokat a zsidó származású ügyvédeket, akik a rendelet hatálybalépését megelőzően (1944. március 31.) az ügyvédi kamarák névjegyzékébe be voltak jegyezve a rendelet hatálybalépése előtt bejegyzett zsidó ügyvédet a kamara választmánya az 1944. évi május hó 31. napjáig a névjegyzékből törölni köteles.[33]

A Budapest Közlöny néhány héttel később arról adott hírt, hogy a Budapesti Ügyvédi Kamara választmánya 1944. évi április hó 14. napján tartott teljes ülésében az 1.210/1944. M. E. számú rendelet alapján a Budapesti Ügyvédi Kamaránál vezetett ügyvédi névjegyzékből jogerőben törölte – számos más ügyvéd mellett – Ujlaki Miklóst is, irodagondnokaként Padányi Zoltánt kijelölve.[34] Életrajzában erről maga Ujlaki is tett említést. Az ezt követő időszakban munkaszolgálatot teljesített.[35]

Még a második világháború lezártát megelőzően, 1945 május 11-én magántanári képesítés iránt adott be kérvényt.[36] A jogi kar kari tanácsa 1945. augusztus 1-én tartott ülésén tárgyalta a beadványt. Ujlaki tudományos munkáinak bírálatát Kolosváry Bálint és Nizsalovszky Endre végezte el, mindkét esetben pozitívan nyilatkozva a pályázó tudományos mun-

30 A Magyar Jogászegylet Összehasonlító Jogi Szakosztályának megalakulása. Magyar Jogászegyleti értekezések és egyéb tanulmányok, 1936. 4. évf. 1–2. sz. 212–213.

31 Uo. 213. Lásd még: Budapesti Hirlap, 1936. 56. évf. 35. sz. 10. p.; Magyarság, 1936. 17. évf. 35. sz. 11. p.

32 ELTE Levéltár, 7.c. 484/1944–1945. 1. sz. melléklet, 6.

33 A m. kir. minisztérium 1944. évi. 1.210. M. E. számú rendelete a zsidók közszolgálatának és közmegbizatásainak, továbbá ügyvédi működésének megszüntetéséről, 5. §.

34 Budapesti Közlöny, 1944. 78(120) 6., 14.

35 ELTE Levéltár, 7.c. 484/1944–1945. 1. sz. melléklet, 2.

36 ELTE Levéltár, 7.c. 484/1944–1945. Kérvény, 1945. május 11.

kásságáról.[37] Nizsalovszky azt a javaslatot tette, hogy a szóbeli kollokvium elengedésével közvetlenül bocsássák próbaelőadásra a folyamodót. Ezt Kolosváry is támogatta, amelyet a kari tanács is elfogadott.[38] Az előadásra 1945. augusztus 28-án került sor a kari tanács VIII. rendkívüli ülésének keretében, ahol Szandtner Pál dékán elnöklete mellett Moór Gyula, Navratil Ákos, Kolosváry Bálint, Kuncz Ödön, Eckhart Ferenc, Gajzágó László, Marton Géza, Nizsalovszky Endre, Baranyay Jusztin, Sárffy Andor és Heller Erik voltak jelen. A habilitációs próbaelőadás címe Az összehasonlító jogtudomány új útjai volt, amelyet egyhangúlag elfogadtak a jelenlevők, és kijelentették, hogy maguk részéről képesített magántanárnak tekintették Ujlakit azzal a figyelmeztetéssel, hogy az ezzel járó jogokat és kötelezettségeket csakis az illetékes főfelügyeleti hatóság megerősítését követően gyakorolhatja.[39] A Magyar Közlöny november 7.-i számában hirdették ki, hogy a vallás- és közoktatásügyi miniszter Ujlakinak *„a Pázmány Péter Tudományegyetem jog- és államtudományi karán a »Szomszédos államok magánjoga« című tárgykörből egyetemi magántanárrá történt képesítését jóváhagyólag tudomásul vette és nevezettet ebben a minőségében megerősítette."*[40]

1947 februárjában Nizsalovszky Endre és Szászy István[41] azzal a javaslattal fordult a kari tanácshoz, hogy a kar állítson fel egy bizottságot annak érdekében, hogy megvizsgálják, nem volna-e indokolt, hogy Ujlaki Miklóst egyetemi rendkívüli tanári címmel tüntettessék ki.[42] A bírálóbizottság elnöke Eckhart Ferenc lett, az előadó Szászy István és a jegyzőkönyvvezető Nizsalovszky Endre.[43] Szászy majdnem 6 oldalas javaslatot tett, amelyben részletesen kiemelte Ujlaki érdemeit, ami új információkkal is szolgál a kirajzolódó életúthoz.

Ujlaki az 1946–1947-es tanévtől kezdve Románia jogviszonyai és Jugoszlávia joga címmel külön tantárgyakat hirdetett meg. Tudományos tervei között szerepelt a magánjogi bibliográfia újabb kötetének kiadása és egy nagyobb tanulmány Az összehasonlító jogtudomány és a jogegységesítés

37 Lásd: Kolosváry Bálint és Nizsalovszky Endre véleményeit. ELTE Levéltár, 7.c. 484/1944–1945.

38 ELTE Levéltár, 7.a.44. 1945. augusztus 1. 238-239.

39 ELTE Levéltár, 7.a.44. 1945. augusztus 28. 1-2.

40 Magyar Közlöny, 1945/169. 2.

41 Kaprinay, Zsófia: Szászy István (1899-1976) *FORUM: Acta Juridica et Politica*, 2020, 10(1). 705-717.; Veress Emőd: Megjegyzések Szászy Istvánról, a magyar polgári jog általános részéről és az összehasonlító jog szerepéről. *Jogtudományi Közlöny*, 2021. 76(2) 49-55.

42 ELTE Levéltár, 7.a.46. 1947. február 19. 30.

43 ELTE Levéltár, 7.c. 941/1946–1947. Jegyzőkönyv, 1947. március 14.

alaptanai címmel. 1945-ben bankjogtanácsos lett, 1946-ban a svéd királyi követség jogtanácsosa, a társulati adóról, a tantiemadóról és a társulati vagyonadóról szóló 1940. évi VII. törvénycikk által létrehozott Országos Döntőbizottság tagja volt, a Budapesti Ügyvédi Kamara Törvényelőkészítő Bizottságának és Gazdasági Bizottságának tagja. Folytatta tevékenységét a Magyar Jogászegyletben, 1947-ben pedig a Pénzügy és Közigazgatás című folyóirat állandó munkatársa lett.[44] A kari tanács támogatását követően a vallás és közoktatásügyi miniszter elé terjesztették,[45] aki a kérést Beck Salamon kérvényével együtt jóvá hagyta.[46]

1947. október 15-i ülésen Szászy István azt indítványozta, hogy a kar állítson fel egy összehasonlító jogi intézetet. A kari tanács támogatta a javaslatot, igazgatónak pedig magát Szászyt választották meg, „*az intézet vezetésében való állandó részvétel mellett*" helyettes igazgatónak Ujlaki Miklóst választották.[47] (Szászy István egy Ujlaki emigrációjának nyilvánvalóvá válását követő, 1949. május 27-én készített előadói anyagából tudható, hogy szervezett helyettes igazgatói tisztség nem volt az intézetnél, Ujlaki soha nem kapott ezért fizetést. Megbízása kifejezetten Ujlaki személyének szólt, és miután emigrált, Szászy István kijelentette, hogy új igazgatóhelyettesre nincsen szükség, az igazgató egyedül is el tudja látni a feladatát.[48])

Egy évvel később, 1948 áprilisában Nizsalovszky Endre Szászy Istvánnal egy újabb indítványt terjesztettek elő. Ennek tárgya az volt, hogy Ujlakinak „A szomszédos államok magánjoga" című tárgykörből történt egyetemi magántanári képesítését terjesszék ki az összehasonlító magánjog egész területére. Az indokolás szerint Ujlaki Miklós, aki ekkorra már rendkívüli tanári címet kapott, 1947. május 27-én a Magyar Jogászegyletben előadást tartott Az összehasonlító jogtudomány új irányai címmel, valamint egyéb munkái is azt mutatták, hogy nem csupán a Magyarországgal szomszédos államok tételes jogát tanulmányozta, hanem több munkája összehasonlító magánjogi tárgyú volt.[49] A kar egyhangúlag elfogadta az indítványt, Ujlaki egyetemi magántanári képesítése tárgykörét összehasonlító magánjogra

44 ELTE Levéltár, 7.c. 941/1946–1947. Bizottsági vélemény, 5.

45 ELTE Levéltár, 1.a.3. 1947. április 19. 17.

46 ELTE Levéltár, 7.c. 1780/1946–1947.

47 ELTE Levéltár, 7.a.47. 1947. október 15. 147-149.; ELTE Levéltár, 7.c. 1691/1947–1948. A Pázmány Péter Tudományegyetem Jog- és Államtudományi Karán felállított Összehasonlító Jogi Intézet szervezeti szabályzata.

48 ELTE Levéltár, 7.c. 1813/1948–1949. Szászy István: Eladói jelentés. 1949. május 27.

49 ELTE Levéltár, 7.c. 1516/1947–1948. Nizsalovszky Endre és Szászy István indítványa.

módosították, ezt pedig a vallás- és közoktatásügyi miniszterhez fel is terjesztették.[50]

Ujlakit a Svéd intézet kulturális kapcsolatok számára „Svenska Institute-il" meghívta, hogy az 1948–1949. tanév őszi félévben a stockholmi egyetem jog- és államtudományi karán a jogösszehasonlításról, valamint a nemzeti és nemzetközi jogegységesítésről előadásokat tartson, valamint azért, hogy a szűkebb kutatási területét illető, az utóbbi éveket jellemző fejlődést tanulmányozza. A kart arra kérte, hogy az Összehasonlító jogi Intézet helyettes igazgatói tisztségében az év végéig szabadságolják és egyben ahhoz is járuljanak hozzá, hogy magántanári és megbízott előadói előadásait a következő tanév első felében szüneteltethesse. A kar támogatta a kérvényt.[51]

A kari tanács 1948. december 23-án tárgyalta Ujlaki újabb kérvényét, amelyben a távol lévő oktató azt kérte, hogy a szabadságát hosszabbítsák meg.[52] Csatolta a Svéd Intézet igazgatójának felkérőlevelét is, amelyből az derül ki, hogy az útja rendkívül sikeres volt. Előadásokat tartott, segítséget nyújtott az uppsalai egyetem Összehasonlító Jogi Intézetének létrehozatalában, és működésének megkezdésében. Ujlaki hamar jó kapcsolatokat alakított ki a svéd egyetemekkel, és a svéd szaktudomány legkiválóbb művelőivel, valamint a levél külön említi, hogy Ujlaki – valószínűleg többek között az új svéd összehasonlító jogi intézet hasznára is – kapcsolatot alakított ki a római Institut international pour l'unification du droit privével és a baseli Institut für internationales Recht und internationale Beziehungen-nel, amelyekben rövid kutatóutat tett. „*Egyrészt kiváló tudományos eredményeire, másrészt pedig arra való tekintettel, hogy a fiatal uppsalai „Összehasonlító Jogi Intézet" az Ön tevékenységét egyelőre egyáltalán nem nélkülözheti, Intézetünk elhatározva, hogy meghívását az 1948/49. tanév második felére is meghosszabbítja*."[53] Kérésének a kari tanács eleget tett.[54]

1949. január 6-án – a hivatalosan közölt terveihez képest váratlanul – jelent meg a hír a Magyar Közlönyben, hogy Ujlaki az ügyvédi gyakorlat folytatásáról lemondott, az ügyvédi iratait Radványi Ferenc ügyvédnek adta át.[55] Ez nyilvánvalóan az itthoni szálak hivatalos elvarrását jelentette, a köz-

50 ELTE Levéltár, 7.a.47. 1948. április 21. 42-43.
51 ELTE Levéltár, 7.a.47. 1948. június 23. 15-16.
52 ELTE Levéltár, 7.c. 923/1948–1949. Jegyzőkönyvi kivonat, 1949. január 5.
53 ELTE Levéltár, 7.c. 923/1948–1949. Gunnar Granberg levele Ujlaki Miklósnak, 1948. november 30. Mellékletben: Hivatalos fordítás svédnyelvű eredetiből.
54 ELTE Levéltár, 7.c. 923/1948–1949. Jegyzőkönyvi kivonat, 1949. január 5.
55 *Magyar Közlöny*, 1949/4. 2.

lönyben sugallt jelenlét csupán a közvélemény felé használt kommunikációs eszköz volt.

A vallás- és közoktatásügyi miniszter 1949. január 13-i levelében utasította a kart, hogy Ujlakit szólítsa fel hazatérésre, amennyiben nem jelentkezik a kari tanácsnál 30 napon belül, akkor megfosztja az állásától.[56] Marton Géza, aki ekkor dékán volt, január 26-án tájékoztatta a történtekről a minisztert. Levelében emlékeztetőleg rögzítette, hogy a vallás- és közoktatásügyi miniszer volt az, aki 247.647/1948.X. szám alatt Ujlaki meghívását és tanulmányútját elsőrendű kultúrpolitikai érdeknek minősítette.[57]

Ujlaki nem tett eleget a miniszteri felszólításnak, ellenben 1949. április 2-én kelt és Marton Gézának címzett szűkszavú levelében lemondott igazgatóhelyettesi megbízatásáról, miután „rajta kívül álló körülmények" miatt a megbízatásnak nem tudott eleget tenni.[58]

A Szladits iskola 1945 és 1949 között felbomlott. Több tagja elhunyt, számos meghatározó személyisége – Ujlaki Miklós mellett ifj. Szladits Károly is – emigrált.[59] Ujlaki neve hosszú évtizedekre kiesett a magyar tudományos köztudatból. Asztalos Lászlótól származik az a nem hivatkozott információ, miszerint vendégprofesszori megbízás lejártát követően az Amerikai Egyesült Államokba távozott, és amerikai egyetemeken tanított.

Asztalos Grosschmid tanítványok – Szladits iskola című tanulmányának publikálásakor Ujlaki még életben volt, Magyarországgal azonban megszakadtak a kapcsolatai.[60]

2. Szakirodalmi tevékenysége

A formálódó Szladits iskola tevékenysége első sorban a gyakorlat feldolgozására támaszkodott, amelynek első átfogó rendszerezését Szladits Károly Fürst László segítségével végezte el. Hasonlóan fontos feladatot jelentett a magánjog szakirodalmának feltárása. Ezt a feladatot Ujlaki Miklós kapta. A harmadik terület a fiatal kutatók eredményeinek publikálásában való segítségnyújtás volt, amely a részeredményeket tanulmánykötetekben, míg az átfogó eredmé-

56 ELTE Levéltár, 7.c. 1143/1948–1949. 210.708/1949.VI.1. sz. 1949. január 13.

57 ELTE Levéltár, 7.c. 1143/1948–1949. Marton Géza levele Ortutay Gyulának.

58 Schweitzer Gábor: A „Pázmány"-tól az „Eötvös"-ig. Adalékok a budapesti jogi fakultás történetéhez (1945-1950) *Múltunk*, 2011/4, 49.

59 Asztalos i. m. 88.

60 Asztalos i. m. 96-97.

nyeket monográfiákban adták közre.[61] Ujlaki Miklós mindhárom kategóriában publikált, szakirodalmi tevékenységének azonban két főbb iránya volt. Az első, amellyel országos hírnevet szerzett, a magánjog bibliográfiájának összeállítása volt, második a szomszédos államok magánjogának kutatása, ami idővel a jogösszehasonlítás általánosabb kérdései és a jogegységesítés felé fejlődött tovább. A két meghatározó kutatási területen kívül foglalkozott még „általános magánjogi" témákkal is. Az alábbiakban ebben a sorrendben gyűjtöm össze a tudományos életút publikációkban megjelent eredményeit azzal a kiegészítéssel, hogy a külföldön publikált tanulmányok minden egyes elemét aligha lehet a teljesség igényével összegyűjteni, ugyanakkor az emigráció alatt született írásokkal ezúttal nem foglalkozom.

A bibliográfiai kutatómunka és a rendszerezés alapvető módszertani kérdéseiről 1930 márciusában publikált először a Jogtudományi Közlöny hasábjain.[62] Még azév áprilisában,[63] huszonnégy éves korában jelentette meg Szladits Károly magánjogi szemináriumának kiadványaként az 1861–1930 között született magánjogi tárgyú magyarnyelvű fontosabb munkák bibliográfiáját.[64] Szladits Károly, az alábbiak szerint összegzi a munka esszenciáját előszavában: „*A bibliográfia minden szaktudománynak nélkülözhetetlen segítő eszköze: az irodalomnak hovatovább beláthatatlan tág terein eligazít, megtámasztja emlékezetünket; munkánkat gazdaságossá teszi, mert megóv az erőpazarlástól, hogy újból keressük, amit mások már felkutattak; emellett az irodalmi becsületesség egyik biztosítéka és a tudományos hála kifejezője, mert megmenti a feledéstől előbbi nemzedékek munkáját*."[65]

A megjelent recenziók pozitívan értékelték a munkát, noha főként Szladits vezetői szerepét és a két évvel korábban megjelent A magánjogi bírói gyakorlat[66] című munkához való viszonyát emelték ki.[67] Ezt követte öt évvel

61 Asztalos i. m. 83-84.

62 Ujlaki Miklós: A bibliográfia műhelyéből. *Jogtudományi Közlöny*, 1930, 65(5), 48-49.

63 Jogtudományi Közlöny, 1930. 65(8), 77.

64 Ujlaki Miklós: *Hetven év magánjogi irodalma; A magyar magánjog bibliográfiája, 1861-1930.* Budapest, Grill Károly Könyvkiadóvállalata, 1930, 572.

65 Ujlaki (1930) i. m. III.

66 Szladits Károly: A magánjogi bírói gyakorlat: 1901-1927: a magyar felsőbíróságok elvi döntéseinek gyűjteménye. Budapest, Grill Károly Könyviadóvállalata, 1928, 732.

67 Munkácsi Ernő: Hetvenév magánjogi irodalma. A magyar magánjog bibliográfiája. *Jogtudományi Közlöny*, 1930, 65(10), 98-99. Ujlaki Miklós: Hetven év magánjogi irodalma. *Kereskedelmi Jog*, 1930, 27(5), 118. ai: Hetven év magánjogi irodalma. *Jogállam*, 1930, 29(5), 216-217; Varannai István: Hetven év magánjogi irodalma. *Polgári Jog*, 1931, 7(1), 48-49.

később egy kiegészítés, amely az 1930 és 1934 közötti időszak magánjogi szakirodalmát gyűjti össze.[68]

Az összehasonlító magánjog területén elsőként a breslaui Osteuropa-Institutban végzett kutatómunkájának eredményeit tette közzé A magyar jog sorsa a Lengyelországhoz csatolt területeken című tanulmányában,[69] amiben az első világháborút követő területváltozások miatt részben a lengyel köztársasághoz került Árva- és Szepesvármegyékben a magánjog területén bekövetkezett mintegy húsz éves változásokat vette górcső alá. Ezzel majdnem egy időben jelent meg az intézet által gondozott Zeitschrift für Ostrecht hasábjain a csehszlovák magánjogban továbbélő magyar házassági jogról szóló német nyelvű tanulmánya, amely a későbbi monográfia egyik fejezete lett.[70]

1931 végén jelent meg Ujlaki legterjedelmesebb, monografikus munkája A magyar magánjog módosulása Csehszlovákiában címmel.[71] A kötet anyagának összeállításához az Osteuropa Institut gyűjteményén kívül kutatásokat végzett még Kassán, Prágában és Brünnben is.[72]

Szladits a következőképpen értékeli a munkát a Jogtudományi Közlönyben: „*Újlaki könyve lelkiismeretesen dolgozza fel, a magánjog szokásos rendszerében, az immár tizenharmadik éve bőven buzogó csehszlovákiai törvény- és rendeletanyagot, azonkívül a bírói gyakorlatot, amennyire az hozzáférhető volt. E bőséges anyag alapján a legapróbb részletekre kiterjedő hű képét adja mindannak, ami a magyar magánjogból az ottani területen 1918 óta megváltozott. Adatainak pontossága és feltétlen megbízhatósága a könyvet elsősorban a gyakorlat számára teszi nélkülözhetetlenné; így fogják fel ezt odaát is, ahol ilyen teljes és szabatos beszámoló a joganyag változásairól eddig még nem állott rendelkezésre*."[73]

68 Ujlaki Miklós: Öt év magánjogi irodalma: a magyar magánjogi bibliográfiája, 1930-1934. Budapest, Grill Károly Könyvkiadóvállalata, 1935. 210.

69 Ujlaki Miklós: A magyar jog sorsa a Lengyelországhoz csatolt területeken. *Jogtudományi Közlöny*, 1931, 66(5), 45-47. Különlenyomat: Ujlaki Miklós: *A magyar jog sorsa a Lengyelországhoz csatolt területeken*. Budapest, Franklin-társulat nyomdája, 1931. 11.

70 Ujlaki, Nikolaus: Das in der Cechoslovakei geltende ungarische Eherecht. *Zeitschrift für Ostrecht*, 1931, 5(4), 253-269. Különlenyomat: Ujlaki, Nikolaus: *Das in der Cechoslovakei geltende ungarische Eherecht*. Berlin, 1931. 17.

71 Ujlaki Miklós: *A magyar magánjog módosulása Csehszlovákiában*. Budapest, Grill Károly Könyvkiadóvállalata, 1931, 258.

72 ELTE Levéltár, 7.c. 484/1944–1945. 1. sz. melléklet, 3.

73 Szladits Károly: Dr. Ujlaki Miklós: A magyar magánjog módosulásai Csehszlovákiában. *Jogtudományi Közlöny*, 1931, 66(30), 250. További ismertetések: Dr. Ujlaki Miklós: A

Ujlaki 1932-ben adta közre A magyar jog sorsa az Ausztriához és Lengyelországhoz csatolt területeken című munkáját,[74] míg 1934-ben jelent meg harmadik monográfiája, amely folytatja a környező országok egykorú magánjogfejlődésének történetét.[75] A munka azokat a módosulásokat veszi számba és elemzi, amelyeken a Romániához csatolt magyar területeken a szűkebb értelembe vett magyar magánjog átesett. Az ehhez szükséges kutatásokat az az 1932–1933-as tanévre kapott ösztöndíjából fedezte. Az anyaggyűjtést Bukarestben, Kolozsváron és Nagyváradon végezte.[76] Ugyanebben az évben jelent meg a tanulmánysorozat utolsó eleme, a Jugoszláviához csatolt területek magánjogát.[77]

magyar magánjog módosulásai Csehszlovákiában. *Jogállam*, 1931. 30(7–8), 373-375.; Nizsalovszky Endre: Dr. Újlaki Miklós: A magyar magánjog módosulásai Csehszlovákiában. *Magyar Jogi Szemle*, 1931, 12(10), 470-772.; R. L.: A magyar magánjog módosulásai Csehszlovákiában. *Külügyi Szemle*, 1933, 10(1), 92-93.

74 Ujlaki Miklós: A magyar jog sorsa az Ausztriához és Lengyelországhoz csatolt területeken. Budapest, Grill Károly könyvkiadóvállalata, 1932. 126. Recenziók: Dombováry Géza: Ujlaki Miklós: A magyar jog sorsa az Ausztriához és Lengyelországhoz csatolt területen. *Ügyvédek Lapja*, 1932. 49(2), 5-6.; Dr. Ujlaki Miklós: A magyar jog sorsa az Ausztriához és Lengyelországhoz csatolt területeken. *Jogállam*, 1932, 31(3–4), 148-149.; Ujlaki Miklós: A magyar jog sorsa az Ausztriához és Lengyelországhoz csatolt területeken. (Budapest, 1932, Grill.) *Külügyi Szemle*, 1932, 9(3) 341.; Szladits Károly: Dr. Ujlaki Miklós: A magyar jog sorsa az Ausztriához és Lengyelországhoz csatolt területeken. Budapest, 1932. Grill. 126. p. *Jogtudományi Közlöny*, 1932, 67(31), 179-180.; Szászy István: Dr. Újlaki Miklós: A magyar jog sorsa az Ausztriához és Lengyelországhoz csatolt területeken. Budapest. 1932. *Magyar Jogi Szemle*, 1932, 13(6), 203-205.

75 Ujlaki Miklós: *A magyar magánjog módosulásai Romániában*. Budapest, Grill Károly könyvkiadóvállalata, 1934. 194. Ismertetés: Szladits Károly A magyar magánjog módosulásai Romániában. Írta: Dr. Ujlaki Miklós budapesti ügyvéd, Budapest, 1934. Grill Károly kiadóvállalata, 194. l. *Jogtudományi Közlöny*, 1934, 69(39) 246.; Dr. Ujlaki Miklós: A magyar magánjog módosulásai Romániában. *Jogállam*, 1934. 33(9–10) 388-389.; F.: Újlaki Miklós: A magyar magánjog módosulásai Romániában. Grill Károly könyvkiadóvállalata, Budapest, 1934., 194 oldal. *Jogállam*, 1934, 388-389.; Komin Ferenc: Dr. Újlaki Miklós: A magyar magánjog módosulásai Romániában. *Külügyi Szemle*, 1934, 11(4), 425-426.; Sömjén László: A magyar magánjog módosulásai Romániában. *Magyar Jogi Szemle*, 1935, 16(3), 127-130.; Ifj. Szigeti László: A magyar magánjog módosulásai Romániában. *Polgári Jog*, 1934, 10(7), 433-434.

76 ELTE Levéltár, 7.c. 484/1944–1945. 1. sz. melléklet 4.

77 Ujlaki Miklós: A magyar jog sorsa a Jugoszláviához csatolt területeken. *Jogtudományi Közlöny,* 1934. 69(25) 142-144. Különlenyomat: Ujlaki Miklós: *A magyar jog sorsa a Jugoszláviához csatolt területeken.* Jogtudományi Közlöny Könyvtára 23. Budapest, Franklin-társulat nyomdája, 1934. 10. Német nyelven megjelent a breslaui Osteupa Institut folyóiratában és különlenyomatként is: Ujlaki, Nikolaus Das Schicksal des

Ujlaki a Jogi Professzorok Emlékezete című kötetben Wenzel Gusztáv életútját összegezte és értékelte,[78] kiemelt helyen foglalkozott a jogösszehasonlító módszer területén elért eredmények számbavételével és példaértékű módszertani gondolatok erősítésével.

1936-ban jelent meg magyar és német nyelven a Ferencz József Tudományegyetem Baráti Egyesületének jog- és államtudományi szakosztályában tartott előadása az utódállamok jogegységesítési tevékenységéről,[79] amely lényegében összegzése volt a környező országok jogfejlődését vizsgáló több éves kutatásának.

1937-ben publikálta tanulmányát, amelyben a csehszlovák polgári törvénykönyv legújabb javaslatát mutatja be kritikai szemszögből,[80] amely a Magyar Jogászegylet összehasonlító jogi szakosztályának 1937. május 20-án megtartott ülésén elhangzott beszéd írásos változata.[81] Konklúzióként rögzíti: *„A csehszlovák javaslat magyar szempontól ismét csökkenti annak a nálunk gyakran hallható érvnek az erejét, hogy a magyar magánjog törvényi szabályozása megbontaná a jogrendszeri közösséget az elszakított területekkel. A tőlünk területet nyert országok jogegységesítő törekvéseinek eddig eredményei nyomána jogközösség sajnos már eddig is olyan sok ponton szakadt meg, hogy az említett szempont a magyar magánjog kodifikációjának elhalasztására indokul ma már fel nem hozható; nem változtat ezen az a körülmény sem, hogy a csehszlovák polgári törvénykönyv esetleg csak hosszú esztendők mulva lép hatályba*."

ungarischen Rechts auf den Jugoslavien angeschlossenen Gebieten. Zeitschrift für Osteuropäisches Recht, 1934, 1(2), 83-92.; Különlenyomat: Ujlaki, Nikolaus: *Das Schicksal des ungarischen Rechts auf den Jugoslavien angeschlossenen Gebieten*. Berlin. 1934. 83-92.

78 Ujlaki Miklós: Wenzel Gusztáv. In: *Jogi Professzorok Emlékezete*. Budapest, Sárkány-Ny., 1935, 65-75. Különlenyomat: Ujlaki Miklós: *Wenzel Gusztáv 1812-1891*. Budapest, Sárkány Ny., 1936, 13.

79 Ujlaki Miklós: *Az utódállamok jogegységesítő törekvései és a magyar magánjog*. A magyar királyi Ferencz József Tudományegyetem Baráti Egyesületének jog- és államtudományi szakosztályában tartott előadások 24. Szeged, Szeged Városi Ny., 1936. 28. Német nyelven megjelent: Ujlaki, Nikolaus Die rechtsvereinheitlichenden Bestrebungen der Nachfolgestaaten und das ungarische Privatrecht. *Zeitschrift für Osteuropäisches Recht*, 1936, 3(9), 580.

80 Ujlaki Miklós: A csehszlovák polgári törvénykönyv legújabb javaslata. *Polgári Jog*, 1937, 13(6), 306–335. Különlenyomat: Ujlaki Miklós: *A csehszlovák polgári törvénykönyv legújabb javaslata*. Budapest, Grill Károly Könyvkiadóvállalata, 1937. 32.

81 Dr. Ujlaki Miklós előadása. *Jogállam*, 1937. 36(5-6), 253.

1938-ban jelent meg Szladits Károly tanári működésének harmincadik évfordulójára készített emlékkönyv hasábjain tanulmánya az összehasonlító jogtudomány feladatairól, amiben kifejti az addigra kikristályosodott módszertani nézeteit.[82] Rögzíti a jogösszehasonlítás magyarországi fejlődését, lényegét, és kitér a világháborút követően kialakult új helyzetből fakadó új feladatokra is. Ujlaki módszerének a lényege, hogy a „*jogösszehasonlítást területileg körülhatárolt olyan szűkebb körre szorítja, amelyben a vizsgálódáskörvonalait az életviszonyok rokonsága szabja meg*." Abban látta ennek a módszertani iránynak az értékét, hogy mivel így az életviszonyok nem különböznek jelentősen egymástól, így „*nagy tapasztalati értékkel bíró*" adatokat lehet nyerni az egyes jogintézményekről valamint arról, hogy mit jelent és milyen következményekkel járna egy adott jogintézmény átvétele egy más jogrendszerből, vagy milyen eredménnyel járna az áttérés egyik jogszabályról a másikra. A jogösszehasonlítás közvetlen célját az élő jog gazdagításában, míg szélesebb értelemeben vett célját a jogegységesítésben látta.[83]

1839 és 1947 között nem publikált a jogösszehasonlítással kapcsolatos eredményeket, aminek egyik, kézenfekvő oka az lehetett, hogy ebben az időszakban egy európai kutatóutat, különösen állami ösztöndíj segítségével, aligha lehetett megvalósítani. Figyelme a magyar magánjog felé fordult. hallgatását megelőző utolsó publikációjában a visszacsatolt területek magánjogát vette górcső alá.[84] A környező országok magánjogáról utoljára 1947-ben írt, amikor a magyar házassági jogi szabályok fennmaradt elemeit vizsgálta a burgenlandi házassági jogban.[85] Ugyanebben az évben adta közre a párizsi magyar békeszerződés pénzügyi jogra gyakorolt hatásáról szóló eredményeit.[86]

82 Ujlaki Miklós: Az összehasonlító jogtudomány feladatai. In: Emlékkönyv Dr. Szladits Károly tanári működésének harmincadik évfordulójára Budapest, Grill Károly Könyvkiadóvállalata, 1938. 575-581.

83 Ujlaki (1938) i. m. 580-581.

84 Ujlaki Miklós: A magyar szent koronához visszatért területek magánjoga. In.: *Emlékkönyv Kolosváry Bálint jogtanári működésének negyvenedik évfordulójára.* Budapest, Grill Károly Könyvkiadóvállalata, 1939, 540-547. Különlenyomat: Ujlaki Miklós: *A magyar szent koronához visszatért területek magánjoga*. Budapest, Grill Károly Könyvkiadóvállalata, 1939. 10.

85 Ujlaki Miklós: Magyar jogszabály töredékek a Burgenland házassági jogában*. Jogtudományi Közlöny,* 1947/23–24, 355-357.

86 Ujlaki Miklós: A párizsi magyar békeszerződés és a pénzügyi jog. In.: Beck Salamon (szerk.) *A békeszerződés magán- és gazdaságjogi vonatkozásai*. Magyar Jogászegylet

Az utókor tudományos értékelései eltérő képet mutatnak Ujlaki összehasonlító magánjogi kutatásait illetően. Asztalos László a 1980-as évek közepén a következőképpen összegzi az (emigráció előtti) életművet: „*A felszabadulás előtt már több olyan publikációt tett közzé, amelyek – alkalmazkodva a korabeli nacionalizmushoz – elsősorban a szomszédos államokban továbbélő magyar joggal foglalkoztak*."[87] Fekete Balázs Wenzel Gusztáv – az összehasonlítójog területén – örökösét látja Ujlakiban. „[…] ő tekinthető annak a jogösszehasonlításnak a legjelentősebb képviselőjének, aki „*a két világháború közötti időszakban közel két évtizedes munkássága során magas szintű tudományos igényességgel kutatta a magyar magánjog továbbélését a Kárpát-medencében. Ujlaki munkássága túlmutat a korábbi kezdeményezéseken, ugyanis nemcsak elméleti kérdéseket vizsgált mint elődei, de bőséges »gyakorlati« jogösszehasonlítást is végzett. Kutatásában részletesen elemezte a magyar magánjog helyzetét a trianoni békeszerződés utáni Kárpát-medencében, miközben élénk figyelemmel kísérte a szomszédos államok fejlődését is. Írására jellemző, hogy mindig eredeti források alapján dolgozta fel az adott állam jogának és továbbélő magyar magánjognak a viszonyát, így tanulmányai és könyvei eligazítanak a szomszédos államok jogfejlődését a korszakban meghatározó problémák világában is*." Elutasította a jogegységesítést, amelyet az elszakított területekkel még többé-kevésbé fennálló jogközösség fenntartásának szükségességével indokolt.[88]

Ujlaki Miklós a bibliográfia és összehasonlító magánjog tudomány területén végzett kutatásai mellett a gyakorlat tudományos igényű rendszerezéséből és elemzéséből – ahogyan ő nevezte: az „általános magánjog"[89] műveléséből – is kivette a részét. Szladits Károly és Fürst László mellett társszerkesztője volt a magyar magánjogjogot feldolgozó Magyar magánjog mai érvényében: törvények, rendeletek, joggyakorlat című munka harmadik, kötelmi jogot tárgyaló részének, amely három kötetben jelent meg 1934-ben.[90] A gyűjteménynek az volt a célja, hogy összegyűjtse a vonatkozó ha-

Könyvtára 25. Budapest, Magyar Jogászegylet, 1947, 102-110. Ujlaki Miklós: A párizsi magyar békeszerződés pénzügyi jogi vonatkozásai. *Pénzügy és Közigazgatás*, 1947, 1(5), 280-283.

87 Asztalos i. m. 86.

88 Fekete Balázs: *A modern jogösszehasonlítás paradigmái. Kísérlet a jogösszehasonlítás történetének új értelmezésére.* Budapest, Gondolat Kiadó, 2011, 175-176.

89 ELTE Levéltár, 7.c. 484/1944–1945. 1. sz. melléklet, 5.

90 Szladits Károly – Fürst László – Újlaki Miklós: *Magyar magánjog mai érvényében: törvények, rendeletek, joggyakorlat III. rész, Kötelmi jog I–III.* Budapest, Grill Károly Könyvkiadóvállalata, 1934, I. XVIII, 843, II. XII, 743, III. XI, 738. Ismerteti: Munkácsi Ernő:

tályos jogforrásokat és a vonatkozó gyakorlatot. Az összeállítás az 1928-as Magánjogi Törvénykönyve javaslatának rendszerét követte, minden fejezet első részében a kódexjavaslat vonatkozó szövegét, majd második részében pedig „az élő jogot" rögzítették (a törvényeket, majd a kormányrendeleteket és egyéb jogforrásokat, végül a felsőbíróságok fontosabb döntéseit).[91] Ezt a háromkötetes munkát 1942 és 1944 között még egyszer, hatályosítva kiadták.[92] Ide sorolható még Ujlaki bérletről szóló munkája is, amely Szladits Károly főszerkesztésében közreadott Magyar Magánjog 4. kötetében jelent meg.[93] Ehelyütt a korábbi bibliográfiai munkáinak biztos talaján állva elemzi a vonatkozó joggyakorlatot.

3. Összegzés

Ujlaki Miklós előtt mind a gyakorlat, mind pedig az elmélet területén ígéretes pályaív látszott kibontakozni. Szladits Károly kiemelkedő tehetségű tanítványa, az iskola egyik meghatározó személye volt. A második világháború ideiglenesen megtörte a karrierjét, de 1945 második felétől töretlen erővel folytatta a tudományos és oktatói tevékenységét. Amikor a kommunista diktatúra kiépülése egyre inkább tettérhető volt, a svédországi kutatóúton lévő, negyvenes évei közepén járó Ujlaki nem tért haza, New Yorkban kezdett új életet. Ebben az időszakban bomlott fel végleg a Szladits Károly nevével fémjelzett iskola.

Ujlaki bibliográfiai munkájával szerzett országos hírnevet. Mintegy húsz éven keresztül szakadatlanul kutatta a Kárpát medencében a trianoni békeszerződést követően továbbélő és folyamatosan változó jogrendszereket, különös tekintettel a magánjogra.

Szladits Károly Fürst László Ujlaki Miklós: Kötelmi jog. *Jogtudományi Közlöny*, 1934. 69(25), 144-145.

91 Szladits – Fürst – Újlaki (1934), i. m. III-IV.

92 Szladits Károly – Újlaki Miklós – Fürst László: Magyar magánjog mai érvényében: törvények, rendeletek, joggyakorlat 3. rész. Kötelmi jog I–III. Budapest, Grill Károly Könyvkiadóvállalata, I. 1942. XXIV, 745, II. 1943. XVI, 717, III. 1944. XII, 414.

93 Ujlaki Miklós: Bérlet. In.: Szladits Károly (főszerk.): *Magyar Magánjog IV. Kötelmi jog, Különös rész*. Budapest, Grill Károly Könyvkiadóvállalata, 1942, 451–545. Különlenyomatként is megjelent: Ujlaki Miklós: *Bérlet*. Budapest, Grill Károly Könyvkiadóvállalata, 1941, 64.