ON THE LEGAL CULTURE OF HUNGARY

Attila HARMATHY*

I. *Preliminary remarks*. II. *The period from the foundation of the Hungarian state until the revolution of 1848/1849: the feudal law*. III. *The period from the mid 19th century to 1948*. IV. *The period from 1948 to the change of system in 1989/1990*. V. *Present period*.

I. PRELIMINARY REMARKS

1. In 1953 a book was published in France on the history of Hungarian law[1] in the series *Les systèmes de droit contemporain* as volume 3 (the first concerned common law and the second Muslim law). In the introduction René David referred to the originality of the Hungarian legal system stressing, however, that Hungarian law belongs to the same group as the other legal systems of the European Continent.[2]

2. The notion and role of legal culture are much debated. The understanding of what culture, in general, is has got an enormous literature and many attempts have been made to work out an acceptable definition. Nevertheless, an outline of what kind of meaning is accepted in this paper should be tried/attempted.

To start with, the more general notion of culture, of which legal culture is a part, faces a similar problem. As Reinhard Zimmermann has put it, on the basis of the literature of sociology and anthropology, one cannot find a better clarification of the notion of the culture than the special feature of a society.[3] In the "dictionary" of the European Private Law recently published by the directors of the Max-Planck-Institut für ausländisches und internationales Privatrecht, Hamburg, Ralf Michaels outlines the problems of the definition of legal culture and gives an overview of different concepts. Summarising the present situation he states that, although legal culture has been much discussed during the last 20 years, its notion is usually unclear. The borderlines between culture and legal culture are uncertain. According to a widely accepted opinion, legal culture is the cultural background of the

* Professor emeritus, Faculty of Law Eötvös University, Budapest. Member of the Hungarian Academy of Sciences, former member of the Constitutional Court of Hungary.

[1] Zajtay, Imre, *Introduction à l'étude du droit hongrois*, Sirey, Paris, 1953

[2] David, René, Préface, in Zajtay, *op. cit.*, note 1, II.

[3] Zimmermann, Reinhard, Römisches Recht und europäisches Rechtskultur, *Juristen Zeitung* 2007, 1.

law including the role of the law in the society. There is a danger that the meaning and the role of the legal culture is explained by different authors in an arbitrary way for backing their preconceptions.[4] In a similar way, Roger Cotterell emphasizes the dangers of using the ideas connected with legal culture in a political or moral context.[5]

Without trying to work out a definition of legal culture, the present paper will give information about the Hungarian legal culture based on the understanding that this legal culture:

- cannot be identified with black letter rules but it includes sociological and historical elements,[6]

- means examining not simply rules, but their function, the style and techniques of their application as they are embedded in social structures and stemming from traditions,[7]

- is not envisaged in isolated legal institutions but is examined in the framework of the legal system in its social and economic background and understood as a phenomenon which does not quickly change.[8]

This understanding seems to be in harmony with the questionnaire worked out by the general reporter.

3. In this paper the Hungarian legal culture will be dealt with from the point of view of private law. The main features cannot be understood, however, without taking into consideration public law elements. Historic development has a decisive role in shaping the Hungarian legal culture too. Therefore, a short overview of the history of Hungarian private law is given, focussing on some important institutions. In the historic survey the following periods are distinguished:

- from the foundation of the Hungarian state (end of 10th century) to the revolution of 1848/1849,

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[4] Michaels, Ralf, Rechtskultur, in: Jürgen Basedow, Klaus J. Hopt, Reinhard Zimmermann (Hrsg.), Handwörterbuch des Europäischen Privatrechts, Mohr Siebeck, Tübingen, 2009, 1255-1259.

[5] Cotterell, Roger, Comparative Law and Legal Culture, in: Mathias Reimann, Reinhard Zimmermann (ed.), *The Oxford Handbook of Comparative Law*, Oxford University Press, Oxford, New York, 2008, 725-726.

[6] Similarly, Varga, Csaba, *Jogrendszerek, jogi gondolkodásmódok az európai egységesülés perspektívájában* (Legal systems, legal ways of thinking in perspectives of European unification), Budapest, Szent István Társulat, 2009, 39 and 40.

[7] Kötz, Hein, "Abschied von der Rechtskreislehre?", *Zeitschrift für Europäisches Privatrecht* 3/1998, 495, 505.

[8] Mankowski, Peter, "Rechtskultur", *Juristen Zeitung*, 2009, 321 and 322.

- from the mid 19th century to 1948
- the period of the "socialist system" from 1948 to 1989/1990
- the present period.

II. THE PERIOD FROM THE FOUNDATION OF THE HUNGARIAN STATE UNTIL THE REVOLUTION OF 1848/1849: THE FEUDAL LAW

4. A part of the territory of Hungary belonged to the Roman Empire in the first centuries A. D. In the 5th century it was invaded by the Huns in the framework of the Great Migration.

There are no reliable sources for stating what has happened after the Great Migration. It can be supposed that the population, the Roman institutions have not completely disappeared and some relics, remains of the Roman Empire, some parts of buildings and monuments can be found in Hungary. Nevertheless, the Hungarian culture cannot be considered as a continuation of the Roman culture.[9]

In the 6th century the territory belonged to the Avar Empire which was defeated by Charlemagne annexing a part of the Carpathian basin to the Frankish Empire. New waves of the Great Migration reached this part of Europe again and at the end of the 9th century the Carpathian Basin was conquered by the Hungarian tribes.[10]

5. At the time of the Hungarian conquest, there were strong states in the neighbourhood of the Carpathian basin. In the South and South-East in the Bulgarian Empire and the Byzantine Empire, in the West and North-West in the newly born Holy Roman Empire (the German-Roman Empire) the Hungarian tribes were stopped from moving further. Animal keeping had a primary importance; nevertheless, Hungarians were also employed in agriculture. Settling in the Carpathian basin, agriculture was of growing importance and the establishment of institutions of a state developed in the second part of the 10th century. Duke *Géza* created a strong central power and his son, *István* (Stephen) became the first king in 1000 to strengthen the central state in fierce battles. Christianity (in its Roman Catholic version and not the Byzantine one) was introduced by the end of the 11th century and the Church held an important role and power.[11] King *István* was canonized as Saint Stephen at the end of 11th century.

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[9] Tóth, István, *A rómaiak Magyarországon* (The Romans in Hungary), Budapest, Gondolat, 1979, 9, 233.

[10] Rácz, Lajos, "A Historical Insight in the Theory and Organisation of the Hungarian State", *The Hungarian State 1000-2000*, András Gergely, Gábor Máthé (ed.), Budapest, Korona Publishing House, 2000, 17-19.

[11] Bakay, Kornél, *A magyar államalapítás* (The establishment of the Hungarian state), 9-13, 19-26, 35-58, 132-171.

6. A special theory of the Holy Crown developed over centuries. The doctrine of the Holy Crown had triple meaning: the supreme power of the king; all persons who exercise power together with king; and the country's geographical area. It was connected with the doctrine that the king could be crowned only with St. Stephen's crown and his other royal insignia (cloak, bonnet, sandal and purse).[12]

7. An important element of the Hungarian constitutional doctrine was that nobles had certain privileges. In the so called *Golden Bull* of 1222 the king (in a weak position) guaranteed some rights to nobles and laid down a constitutional basis for centuries.[13]

8. Although it is not known what the exact history of Golden Bull was, it can be stated, on the basis of some documents, that the king was under pressure by noblemen. In the movement forcing the king to sign the *Bull*, an important role was played by the lower strata of noblemen too.[14]

The social background can be understood taking into consideration that the Orders of Noblemen and Clergy had evolved by the 13th century. The local self-government developed with the preponderant role of the noblemen and the representation of their communities already had a role at national level too in the 15th century. The bourgeoisie developed more slowly.[15] The state of the society was reflected by law at different levels.

9. Lawyers already had a considerable role in the development of medieval law but a special social stratum of lawyers could not be found in Hungary. Lawyers working at the king's court and in the king's chancellery had an importance in legal development. At the end of 14th century the staff of the chancellery and the court were separated. In the chancellery it was usually the richer noblemen who were present and were those who had had enough money to spend time as students at universities abroad. They typically had a good basis in canon law but not always in Roman law. In the king's court these were usually noblemen not belonging to the aristocracy who were active and who were not rich enough to study abroad. They usually had a good Latin language background and received professional training while working. Lawyers worked at a regional level, mainly in cities

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[12] Rácz, *op. cit.*, note 10, 24.
[13] Eckhart, Ferenc, *A short history of the Hungarian people*, London, Grant Richards, 1931. 43.
[14] Kristó, Gyula, *Az aranybullák évszázada* (The century of Golden Bulls), Budapest, Gondolat, 1976, 58-63.
[15] Bónis, György, *Hűbériség és rendiség a középkori magyar jogban* (Vassalage and system of orders in medieval Hungarian law), Budapest, Osiris, 2003, 358, 365.

as notaries, but professional knowledge had a more serious basis in the centre.[16]

10. Prior to the 16th century Hungarian law was mostly unwritten customary law. There were some statutes too but they did not cover the whole field of law. The feudal legal system developed after the factual property relations were established. The system was characterised by the great importance of land and by the protection of the interest of the family to keep the property within the family (limiting the right of disposal). From the very beginning some elements of legal policy prevailed, such as protecting the surviving widow's position in the law of inheritance.[17]

In the 15th century the collection of customary rules was on the agenda but no result was achieved. On the contrary, the collection of rules applied in some cities was made in the same period. An example of it is the collection of the city Buda. The collection is in the German language as the majority of the population of cities was of German origin.[18] The German language of the collection is not surprising as the Kingdom of Hungary was at that time already a country of mixed ethnicity. Furthermore it was an essential element of the system that people belonging to different classes of society had different kinds of rights.

11. On the basis of the above-mentioned, it is understandable that customary law was not based on Roman law, there was no reception of Roman law. Although canon law was applied by ecclesiastic courts, it was not transferred to civil law relationships in general. Bearing in mind the use of the Latin language, it is understandable that the terminology of Roman law was known and even used but it did not mean the identifying of Roman law rules with the rules of customary Hungarian rules. The feudal system was the decisive factor in shaping the legal rules of property law and law of succession. In a similar way, social and economic conditions in Hungary were very different from those of Roman law. In the law of contracts there were similar notions but legal historians call attention to the differences in this field, too.[19]

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[16] *Bónis, György, A jogtudó értelmiség a Mohács előtti Magyarországon (Intelligentsia having legal expertise in the period before the battle of Mohács*), Budapest, Akadémiai Kiadó, 1971, 11-14.

[17] Szladits, Károly, A magánjog fogalma, fejlődése és tudománya (Notion, development and science of private law), *A Magyar Magánjog* (Hungarian Private Law), in Szladits, Károly (ed.), Budapest, I. Grill, 1941, 69.

[18] Mádl, Ferenc, Kodifikation des ungarischen Privat- und Handelsrechts im Zeitalter des Dualismus, *Die Entwicklung des Zivilrechts in Mitteleuropa*, in Andor Csizmadia, Kálmán Kovács (Hrsg.), Budapest, Akadémiai Kiadó, 1970, 88, 117.

[19] Bónis, György, *Középkori jogunk elemei* (Elements of our medieval law), Budapest, Közgazdasági és Jogi Könyvkiadó, 1972, 66-67, 96.

12. In the 16th century the king was required by the Orders to commission a judge to collect the rules of customary law. The hope was that the written and cognizable customary rules would put an end to the arbitrariness of the king and the aristocracy. The collection was not finished. After some time the task of completing the collection was passed to the Chief Judge, Werbőczi. The collection was presented to the Diet in 1514 and it was approved. The king also confirmed the collection but it was not sealed and promulgated because of the death of the king. Werbőczi arranged for the collection to be printed. As it became the only accessible written text of the customary law (which contained the rules of statutes, too), it was applied by the courts. It covered mostly the rights of noblemen and only to some extent, the rights of serfs and the inhabitants of cities; nevertheless its importance was great.[20]

13. The collection, having the abbreviated denomination *Tripartitum* (Triple Book), became the source of law (based not a statute but on custom) for several centuries.[21] Much later, in the 20th century, one of the most important Hungarian lawyers, Grosschmid, characterised its role saying that it hindered the reception of Roman law and of any foreign law, and being customary law it became the basis of an independent, special legal development based not on statutes but on customary law, in a similar way as English common law.[22] The similarity with Common Law has not been accepted, but the importance of the *Tripartitum* is generally recognised.

14. The *Tripartitum* is based on categories which derive from Roman law and it also refers to general principles of Roman law, but otherwise Roman law has not exerted an important influence on the *Tripartitum.*[23] The same can be repeated in connection with the Hungarian civil law in general. Thus, there has been no reception of Roman law in Hungary. Roman law categories became known to Hungarian lawyers in the second part of the 19th century and in the 20th century partly in an indirect way, by means of the influence of Austrian law, and of the German legal theory through theoretical works and University teaching.[24]

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[20] Mádl, *op. cit.*, note 18, 89;

[21] Frank, Ignác, *A közigazság törvénye Magyarhonban* (the title can be indicated in English as the Law of Hungary), Budapest, Magyar Királyi Egyetem, 1845, 64-67.

[22] Grosschmid, Béni, *Jogszabálytan* (Theory of legal rules), Budapest, Athenaeum, 1905, 713, Szladits *op. cit.*, note 17, 77.

[23] Földi, András, Hamza, Gábor, *A római jog története és institucióí* (History and institutions of the Roman Law), Budapest, Nemzeti Tankönyvkiadó, 14, kiadás, 2009, 142; Hamza, Gábor, *Az európai magánjog fejlődése* (The development of European Private Law), Nemzeti Tankönyvkiadó, Budapest, 2002, 79-80.

[24] Pólay, Elemér, *A pandektisztika és hatása a magyar magánjog tudományára* (Pandectist theory and its influence on the Hungarian theory of private law), Acta Universitatis Szegedinensis de Attila József Nominate, Acta Juridica et Politica, Tomus XXIII, Fasciculus 6, 1976, 22-23, 90.

15. The political, social and economic life of Hungary was influenced by the struggle with the Ottoman Empire since the second part of the 15th century. After the battle of Mohács in 1526, a great part of the country was invaded by Ottoman troops and the occupation lasted until the end of the 17th century. The country suffered a lot as result of the constant struggles, the development stopped and huge territories were devastated. Hapsburg rulers became the kings of Hungary who were Austrian archdukes and at the same time rulers of several other countries. Constant struggle with the king for the constitutional rights of the country characterised the centuries until the end of World War I, when Hungary became a republic.

16. The Ottoman occupation of a great part of the country also influenced the position of the Catholic Church and the role of the canon law. The Catholic Church also lost a considerable part of its property. Another element of the diminishing role of canon law was the movement of reformation. To some extent, in connection with the political situation, the reformation spread over a great part of the country mainly in territories which were not under the control of the Hapsburg king. The Calvinist noblemen originating from that part of the country became an important basis for the national endeavours. The ecclesiastic courts of the Catholic Church lost most of their earlier competences for other reasons too.[25] Consequently, canon law also lost importance and opened the way to Roman law serving as background basis.

17. Hungarian civil law remained mostly customary law and the *Tripartitum* was the basic source of law. The court practice had great importance under these conditions. Taking into consideration the importance of the court decisions, Queen Maria Theresa commissioned a three member committee to collect the important decisions of the Supreme Court, which was called *Curia.* The collection was published in 1769 and it exerted an influence on the practice of all courts.[26]

The role of court practice in shaping the development of civil law increased. Otherwise everyday legal practice prevailed; no serious theoretical work was done. It became characteristic under the political conditions that, because of the fight for independence, constitutional law questions were at

[25] Gergely, Jenő, "Churches in the last decades of feudalism", and "Béla Szabó, Development of law in Hungary: The first eight centuries", both in *The Hungarian State 1000-2000 op. cit.*, note 10, 123, 166.
[26] Horváth, Attila, *A magyar magánjog történetének alapjai* (Bases of the history of the Hungarian Private Law), Budapest, Gondolat, 2006, 65.

the forefront of interest and the central problem was the role of the central power, respectively that of the Diet.[27]

18. An important new phase started in the 19th century. The industry started developing, although at a much slower pace than in Western European states. The bourgeoisie was still not strong enough to exert strong pressure in political fields. The development was hindered by the still existing feudal system. The systemic problems hit not only the still existing serfdom but the noblemen too, with the exception of the aristocracy. The social and economic system needed changes and the middle and lower strata of noblemen led the political struggle for change. The aim for changes in social and economic fields was connected with the aim for independence. The Diet of 1790 declared that Hungary constituted a free and independent kingdom which the legally crowned king was bound to rule according to the rules and customs, but there were no real changes in the political field. The central administration did not execute and did not give effect to decisions of the Diet.[28]

The social and economic changes were reflected by the law. During the Reform Era, from 1825 to 1848, the Diet passed several Acts needed to establish some bases for the transformation of the system. The obstacles were not removed, however, because the political situation and constitutional problems remained in focus. Important rules abolishing the feudal system and feudal restrictions concerning property were adopted by the Diet after the commencement of the Revolution in 1848. Free disposing of property was particularly important for the development of the system of credits, which was a precondition of progressing from the feudal economy. An Act passed in 1848 envisaged civil law codification also, but the elaboration of the code could not be realised as there was not enough time until the end of the Revolution in 1849 (the revolution was defeated by Russian troops sent by the Russian tsar at the request of the king). Some attempts had been made to codify private law before the Revolution but without success.[29] Encumbrances to development of trade and industry were removed, but a new legal system furthering the construction and functioning of the new economy and society was not established. Private law remained uncodified and the *Tripartitum* originating from the 16th century was still applied. The role of court practice remained decisive.

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[27] Kosáry, Domokos, *Culture and society in eighteenth century Hungary*, Budapest, Corvina, 1987, 163-164.

[28] Eckhart, *op. cit.*, note 13, 144; Várady, Géza, *Ezernyolcszáznegyvennyolc, te csillag (1848, our star)*, Budapest, Gondolat, 1976, 22-29.

[29] Zlinszky, János, Hungarian Private Law in the 19th and 20th centuries up to World War II, *The Hungarian State 1000-2000*, *op. cit.*, note 10, 305-306.

19. Summarising characteristic features of the period from the establishment of the Hungarian state until the Revolution of 1848/1849, one can state that the feudal system was decisive for the civil law of the whole period, customary law had the greatest importance; no reception of Roman law took place although it was known by lawyers that contemporary foreign law had an influence, mainly in cities, but its importance was limited as the cities were not strong enough and the rules concerning noblemen were decisive for the system; court practice shaped the rules of civil law; constitutional questions of independence and self-government were at the forefront and influenced the way in which civil law developed.

The first period also had an important effect on the development of Hungarian civil law in later periods.

III. THE PERIOD FROM THE MID 19TH CENTURY TO 1948

19. After the defeat of the Hungarian revolution, Austrian law was put into force and the Hungarian court system was abolished. The country was governed by Imperial warrant and Ministerial decrees. The country was dismembered. The objective of the new administration was to absorb Hungary within a centralised monarchy. General taxation was introduced meaning that noblemen had no privileges; the taxation caused the ruin of the gentry. German became the official language in government offices and in schools.[30] Austrian capital gained considerable ground in the Hungarian economy.[31] Several people who had participated in the revolution were executed, put into prison and many Hungarians emigrated. People hated the absolutist regime and started a passive resistance.

20. The Hapsburg monarch faced serious problems with foreign relations in 1860. Therefore, it seemed inevitable to find some kind of compromise within the empire with the most important opponent; the Hungarians. As a first step, the Hungarian administrative and judicial organs were re-established in 1860 and the Chief Judge was commissioned to convene a committee with the membership of the judges of the Supreme Court and other esteemed professionals. The task of the committee was to state what kind of rules should be applied in Hungary until the Diet would decide by legislation. The commission had meetings from the end of January 1861 until the beginning of March 1861 and worked out the so-called Provisional Rules of Administration of Justice. The Diet approved the Provisional Rules but not in the form of an Act of Parliament. The monarch also consented to it but not in the form as in the case of Acts of Parliament. Thus, the Provisional Rules did not become legal rules according to

[30] Eckhart, *op. cit.*, note 13, 198-199.
[31] Horváth *op. cit.*, note 26, 59, 60.

constitutional principles. Nevertheless, in July 1861, the Provisional Rules were approved by the Plenary Session of the Supreme Court as guidelines until the legislation set new rules in accordance with constitutional principles. The provisional rules were applied on the basis of customary law until the enactment of the Civil Code of 1959.[32] This special solution conformed to the development of law in the first period. Customary law and the special position of courts continued to play a decisive role.

21. In 1867 the compromise was made in constitutional form and the Diet restarted legislative activity. In the following years the question to be decided by the legislation was the same as that of the commission convened by the Chief Judge. The economic conditions had changed considerably since the pre-revolutionary years and the Austrian rules were more in accordance with the existing situation than the earlier Hungarian rules based on feudal society.

The commission convened by the Chief Judge accepted a way of compromises: the old Hungarian rules were put into force again but without the feudal restrictions on property and without re-establishing the feudal system. The changes were particularly important in the field of immovables. The rules of the Austrian Civil Code and those concerning land registry, which were in force during the years of absolutism, corresponded to the requirements of the developing economy while it was practically impossible to return to the old Hungarian rules. Some lawyers were in favour of maintaining Austrian law in general, i.e. full reception of foreign law.[33] This opinion remained, however, in a minority position. In the atmosphere of the struggle for independence and the denial of the rules of the hated absolutist regime, it was not possible to choose modernisation; maintaining Austrian rules in force by means of full reception.[34]

The decision made by the commission and approved by the Diet was partial reception, i.e. the rules of land registry and the rules of the Austrian Civil Code concerning the acquisition and alienation of property being objects of land registry remained in force. This solution, which had not enumerated precisely the concerned sections of the Code, gave ground to judicial interpretation.

22. In the second part of the 19th century the economy developed fast, in a similar way to other countries of Central-Eastern Europe. As a

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[32] Horváth *op. cit.*, note 26, 62-65.

[33] Dell' Adami, Rezső, *Az anyagi magyar magánjog codifikátiója* (Codification of the Hungarian substantive private law), Budapest, Athenaeum, 1877, 54-55.

[34] Kajtár, István, *A 19. századi magyar állam- és jogrendszer alapjai* (Bases of of the 19th century Hungarian system of state and law), Budapest, Dialóg Campus, Pécs, 2003, 161-162.

result of the industrialisation society was transformed. Although in Hungary the aristocracy retained its positions both in the economy and in the political field; the bourgeoisie gained importance.[35] The transformation of the legal system was inevitable.

23. The developing bourgeoisie demanded legal rules establishing legal certainty for their activities. The process of legislation also started in this field during the reform period from 1825 but it could not achieve the objectives because of the political situation. During the years of absolutism Austrian law was applicable and met the requirements of the bourgeoisie, a great part of which was, and had been for centuries, the German speaking population of the cities. In 1862, after the approval of the Provisional Rules of Administration of Justice submitted a petition to the Chancellery asking for the German General Commercial Code of 1861 (i.e. prior to the unification of German states) which was in force in Austria too, and the German Act on Bill of Exchange, to be put into force in Hungary As the petition had no result, the Chamber of Commerce and Industry of Budapest (and Chambers of some other cities) made similar propositions in 1971 and 1872. The propositions did not get a favourable response. The prevailing opinion was that the dignity of a country would not permit a simple transplanting of a foreign law. The commercial law had cosmopolitan character; nevertheless, its rules should also be based on special conditions of the country. The author of the draft of the commercial code in the grounding emphasised, however, that the German Commercial Code was considered to be the best and on the other side, the commercial interests and the close commercial contacts require the acceptance of the basic ideas of the German Code.[36] Consequently, the Commercial Code enacted in 1875 was based on the German Commercial Code.

Some years later, when the partial revision of the Code was discussed, it was again underlined that the reception of the principles of the German Commercial Code took place under pressure by the businessmen. The revision was also prepared on a comparative basis, with special emphasis on German law.[37] The practice, however, transformed the transplanted rules. At the time of the 50th anniversary of the enactment of the Commercial Code it was stated that the judicial practice had silently

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[35] Berend, I. Iván, Ránki, György, Közép-Kelet-Európa gazdasági fejlődése a 19-20. században (Economic development of Central-Eastern-Europe in the 19-20th centuries), Budapest, Közgazdasági és Jogi Könyvkiadó, 1976, 227-233.

[36] Apáthi István, *A magyar kereskedelmi törvény tervezete* (Draft of the Hungarian Commercial Code), Budapest, Heckenast, 1873, 7-9.

[37] Kuncz, Ödön, Részvényjogi reformkérdések (Questions of reforming rules on shares, 1913), *Küzdelem a gazdasági jogért* (Struggle for the economic law), II. Budapest, Királyi Magyar Nyomda, 1941, 124.

transformed the rules of the Commercial Code and shaped its profile in accordance with the Hungarian conditions.[38]

The rules of the commercial law were strongly influenced in the 19th century by German law. Later on, however, in the 20th century the conditions changed and the foreign was not transplanted any more. The esteemed commercial lawyer, professor Kuncz stressed that although the law of developed industrial countries should be studied, these rules cannot be translated and put into force but they should be reconsidered ,taking into consideration the special features of the Hungarian economy. In Hungary, even in the middle of the 20th century, agriculture had a great importance. In addition the historical background and the mentality of the people should have a formative effect.[39]

24. The commercial law had a special importance in the development of the Hungarian civil law as it was codified in the second half of the 19th century; on the contrary, civil law remained uncodified. Several statutes concerning specific fields of civil law were passed by the Diet and drafts of a Civil Code were worked out and debated in parliamentary committees but a Code was not voted for, mainly for political reasons. Thus, the rules on commercial contracts were taken into consideration in Civil Law relationships too.

The first draft of the Civil Code, submitted to the Diet in 1900 was later criticised because of the strong influence of the German Civil Code. Besides German law, some other European laws (French, Swiss and even English examples) were also taken as a model, mainly in the law of contracts.[40] Nevertheless, the German influence was preponderant. In the following drafts, solutions of the German Civil Code were no longer used to the extent as in the first one. In the draft of 1928 some Swiss elements could be observed. This last draft of 1928 was studied in wide circles and court practice started applying it. Thus, to some extent, this draft became customary law.

Hungarian Civil law remained customary law and it had advantages in comparison with codified systems. The difficulties during the World Wars and the great economic crisis in the 1930s necessitated new solutions in civil

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38 Kuncz, Ödön, Az ötvenesztendős Kereskedelmi Törvény és annak reformja (The fifty years old Commercial Code and its reform), *Küzdelem a gazdasági jogért* (Struggle for the economic law), Budapest, Királyi Magyar Egyetemi Nyomda, 1939, 68.

39 Kuncz, Ödön, Kartelljogunk reformja (The Reform of our law of cartels, 1940), *Küzdelem a gazdasági jogért* (Struggle for the economic law), II, Budapest, Királyi Magyar Nyomda 1941, 642-643.

40 Szladits *op. cit.*, note 17, 106.

law too. As the Hungarian law was not fixed by code, the practice could adapt itself more flexibly.[41]

25. Perhaps the most debated question in connection with the drafting of the Civil Code was the regulation of the law of succession. The question was whether some rules having their origins in the property system of the feudal period should be maintained or not. According to the debated solution, the surviving widow could not get title on intestacy of the objects of property got by the deceased person from his family and the ownership of these objects of property was inherited by the surviving members of the family if there were no descendants. The main aim of this regulation was to keep the property within the family.[42] As this was an established customary rule, it remained in practice.

26. Lawyers were usually practice oriented in the early 19th century. The German "pandectist" theory based on Roman law had had an influence since the middle of the 19th century. It allowed the obtaining of information about other legal models not only the Austrian one. The lack of a theory of law made it possible that the German "pandectistic' could find an easy acceptance,[43] and it was felt in the first draft of the Civil Code. According to the opinion of Almási, a civil law professor, the same happened to the German law solutions as with Austrian rules: the court practice transformed them slowly and adapted them to Hungarian conditions.[44]

27. The special position of the Supreme Court was also acknowledged by an Act. According to Article 75 of the Act LIV of 1912, decisions of plenary sessions of the Supreme Court and the decisions handed down for the sake of unity of court practice were binding upon all courts. These decisions were collected and published.

The development of law by court practice and the transformation of foreign elements borrowed from other countries by court practice, is considered as a characteristic feature of Hungarian Civil law.[45]

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[41] Weiss, Emilia, Die Entwicklung des Vertragsrechts der ungarischen zivilrechtlichen Kodifikationsarbeiten, *Entwicklung des Zivilrechts in Mitteleuropa (1848-1944)*, Andor Csizmadia, Kálmán Kovács (Hrsg.), Budapest, Akadémiai Kiadó, 1970, 290.

[42] *Weiss, Emilia, A túlélő házastárs öröklési jogállása történeti kialakulásában és fejlődési tendenciáiban* (*History and development tendencies of the position in inheritance of the surviving spouse*), Budapest, Akadémiai Kiadó, 1984, 117-122.

[43] Zlinszky, János, *Wissenschaft und Gerichtsbarkeit*, Klostermann, Frakfurt am Main 1997, 1, 16, 17; Kecskés, László, *A polgári jog fejlődése a kontinentális Európa nagy jogrendszereiben* (Development of Civil Law in the great legal systems of continental Europe, Budapest, HVGOrac, 2009, 391.

[44] Almási, Anton, *Ungarisches Privatrecht*, Gruyter, Berlin und Leipzig, 1922, VI.

[45] Szladits Károly, A magyar magánjog jellegváltozásai az utolsó száz év alatt (The changing character of the Hungarian Civil Law during the last onehundred years, 1840-1940),

IV. THE PERIOD FROM 1948 TO THE CHANGE OF SYSTEM IN 1989/1990

28. After World War II, Hungary was occupied by Soviet troops. In the first years after the War a democratic system existed, but in 1948 the political power was taken over by the Communist Party. The economy was in ruins and forced industrialisation had serious consequences for decades.

A new political system was created based on the communist ideology. According to the ideology, a new type of law was created. For some years the theory was that nothing remained from the capitalist law based on exploitation of workers, and an absolutely new type of law was brought about. During the existence of this socialist law there were several periods and the ideology changed.

In the new type of civil law, a main constant idea was the rejection of the private property of means of production, the bulk of production means was under the ownership of the State directing the economy in a system of comprehensive planning.[46] Administrative law gained ground and civil law lost importance.

The political system was decisive and the role of civil law changed accordingly. In Hungary the system of the early 1950s changed slowly after the revolution of 1956. In the late 1960s an attempt was made to establish some kind of market economy and as a consequence the role of civil law increased to some extent.

29. The first Civil Code was drafted in the mid 1950s and it was enacted after the revolution in 1959. Although the prevailing idea denied the continuation of legal culture, the Civil Code was built on the former civil law. The general grounding of the bill on the Civil Code expressly stated that the bill had made use of the draft of 1928, of the court practice and the legal theory.[47] It emphasised that the bill was built on the Soviet experience but in reality there was no important transplantation from Soviet law. The political system was decisive and it had consequences for civil law.

Emlékkönyv Dr. viski Illés József tanári működésének negyvenedik évfordulójára (Essays in honour of viski Illés József on the occasion of the fortieth anniversary of his teaching activity), Budapest, szerk, Eckhart, Ferenc és Degré, Alajos, Stephaneum, 1942, 486, 492-493.

[46] Eörsi, Gyula, *Comparative Civil (Private) Law*, Budapest, Akadémiai Kiadó, 1979, 70-84.

[47] *A Magyar Népköztársaság Polgári Törvénykönyve*, közzéteszi az Igazságügyminisztérium Civil Code of the Hungarian Peoples' Republic, published by the Ministry of Justice), Budapest 1959, 14-15. p.

The 40 years of the system transformed a great part of the traditional society and economy. Its consequences are not yet clarified and neither is its impact on the legal system as a whole.

30. In Hungary the continuity of the traditional way of thinking could be maintained. Partly in connection with the codification work, partly later when cold war was over and in Hungary, relatively free scientific research work could be done; comparative law had a considerable importance. Mainly the laws of the European legal systems were studied. The traditional of German orientation remained in the civil law field. It is interesting that the style of the Civil Code was different from the German one; it resembles in some respect the French style although no direct contact between the two systems can be found.

In the second part of the period a new element was observed: the increased interest in English common law, this became possible because of the increased number of lawyers who were able to read English language law books.

31. Some characteristic features of Hungarian civil law remained. Although Hungarian civil law became a codified system, the Code did not contain detailed rules as it was envisaged that fast economic and social changes would take place on the way towards communism.[48] Therefore, the courts had an important range of possibility of interpreting the rules. The Supreme Court had the right under the provisions of an Act of Parliament to hand down decision of principle and to publish other decisions which gave guidelines to lower courts. Thus, the decisive role of the Supreme Court in the administration of Justice remained. One can say that some kind of customary law was functioning side by side with the code and a great number of statutes.

32. It was a characteristic feature of the Hungarian socialist system that the ownership of land was not abolished. The reason for this was that the ownership was so strongly rooted in the mind of peasants that it could have had serious political consequences if the land had been nationalised. The political aim of transforming the property system was achieved by the forced organisation of co-operatives and tricks concerning land. Closely connected with the regulation of ownership in land, the rules of succession were not modified in a revolutionary way. The rules on succession of the relatives on objects got by the deceased person were only slightly modified, also because of the fact that people knew these rules and were against

[48] Mádl, Ferenc, Das erste ungarische Zivilgesetzbuch – das Gesetz IV vom Jahre 1959 – im Spiegel der Geschichte der zivilrechtlichen Kodifikation, *Das Ungarische Zivilgesetzbuch in fünf Studien*, in Ferenc Mádl (red.), Budapest, Akadémiai Kiadó, 1963, 86.

changes.[49] Sociological studies have also stated that legal knowledge is greater in the case of legal norms related to traditional values (such as life, property, family), whereas it is less if the rules concern public administration, economy, i.e. elements of legal knowledge intended to shape the society.[50]

V. PRESENT PERIOD

33. After the collapse of the former regime the transformation of the whole legal system was on the agenda. Once again constitutional questions prevailed: it was of primary importance to re-establish a democratic system, to return to constitutional values and traditions. As Hungary did not have a written constitution until 1949, when a "socialist" constitution was made, several questions could be found in customary law. Continuity and traditions again became important in constitutional law too.[51]

34. In the field of civil and commercial law the way of transformation and modernisation has been a basic problem for more than two decades.[52] There is a vast amount of literature from the transition period. However, the necessary data is still missing to state what the social and economic consequences of the former regime are. Legal culture does not rapidly change, but it needs time to state what remained hidden under the previous period and what elements are present even nowadays. It needs time and research work in several social sciences to state what the existing values are.

There is also a central problem of what the essential elements of the legal system are, which are rooted in the mind of people. The aim is not to destroy values when trying to modernize the system. A special aspect of the whole problem is the European unification or harmonisation of the system without losing national values.

At present, it can be stated that Hungarian civil law (and very probably the whole legal system) belongs to the Franco-Latino-Germanic system on the basis of the classification of the general report.

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[49] Zalán, Kornél, Hauptprobleme des Erbrechts im Ungarischen Zivilgesetzbuch, in Mádl, *op. cit.*, note 48, 322, 328.

[50] Kulcsár, Kálmán, *Modernization and Law*, Budapest, Akadémiai Kiadó, 1992, 118.

[51] Kukorelli, István, *Tradíció és modernizáció a magyar alkotmányjogban* (Tradition and modernisation in the Hungarian Constitutional Law), Budapest, Századvég Kiadó, 2006, 11-19.

[52] The present author has dealt with several questions of this large problem, e.g. *Introduction to the Hungarian Law*, Kluwer, The Hague,London, Boston 1998, *Process of Transition in Central and Eastern Europe*, in: Jacob Ziegel (ed), New Developments in International Commercial and Consumer Law Hart, Oxford,; *Hungarian Civil Law since 1990*, Acta Juridica Hungarica 2002, *Transformation of Hungarian Civil Law,* The Transformation of the Hungarian Legal Order, in András Jakab *et al.*, (ed.), Alphen a an Rijn, Kluwer, 2007.