

VI

# SIC MUR AD ASTRA

EDITORS  
GERGELY GOSZTONYI  
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DUNJA MILOTIĆ

Collection  
of papers  
on **Hungarian**  
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legal history 2022

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# **Dóra KARSAI: The commercial companies from the beginning till today**

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## **1. Introduction**

Nowadays, not a day goes by without some direct or indirect contact with a commercial company. From using a mobile phone in the morning to shopping in the evening, there are countless occasions when we use or pay for the services of a company. We just often don't think about it. The concept of a commercial company often seems foreign and overly technical, even though the meaning of the term is obvious to even the most inexperienced. One of the aims of my study is to bring the reader a little closer to this concept, the broad structure behind it, and how it has evolved, by presenting this system, which is found in many areas of life, and thus to give the reader the opportunity to gain a better understanding of the structure of the commercial companies that are an integral part of our everyday lives.

## **2. Historical background**

The first formation of commercial companies in Europe appeared in the 13<sup>th</sup> century with the spread of the technical revolution, which led to the beginnings of the capitalist economic system. Here came the realization that, by combining economic and intellectual forces, capital could be better provided by a well-organized comprehensive industrial and commercial system, and as a result, performance would increase, the risk would be shared, better quality products could be produced, and thus the company would be more competitive, a key characteristic for the survival of the firm under capitalism. The first version of companies was called guilds or guilds. These two

advocacy organizations had essentially the same purpose, only the name differed as time went on. The sum of it was that craftsmen/merchants/tradesmen in towns and cities engaged in the same activity were grouped together within a king-backed trade association to limit competition between them. However, as the prelude to capitalism had already appeared, the transport was not yet so advanced that if one could not compete properly in one town, one could transport to another town in a way that was worthwhile for him, including travel costs, and relocating a firm to another town was a much more difficult, almost impossible, task in this era. Hence the solution mentioned a few lines above so that all merchants could prosper properly while protecting each other against the emergence of a competitor. As well as protecting internal interests, this was also beneficial to the townspeople and the state, as it created an orderly industrial system with less turmoil, and the guilds often performed public functions in ensuring the defense or development of the town.<sup>1</sup>

A significant milestone in the development of commercial companies was the great geographical discoveries that began in the 16<sup>th</sup> century, as this opened up the possibility of overseas trade, which proved to be much more cost-effective than its predecessors. The emergence of colonialism was another consequence of overseas trade and played a major role in the expansion of commercial companies. With this opening up of opportunities for commercial companies worldwide, large companies emerged, which can be seen as the forerunners of today's multinationals. Here, it was no longer enough to have a local internal code, as in the case of guilds but needed something more serious, more general, recognized worldwide, and sufficiently broadly based. The solution was the development of a set of technical legal principles that provided general conditions for those joining a trade association. Compliance with them was compulsory and at the same time benefited the members and the operation of the company. For example, the assets of the members and the organization could be separate and independent, i.e. the members had 'private' assets which were not part

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<sup>1</sup> HORVÁTH, Attila: *A magyar magánjog történetének alapjai [The Foundations of the History of Hungarian Private Law]*. Budapest, 2006, Gondolat Kiadó, pp. 354–356.

of the assets of the company and the members were liable only for the amount contributed to the company. This was to ensure that the labour/capital needs of growing commercial companies were met while at the same time preventing the members from going bankrupt in the event of a bankruptcy. This conditionality also acted as an incentive for individuals, which was essential to encourage them to join in order to continue to grow and compete.<sup>2</sup>

The 19<sup>th</sup> century is considered to be the golden age, as the operating system of capitalism was fully developed by then, but the size of companies and their production was not yet such as to overwhelm the capacity of the individuals involved, or to allow their operation to be brought under the control of a bureaucratic apparatus, which is also a major constraint. Coming back to trade, rapid development and geographical expansion have made it necessary for countries to regulate its operation themselves, establishing their order with certain limits (the extent of which has varied over the ages), and in extreme cases even to involve it in the centralization of state management. Such a regulatory process was also initiated in Hungary, greatly influenced by the structure and provisions of the German Commercial Code.<sup>3</sup>

In Hungary, the liberal oppositionist István Széchenyi made the nationalization of trade, including the emerging commercial companies, a major demand of the reform era. He was also responsible for the establishment of the first significant commercial companies, which were known as the Chain Bridge (Lánchíd) Joint Stock Company (1837) and the Pest Milling (Pesti Hengermalom) Joint Stock Company (1838).<sup>4</sup> The laws of the time, which were beyond European standards, were still in force during the neo-absolutist period. These laws were the Merchants Act<sup>5</sup>, the Factories Act<sup>6</sup>, the

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<sup>2</sup> *Ibid.*, p. 356.

<sup>3</sup> *Ibid.*, pp. 357–359.

<sup>4</sup> GOSZTONYI, Gergely: A polgári szabadságjogok [Civil liberties]. In: MEZEY, Barna – GOSZTONYI, Gergely (eds.): *Magyar alkotmánytörténet [Hungarian constitutional history]*. Budapest, 2020, Osiris Kiadó, p. 285.

<sup>5</sup> Act 16 of 1840.

<sup>6</sup> Act 17 of 1840.

Companies for Public Purposes Act<sup>7</sup>, and the Merchant Boards and Brokers Act<sup>8</sup>. However, after the Reunification, the economic situation in the country changed, and trade also required new regulations. In the light of this, the then Minister of Trade asked István Apáthy and Ödön Kuncz to submit a new, unified law, which was promulgated on 16 May 1875 and came into force on 1 January 1876 as the Hungarian Trade Act<sup>9</sup> (HTA).

To keep Hungarian commercial law at an international level, several sections of the HTA are simply translated from the German Commercial Law. The main objective was modernization, which included, for example, the adoption of Western European legal institutions, but also took into account the domestic context to apply them properly and achieve the best possible effect in Hungary. This was achieved, as industrial production was raised from 8 percent in 1850 to 25 percent in 1913. The Act deals with five types of a commercial companies, namely the general partnership, the limited partnership, the joint-stock company, the limited liability company, and the cooperative society. Although it is not included in the legal text, in practice there was an additional company, the so-called silent partnership, but this was eventually abolished in the course of the dynamic developments. This large-scale progress was hindered first by World War I, then by the Great Depression, and then by the Soviet dictatorship that followed World War II, which completely froze the capitalist operation of trade and the economy, and thus the market economy in Hungary ceased to exist for a time.<sup>10</sup>

### **3. Commercial companies during the socialism**

The proclamation of the Hungarian People's Republic on 20 August 1949 marked the beginning of the reign of the socialist dictatorship. This brought with it, first of all, the

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<sup>7</sup> Act 18 of 1840.

<sup>8</sup> Act 19 of 1840.

<sup>9</sup> Act 37 of 1875.

<sup>10</sup> HORVÁTH, *op. cit.*, pp. 374–385.

emergence of the planned economy. In practice, the planned economy meant that, on the one hand, the state eliminated the possibility of privatization in the economy by creating a single state property, and, on the other hand, it implemented the three- and five-year plans under the control of a central office (which in Hungary was the National Planning Office). At that time, the primary objective of a (state) enterprise was to achieve the required efficiency, and it did not have the autonomous discretion to take on a legally and economically risky option in the light of market conditions, but was only required and allowed to perform the tasks assigned to it.<sup>11</sup>

In addition to the nationalized companies, cooperatives still existed as a type of commercial company. The distinction between the cooperative and the state-owned enterprise was later completely blurred with the development of socialism and became part of the unified state ownership.<sup>12</sup> Two types of cooperatives can be distinguished: initially, there were producer cooperatives, and then, with the emergence of the new economic mechanism, general consumption and sales cooperatives. The primary aim of the creation of producer cooperatives was collectivization, whereby the private property of agricultural workers was taken away and centralized in a cooperative, even utilizing forced labour. The cooperatives fulfilled the needs of the state by the tasks imposed on them. But they tried to keep up the pretense that the members were still part-owners of the land annexed by the cooperative and had any control over its use. This was done by the periodic cooperative meetings, which were only a show and had no real benefit for the operation of the cooperative.

The term new economic mechanism has already been mentioned in the course of my study and I think it deserves an explanation of what exactly it is and why it is significant in relation to my subject. The introduction of the new economic mechanism in 1968 was necessary because the planned economy of that time was not efficient

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<sup>11</sup> SÁRKÖZY, Tamás: A vállalatirányítás elvi kérdéseiről [On the theoretical issues of corporate governance]. *Jogtudományi Közlöny [Legal Gazette]*, Vol. 24, 1969, pp. 89–90.

<sup>12</sup> SÁRKÖZY, Tamás: *A szocialista vállalatok közös ismérvei a magyar adottságok között [The Common Criteria of Socialist Enterprises under Hungarian Conditions]*. Budapest, 1981, Akadémiai Kiadó, p 33.



enough, the country was in a deepening economic crisis, and in the Kádár era, it was more possible to deviate from the strict regulations dictated by the Soviets in the framework of the KGST.

It is important to distinguish, from the economic point of view of the state, between the public authority and the economic policy of the manager and owner. and management powers. While official control is essentially negative in direction, as its instrument is the system of prohibition and licensing, which must be enforceable against all sectors of the economy to function potentially. Economic governance is more policy-oriented, focusing on specific sectors, to steer economic activity in a particular direction, and the means of which are to anticipate economic advantages and draw attention to disadvantages. Later on, these features of autonomous corporate planning were made a mandatory requirement for cooperatives.<sup>13</sup> All in all: one of the primary aims of these management mechanisms is to reduce the state's ownership as much as possible (but not completely, it should have influence) and thus to develop an autonomous organized system of operation, which fits in perfectly with the so-called soft dictatorship of the Kádár era.<sup>14</sup>

It should also be mentioned here that in a hierarchical system, the interests of the state and its proprietary character are more clearly defined, while in a non-hierarchical system the functional functions of the government are more clearly defined, since in this case-control or supervision is exercised by a body independent of the state, and thus the efficient functioning of the economy is better ensured by the establishment of a balance.<sup>1516</sup>

The fact that the state no longer wanted to dominate the market, but only to regulate its organized functioning, can be seen as a significant change. This gave those

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<sup>13</sup> Act 7 of 1972.

<sup>14</sup> SÁRKÖZY, 1969, *op. cit.*, pp. 93–101.

<sup>15</sup> HALMAI, Gábor: *Az „új” gazdasági mechanizmus fejlődése – a párthatározatok és a közgazdasági irodalom tükrében [The Development of the „New” Economic Mechanism – in the Light of Resolutions and Economic Literature]*. Budapest, 1982, Akadémiai Kiadó, pp. 1–12.

<sup>16</sup> SÁRKÖZY, 1969, *op. cit.*, pp. 92–97.

with an economic interest the opportunity to gain some control over their property and to dispose of it as a minimum according to their wealth (of course, only in a proportion that was still compatible with the state's interests).<sup>17</sup>The governance model has also been transformed, with the previous strict planned economy, essentially run by a central agency (the National Planning Office), being replaced by sectoral governance. This change meant that the ministries were no longer responsible for the operation of the companies hierarchically subordinate to them, but were responsible for the management of a sector in its entirety, irrespective of the sectoral differences between the companies, to ensure that the sector functioned properly in the national economy and to ensure its continued development.<sup>18</sup> This type of management was known at the time as corporate supervision.<sup>19</sup>It was during this period of the new economic mechanism that general consumption and marketing cooperatives appeared alongside the producer cooperatives, with much greater autonomy, to which traders, producers, farmers, or landowners themselves subscribed. Here, cooperatives tended to be formed according to occupation and were rarely formed based on the location of the land. Territoriality was a factor, as a cooperative of this kind was usually formed jointly in a given village or neighboring villages, but this was not the primary consideration in terms of destination.

In my view, this socio-economic autonomy, which ensured separation from the state, gave the merchants, craftsmen, or part-owners of the company the opportunity to escape the constraints of the strictly planned economy, to have greater freedom of movement and thus to take a more active part in the work, which was also necessary to alleviate the severe economic crisis caused by the planned economy. This slight relaxation was also experienced by state-owned enterprises, which ensured the development of those that lagged in efficiency.<sup>20</sup> It is undeniable that the Soviet dictatorship was there in the background, which still had a large say in the functioning

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<sup>17</sup> *Ibid.*, pp. 89–91.

<sup>18</sup> Government Decision No. 2027/1967.

<sup>19</sup> Government Decree No. 11/1967.

<sup>20</sup> Act 6 of 1977, Section 2.

of the economy, only perhaps it did so in a more formalized system. As we have seen from the development of history, these measures were only a temporary solution, and with the final bankruptcy of socialism, the possibility of the free market opened up and capitalist management (re)appeared in our country.

#### **4. Nowadays' conditions**

Today in Hungary, Act CLXIV of 2005 on Trade is in force, which was promulgated on 25 December 2005 and entered into force on 1 June 2006.<sup>21</sup> The logical structure of Act 37 of 1875 is slightly recognizable in the current Trade Act, but thanks to continuous innovation, the legislation is appropriate to the present situation and therefore differences can be detected compared to the old, more significant article. Such similarities can be seen in the fact that the primary objective of the law is still to ensure that trade is properly restricted or those prohibitive competitive situations do not arise, for example, the prohibition of cartels.<sup>22</sup> From my observations, the above-mentioned Act is the main regulatory instrument for trade and although there are various complementary laws, they tend to apply only to specific cases or situations and the framework for commercial activity is set out in this legislation.

The forms of business entities are currently set out in Act V of 2013 on the Civil Code. In our current law, the same five types of companies are defined, but their grouping is more distinct than in the previous article of the law referred to.<sup>23</sup> As it is more sharply distinguished here between the general partnership, the limited partnership, the limited liability company, the joint-stock company, and the limited liability partnership, which are included in the category of companies, and the cooperative, which is considered as a separate category. The main difference between the two categories, as I understand it, is that a cooperative focuses on self-help, on

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<sup>21</sup> KORNAI, János: Hungary's U-turn. *Society and Economy*, Vol. 37., No. 3, 2015, pp. 279–329., <https://doi.org/10.1556/204.2015.37.3.1>

<sup>22</sup> Act CLXIV of 2005, Section 7–7/A.

<sup>23</sup> Act V of 2013, Title VI.

achieving or helping its members or some other socially interested purpose, whereas a business partnership in its various forms focuses on commercial as advantageously as possible, often done professionally by its members. However, it can be argued that in the 13<sup>th</sup> century, guilds, despite strict regulations, could be seen as much more subjective in their approach given their small size or scope, whereas today's firms are much more objective, profit/goal-oriented in many cases.

The advent and spread of the internet<sup>24</sup> is a major advantage over the past because it means that the relevant terms and conditions can be easily viewed from anywhere and the monitoring of commercial companies can be carried out much more efficiently and easily. In addition to the legislation, the Hungarian Chamber of Commerce and Industry (HCCI) is also of great importance, where all the rules/regulations on this subject can be found in one place. The operation and functions of the HCCI have, in a small part as a result of my research, developed my view of it as a guild in the 13<sup>th</sup> century in a given town, as it brings together under one hat a wide-ranging system of regulation of commercial companies. At some level, to set up a legal commercial company, compliance with the relevant rules is mandatory, and this is stated on the HCCI's website. The HCCI does not have as strong power and influence as a guild used to have, but rather only lays down the foundations and provides information, but it has a central role and a set of conditions that are extremely important. There are also separate chambers per county, subordinate to the HCCI, but not hundreds of them, as they're used to be guilds per profession and city. Although the purpose and function for which the guild was set up are different and therefore its operation can be compared to an instrument of influence over a commercial company, but because it also performs functions of protection of interests, such as the preventive protection of a modern commercial company against other companies, it can be compared to the HCCI.<sup>25</sup>

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<sup>24</sup> GOSZTONYI, Gergely: Aspects of the History of Internet Regulation from Web 1.0 to Web 2.0. *Journal on European History of Law*, Vol. 13, No. 1., 2022, pp. 168-173.

<sup>25</sup> <https://mkik.hu/> [Access on October 14 2022].

## 5. Summary

The title of the third section of my paper is a question that, at first glance, seems to be a contradiction in terms. After all, how would it be possible to have commercial companies under socialism? As my paper has shown, it is not at all impossible. Socialism, too, was a time of constant change and was diverse in its own way. First, there were the so-called loopholes, which allowed companies a minimum degree of autonomy, such as the various housing cooperatives, or the large companies that were extremely important for the political and social life of the country, where the forced centralization based on the plan-rule system was not fully enforced.<sup>26</sup> Then, the new economic mechanism was a deliberate attempt to alleviate the economic terror caused by socialism, which gave commercial companies more scope to operate again, partly independently. Eventually, with the end of socialism, such severe restrictions were finally lifted, and free, independent companies were once again free to operate in a market economy. All in all, looking at the development of trade from its beginnings to the present day, it can be concluded that the socialist period has had a rather negative impact on the development and evolution of trade and enterprise. In my opinion, if this period could be cut out of Hungarian history, there would be a less dramatic difference between the immediate pre-socialist period and the immediate post-socialist period.

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<sup>26</sup> SÁRKÖZY, 1981, *op. cit.*, p. 39.