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Eötvös Loránd University / Faculty of Law / Department of the History of Hungarian State and Law / 2024

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Botond CZIFRA: On the question of certain rights of the Minister of Justice related to the organization of the jury trial in the Austro-Hungarian Monarchy

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The concept of the national sovereignty became a fundamental principle during the Age of Enlightenment. The Declaration of the Rights of Man and of the Citizen,[1] which marked the beginning of a new political era, stated the following: "Art. 3. Le principe de toute Souveraineté réside essentiellement dans la Nation. Nul corps, nul individu ne peut exercer d'autorité qui n'en émane expressément." Within the framework of national sovereignty, the people started to exercise their power in the legislative and in the executive department (mostly through elected representatives), but also claimed the right to participate in judicial proceedings.[2] According to Ferenc Finkey,[3] this liberal political institution does not legitimise the jury trial in itself, but we have to emphasize that the participation of jurors act as a guarantee to repress the judicial tyranny. Although the famous Hungarian legal scholar from Sárospatak did not share this opinion, I believe that this type of tyranny was not unknown to the Hungarian society neither: for the "lent",[4] the common folk, the feudal laws could at

[1] Légifrance, Déclaration des Droits de l'Homme et du Citoyen de 1789, https://www.legifrance.gouv.fr/contenu/menu/droit-national-en-vigueur/constitution/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789 [Access on March 24, 2024].

[2] For the comparative aspect see: RIGÓ, Balázs: A kivívott és közben látenssé vált állampolgári jog (Az angol esküdtszék története – Antal Tamás) [The civil right that was won and became latent (The history of the English jury – Antal Tamás]. *Jogelméleti Szemle [Journal of Legal Theory]*, No. 3, 2023, pp. 67–87. DOI: doi.org/10.59558/jesz.2023.3.67

[3] FINKEY, Ferencz: *Az uj magyar esküdtszék és az esküdtbiróság előtti bünvádi eljárás – népszerü ismertetés az esküdtek számára [The new Hungarian jury and criminal proceedings before a jury - a popular introduction for jurors]*. Sátoraljaújhely, 1900, Zemplén Könyvnyomtató Intézet, p. 6.

[4] Lent stands for the inferior layer of the Hungarian society.

the very least impair the general sense of justice just as much as the abuses of the protonotaries, which led to their abolishment in 1723.

The jury trial means that the decision on the guilt or on the innocence of the accused party is not made by citizens chosen from various layers of the society, and only the sentencing is made by the judge. As Rusztem Vámbéry explained it in the newspaper called Vasárnapi Ujság in 1900,[5] the jury trial – as envisioned by the Proposal of 1843 – had been introduced by the April Laws,[6] but it was only one of the safeguards of the liberty of the press until the promulgation of the Code on Criminal Procedure of 1896. The Code determined the competence of the jury destining it to hear the most serious crimes. The detailed provisions on the organization of the jury were found in Act 33 of 1897. This act vested the Minister of Justice with several competences. In my paper, I will present the relevant competences of the Minister of Justice, and I will examine one in detail, which was granted by § 34: the right to merge the neighbouring territorial districts.

Many debates arose against the introduction of the jury trial during the Reform Era as well as after the Austro-Hungarian Compromise. The introduction of the jury into the Hungarian legal system was not without difficulties: despite the fact that the jury itself was derived from the concept of national sovereignty, Endre Marsovszky[7] expressed at the national assembly on 18th May 1897 that he personally opposed the jury trial, since the guarantees of judicial independence safeguarded the rights of citizens more effectively than of those of the jury procedure. Furthermore, as the Hungarian judges had not given any reason for a loss of confidence, he saw the extension of the jury trial as part of the regnant liberal government's political

[5] Vasárnapi Ujság means Sunday's Journal, it was an informative weekly print published between 1854–1921.

[6] GOSZTONYI, Gergely: Freedoms in the Hungarian April Laws of 1848. *Journal on European History of Law*, No. 1., 2024.

[7] Marsovszky Endre, born in Vienna, 1859, member of parliament, was the representative of the district alsó-lendvai (Zala county) at the national assembly of 1897. Populist politician, he published regularly in the journal Fejérmegyei Napló. https://www.arcanum.com/hu/online-kiadvanyok/Lexikonok-magyar-irok-elete-es-munkai-szinnyei-jozsef-7891B/m-96B16/marsovszky-endre-981FF [Access on March 24, 2024].

program.[8] Although the representative formulated this as his personal opinion, he said in the exordium of his speech that he was recapitulating the standpoint of his comrades.[9] Consequently, the raison d'être of the jury trial was still debated by the populist party in 1897. Still, I have to mention that the populist party managed to obtain 18 mandates in the course of the assembly election on 29th October 1896, which granted them 4% of all seats in the Parliament. Therefore, the *communis opinio* of the Hungarian society is not deductible from their standpoint.[10]

On 19th March 1897, the bill on the jury trial was introduced by the Minister of Justice Sándor Erdély.[11] The bill triggered heavy debates in the House of Representatives. The representatives opposed the selection of jurors (they proposed draw instead of the selection described in § 15)[12] and the high necessary tax rate mostly.[13] Moreover, there were representatives who saw the bill as an attack on freedom of the press.[14]

The bill[15] vested the Minister of Justice with three competences (whereof one he would have got indirectly, through the government) and with three obligations: the right to order those to juror duty who would have been exempt from carrying it out, when the jury could not be empanelled otherwise (§ 8), the right to merge several neighbouring districts into one juror district (§ 34). The bill also aimed to grant the government the right to suspend some jury trials, if the circumstances would exclude

[8] Képviselőházi Napló, 1896. VI. kötet, 1897. április 28 – június 12. Ülésnapok : 1896-98, 85. p.

[9] „I want to indicate briefly the standpoint that me and my comrates occupy over against this proposition." - Képviselőházi Napló, 1896. VI. kötet, 1897. április 28 – június 12. Ülésnapok: 1896-98, 84. p.

[10] SZABÓ, Pál Csaba (ed.): *A magyar állam története 1711–2006 [History of the Hungarian State 1711–2006]*. Budapest, 2006, Bölcsész konzorcium, 375. p.

[11] Képviselőházi irományok, 1896. V. kötet, 131-152., XXVI-XXXVII. sz., 1896-137. Törvényjavaslat az esküdtbíróságokról.

[12] E. g. Bernát Béla's speech, Képviselőházi Napló, 1896. VI. kötet, 1897. április 28 – június 12. Ülésnapok: 1896-98, p. 84.

[13] *Ibid*.

[14] Madarász József, Képviselőházi Napló, 1896. VI. kötet, 1897. április 28 – június 12. Ülésnapok: 1896-98, p. 85. Cf. GOSZTONYI, Gergely: Censorship and law in Hungary in the past. *Romanian Journal of Legal History*, No. 1., 2021, pp. 37–46.

[15] Képviselőházi irományok, 1896. V. kötet, 131-152., XXVI-XXXVII. sz., 1896-137. Törvényjavaslat az esküdtbíróságokról.

the peaceful and unbiased judgement (§ 35). The proposal also compelled the Minister of Justice to determine the number of necessary jurors and substitute jurors for the next year in every juror district in a decree (§ 15), to determine the number and the period of the ordinary sessions of the jury trials (§ 29), and to determine the details of the entry into force (§ 38-39). In the end, the Minister of Justice got only two out of these competences.

The planned authority to suspend the jury trials triggered heavy debates between the Members of the Parliament. Even the Minister of Justice argued that § 35 and the related § 36 should be left out from the bill.[16] Using the contemporary expression, this provision was still on the "carpet" during the general debate of the bill, and multiple representatives expressed their indignation. On 18th May 1897, Jenő Polczner[17] stated that the bill „*back then piqued the vivid and strong interest not only of the whole Hungarian political world, but also of the Hungarian lawyer community.*"[18] The representative labelled this part of the bill „*constitutionally impossible*", thereby he got into a contradiction with judicial rapporteur Lajos Psik, who declared[19] that this disposition was not in point of fact unconstitutional on account of the „*sufficient constitutional cautela*". Looking back from the present, I can agree with Jenő Polczner on these issue.

According to Attila Horváth, the Hungarian historical constitution consists from the most significant legal norms created through the centuries.[20] Among them are the

[16] Képviselőházi napló, 1896. VI. kötet, 1897. április 28–junius 12.Ülésnapok 1896-98, Psik Lajos előadó, p. 79.
[17] Polczner Jenő lawyer, politician, he has great merits from the reconstruction of Szeged, figther of freedom. He was MP, the representative of the electoral district II, Szeged from 1896. SZATMÁRI, Mór: *A szövetkezett balpárt arcképcsarnoka [Portrait gallery of the united left party]*. Budapest, 1905, A szerkesztő-bizottság kiadása, p. 149.
[18] Képviselőházi napló, 1896. VI. kötet, 1897. április 28–junius 12. Ülésnapok 1896-98, Polczner Jenő, p. 80.
[19] Képviselőházi napló, 1896. VI. kötet, 1897. április 28–junius 12. Ülésnapok 1896-98, Psik Lajos előadó, p. 79.
[20] HORVÁTH, Attila: A magyar történeti alkotmány [The Hungarian historical constitution]. In: GOSZTONYI, Gergely – MEZEY, Barna (eds.): *Magyar alkotmánytörténet [Hungarian constitutional history]*. Budapest, 2020, Osiris Kiadó, pp. 54–64.

so-called *cardinal acts*, for example Act 12 of 1791 on the exercise of legislative and executive power. The law, promulgated by Leopold II, states that „*the ascertained or ascertainable court organization will not be modified by royal power*". The future participle in the expression „*ascertainable court organization*" lets me infer that after the enactment of this law, even the King have not been able to change the future court organization. Furthermore, Act 3 of 1848, which re-entered into effect in March 1867,[21] declared that „*His Majesty, and in his absentia the palatine and the royal lieutenant, according to the laws, exercise the executive power by an independent Hungarian government*". Therefore, if the Minister of Justice gets the right to suspend the jury trial in a certain territory, the executive power would get the right to modify the court organization, thus the provision of the bill contradicted the Hungarian historical constitution. Furthermore, the wording of the bill („*if in the territorial scope of this act or in some part of it such circumstances arise that exclude the peaceful and unbiased judgement of the jury trials*") is not unambiguous enough to serve as a constitutional guarantee, because it would have been necessary to explain what the peaceful judgement stands for, and especially that what kind of circumstances could exclude the unbiased judgement of the jury trial. Besides, as Finkey[22] describes it, during the formation of the jury, both the accuser and the accused may signal if a juror is incompatible with the case, and the concerned juror can signal it too. Furthermore, both the accuser and the accused have the right to reject several jurors. It is important to note that experiences from the past led to the formation of this provision. In 1892, the jury exonerated Romanian politicians one after the other in Nagyszeben. Consequently, the Minister of Justice dissolved this jury, and the jury of Kolozsvár and Marosvásárhely had to adjudge these cases.[23]

[21] KÉPES, György: Kormányforma a dualizmus korában [Form of government in the age of dualism]. In: GOSZTONYI, Gergely – MEZEY, Barna (eds.): *Magyar alkotmánytörténet [Hungarian constitutional history]*. Budapest, 2020, Osiris Kiadó, pp. 320–322.
[22] FINKEY, *op. cit.*, pp. 52–53.
[23] CSIZMADIA, Andor: *Az esküdtbíróság Magyarországon a dualizmus korában [The jury in Hungary in the age of dualism]*. Budapest, 1966, Közgazdasági és Jogi Könyvkiadó, p. 133.

During the debate of the bill, Ödön Barta[24] argued that § 34 was derived from the subsequent article.[25] The representative stated that territorial jurisdiction was a constitutional guarantee, since none can be detracted from his ordinary judge. During the debate,[26] the judicial committee analysed every condition of eligibility in detail, and it stated that there were many more eligible citizens in every court district than it was really necessary (480 eligible citizens). Even in the case of royal courts of Eperjes, Lőcse, Ipolyság, Déva, Erzsébetváros, Aranyos-Marót, Rózsahegy, Trencsén, Fehértemplom and Karánsebes, it has been proved that there were much more eligible citizens than necessary: at the court of Eperjes 1382 citizens, almost three times more than required, at the court of Lőcse 2446 citizens, so close five times more than required, at the court of Ipolyság 9235 citizens, almost nineteen times more than required, at the court of Déva 3012 citizens, almost six times more than required, at the court of Csíkszereda 6756 citizens, almost fourteen times more than required, at the court of Erzsébetváros 6747 citizens almostfourteen times again more than required, at the court of Aranyos-Marót 8295 citizens, almost seventeen times more than required, at the court of Rózsahegy 1680 citizens, almost three and a half times more than required, at the court of Trencsén 1888 citizens, almost three and a half times more than required, at the court of Fehértemplom 2621 citizens, almost five and a half times more than required, at the court of Karánsebes 762 citizens, almost one and a half times more than required eligible citizen was counted compared to the number of eligible citizens that was necessary to the jury trial.[27] It is easy to see that the counter-arguments against giving the Minister of Justice the ability to merge neighbouring court districts were well-founded. Considering these statisticsc Ferenc

[24] Barta Ödön lawyer, politician, he was elected to be the representative of the district of Bereg county in 1896. ÚJVÁRI, Péter: *Magyar Zsidó Lexikon [Hungarian Jewish Lexicon]*. Budapest, 1929, Zsidó Lexikon, p. 92.

[25] Képviselőházi napló, 1896. VI. kötet, 1897. április 28–junius 12.Ülésnapok 1896-104, Barta Ödön, p. 202.

[26] Képviselőházi irományok, 1896. V. kötet, 131-152., XXVI-XXXVII. sz.Irományszámok1896-137. Törvényjavaslat az esküdtbíróságokról, pp. 120–146.

[27] For the figures: Képviselőházi irományok, 1896. V. kötet, 131-152., XXVI-XXXVII. sz. Irományszámok 1896-137. Törvényjavaslat az esküdtbíróságokról, p. 146.

Finkey thought that the Minister of Justice will rarely take advantage of this right,[28] but according to Andor Csizmadia, the Minister of Justice used this competence many times.[29]

Unlike in the case of § 35, I would not argue unequivocally that the provision found in § 34 contradicted our historical constitution. I agree with Ödön Barta,[30] who stated that Act 4 of 1869 on the exercising of the judicial power guaranteed the fundamental right of access to justice,[31] but § 34 of the bill, likewise the final text of Act 33 of 1897 declared the following: „*to emerge the territory of several neighbouring royal court districts on the territory of a same royal regional court of appeal into one juror disctrict*". The reasoning of Ödön Barta is not well-founded, since the ordinary courts and the jury trial are not the same. The cited § did not aimed to remit the case to the jurisdiction of another royal court, but it intended that the jurors would have been very likely chosen from the list of a major jury district. Furthermore, regarding the jury trial, I find the concept of the ordinary judge incomprehensible, since both the accuser and the accused could rule out some jurors, without any justification. I think that in case of the jury trial the right of accessing the justice may relate not to the person of the judge, but to the institution. Consequently, § 34 did not oppose the historical constitution, and it speaks volumes that this provision was included in the final text.

Other provisions of the bill were criticised also, primarily focusing on the census, the committees, together with the above-mentioned competences of the Minister of Justice. With the words of Sándor Erdély, the bill „*was exposed to the most baseless*

[28] FINKEY, *op. cit.*, p. 30.
[29] CSIZMADIA, *op. cit.*, p. 133.
[30] The member of parliament was speaking about the ordinary judge, but it's clear from the context and from the message that he was thinking about the judge who had the competence to adjugde the case. For reasons of space, I would not like to engage into the question of the concept 'ordinary judge' in the Hungarian historical constitution.
[31] Regarding the law see: KÉPESSY, Imre: A bírói függetlenség kialakulása Magyarországon [The establishment of judicial independence in Hungary]. In: MENYHÁRD, Attila – VARGA, István (eds.): *350 éves az Eötvös Loránd Tudományegyetem Állam- és Jogtudományi Kara [The Faculty of Law of the Eötvös Loránd University is 350 years old]*. Budapest, 2018, ELTE Eötvös Kiadó, pp. 1052–1060.

attacks and incriminations",[32] but there is an argument that these attacks and incriminations were not always without merit. From my point of view, the competences assigned to the government in the organization of the administration of justice could serve as the base of further research, especially as the judicial organization of various countires could be typified from this standpoint. Therefore, further examination of the provision found in § 35 could pave another another way to measure of the judicial independence in the comparative constitutional history.[33]

[32] Képviselőházi napló, 1896. VI. kötet 1897. április 28–junius 12. Ülésnapok 1896-104, p. 203.
[33] RIGÓ, Balázs: A büntetőjog történetéből II. Kora újkor – újkor. [From the history of Criminal Law II. Early modern – modern era]. In: FÖLDI, András (ed.): *Összehasonlító jogtörténet [Comparative Legal History]*. ELTE Eötvös Kiadó, Budapest, 2018, pp. 325–354.