IX

SIC ITUR AD ASTRA

EDITORS
IMRE KÉPESSY
GERALD KOHL
DUNJA MILOTIĆ
JOSEF PAUSER

Collection of papers on Austrian, Croatian and Hungarian legal history

2026

ISBN: 978-3-200-11251-3
DOI: 10.21862/siaa.9

SIC ITUR AD ASTRA

EDITORS
IMRE KÉPESSY
GERALD KOHL
DUNJA MILOTIĆ
JOSEF PAUSER

Collection of papers on Austrian, Croatian and Hungarian legal history

2026

Universität Wien / Juristische Fakultät / Institut für Rechts- und Verfassungsgeschichte
Eötvös Loránd University / Faculty of Law / Department of the History of Hungarian State and Law
University of Zagreb / Faculty of Law / Chair of Croatian History of Law and State

Austrian–Croatian–Hungarian Legal History Summer School

The Croatian–Hungarian (from 2024: Austrian–Croatian–Hungarian) Legal History Summer School was organised for the first time in 2016 in Budapest as a result of the cooperation of the Eötvös Loránd University, Faculty of Law, and the University of Zagreb, Faculty of Law. The two History of State and Law Departments of these universities, joined by the Department of Legal and Constitutional History, University of Vienna, Faculty of Law, in 2024, published the best articles in the *Sic itur ad astra* series:

- *Sic itur ad astra I* (ISBN 978-963-284-935-5, Eötvös Loránd University Faculty of Law, Budapest, 2017, 64 p.)
- *Sic itur ad astra II* (ISBN 978-953-270-116-6, University of Zagreb Faculty of Law, Zagreb, 2018, 105 p.)
- *Sic itur ad astra III* (ISSN 2631-181X, Eötvös Loránd University Faculty of Law, Budapest, 2019, 134 p.)
- *Sic itur ad astra IV* (ISBN 978-953-270-133-3, University of Zagreb Faculty of Law, Zagreb, 2020, 135 p.)
- *Sic itur ad astra V* (ISBN 978-963-489-439-1, ISSN 2631-181X, Eötvös Loránd University Faculty of Law, Budapest, 2022, 123 p.)
- *Sic itur ad astra VI* (ISBN 978-953-270-165-4, ISSN 2631-181X, University of Zagreb Faculty of Law, Zagreb, 2023, 164 p.)
- *Sic itur ad astra VII* (ISBN 978-963-489-672-2, ISSN 2631-181X, Eötvös Loránd University Faculty of Law, 2024, 196 p.)
- *Sic itur ad astra VIII* (ISBN 978-963-489-827-6, ISSN 2631-181X, Eötvös Loránd University Faculty of Law, 2025, 145 p.)

Our ninth summer school was organized in Vienna in 2025. The broad topic was „On the diversity of content and methods in legal history”.

We hope that our students will reach the stars and that we will find their names and achievements in similar scientific publications in the future as well.

Budapest–Vienna–Zagreb, 2026

The Editors

Table of contents

Botond CZIFRA: The constitutive effect of the cadastral registration and the judicial enforcement in the Provisional Judicial Rules

Eötvös Loránd University, Faculty of Law

DOI 10.21862/siaa.9.1

1. Introduction

The commercial life of Hungary and thus the living conditions of its inhabitants have been determined by the lack of credit for a long time, which played a significant role in the course of historical events, whether in the development of political events,[1] or in their economic impact.[2] One of the primary obstacles to credit was the lack of adequate collateral possibilities. In fact, two legal transactions are necessary for the creation of the pledge solutions that are widespread today: the agreement of the parties to create a pledge - the so-called *commitment*"- and the commitment to perform the service, the so-called *in rem transaction*,[3] which in practice in the context of mortgage lending involves the registration of a priority right of satisfaction in a register. In Hungary, for a long time, the lack of a cadastre meant that it was not possible to pledge property properly, and although the legislature recognised the need for a land register, proposals to introduce one failed on several occasions, as the nobility saw them as a threat of taxation.[4]

---

[1] VARGA, János: A bihari nemesség hitelviszonyai a polgári forradalom előtt [The debt-relations of the Bihari nobility before the civilian revolution]. *Történelmi Szemle [Historical Bulletin]*, No. 1-2, 1958, p. 52.

[2] GRÓF SZÉCHENYI, István: *Hitel [Capital]*. Pest, 1830, Petrózai Trattner J. M. és Károlyi István Könyvnyomtató-Intézete, pp. 41-44.

[3] CSIZMAZIA, Norbert – GÁRDOS, István: A zálogjog alapítása a dologi jogok szerzésének rendszerében [The establishment of hypothec in the system of *in rem* rights]. *Polgári Jogi Kodifikáció [Private Law Codification]*, No. 1, 2007, pp. 26-36.

[4] HORVÁTH, Attila: *A magyar magánjog történetének alapjai [The foundations of the history of Hungarian private law]*. Budapest, 2006, Gondolat Kiadó, p. 226.

2. Historical background

After the suppression of the War of Independence of 1848-49, the Habsburg government started to introduce the Austrian cadastral institutions in Hungary.[5] The Revolution and the War of Independence had a significant impact on Hungarian legal thought, whether in the field of public or private law. The complete transformation of the legal structures of the feudal society, such as the introduction of the common tax, the abolition of the serfhood or the extension of the suffrage, in accordance with the establishment of an independent and responsible Hungarian ministry, meant comprehensive changes,[6] which, besides important public law issues, fundamentally transformed Hungarian private law.[7][8] Despite the fall of the War of Independence, the reforms carried out brought about such changes in Hungarian society and public thinking that there was no way back to the legal system that existed before 1848. Thus, in the Hungarian public life of the time, the stable foundations of a new legal system had to be laid in the light of the greatest public law issue of the time – the relationship to the Austrian Empire – together with the fact that private law issues proved to be crucial for Hungary's economy – as is also excellently demonstrated by the fact that the Imperial Court addressed the issue on several occasions.[9] In this respect, the return of

[5] NAGY, Gábor: Az ingatlan-nyilvántartási (telekkönyvi) rendszer kialakulása Magyarországon, I. rész (A kezdetektől a XX. század első feléig) [The development of the cadastral system in Hungary, First Part (From the beginnings to the first half of the 20th century)]. *Jogi Fórum Publikáció [Legal Forum Publication]*, https://www.jogiforum.hu/files/publikaciok/nagy_gabor_az_ingatlan-nyilvantartasi_rendszer_kialakulasa_1%5Bjogi_forum%5D.pdf [Accessed on November 18, 2025]

[6] KÉPES, György: Az 1848-as forradalom törvényalkotása és a magyar parlamentarizmus (The legislation of the Revolution of 1848 and the Hungarian parliamentarism]. *Jogtudományi Közlöny [Jurisprudential Bulletin]*, No. 5, 1998, pp. 137-140.

[7] HOMOKI-NAGY, Mária: A polgári kori magánjog kialakulása [The evolution of civilian private law]. In MÁTHÉ, Gábor (ed.): *A magyar jog fejlődésének fél évezrede [The half millennium of the development of Hungarian law]*. Budapest, 2014, Nemzeti Közszolgálati Egyetem, p. 286.

[8] MÁLYUSZ, Elemér: A reformkor nemzedéke [The generation of the reform era]. *Századok [Hundredths]*, No. 1-6, 1923, pp. 20-21.

[9] On the most important, see GEDEON, Magdolna: Az osztrák polgári törvénykönyv bevezetése Magyarországon [The introduction of the Austrian Civil Code in Hungary]. *Klió (Clio)*, No. 4, 2011, pp. 78-83. p.

legislative powers to the Hungarian Parliament with the October Diploma proved to be a turning point,[10] but at the same time a number of issues arose which required further resolution. In his instruction of 20th October 1860, Emperor Franz Joseph convened the *Conference of Justice of the Realm* to settle these issues, which drafted the *Provisional Judicial Rules*.[11] On the basis of the provisions adopted by the Conference, the *Decree on the Cadastre* promulgated on 15th December 1855 remained in force, with certain amendments only to the rules of civil procedure,[12] given that the Provisional Judicial Rules mainly focused on its regulation.[13]

3. The necessity of the land registry system

From the point of view of the behaviour of economic operators, one of the primary functions of the land registry system is to mitigate the information asymmetry between the parties involved in transactions,[14] in order to make contractual relations more predictable and to help prevent abuses such as multiple mortgaging,[15] which were prevalent in the period and made it difficult to develop appropriate collateral solutions. However, the cadastre, in particular with regard to the collateral relations discussed and the claims that were registered, may prove to be an appropriate instrument for this purpose, through the potential constitutive effect of the entries that are included (the

[10] On the impact of the October Diploma, see in detail KÉPESSY, Imre: *Az Országbírói Értekezlet története és öröksége [The history and the legacy of the Conference of the Justice of the Realm]*. Budapest, 2023, Gondolat Kiadó, pp. 45-58.

[11] On the history of the source and on the issues related to its legal effect, see, in addition to Képessy, *op. cit.*, KÉPESSY, Imre: Kérdések az Ideiglenes Törvénykezési Szabályok jogforrási jellegét illetően [Questions concerning the source of law-nature of the Provisional Judicial Rules]. In PERES, Zsuzsanna – BATHÓ, Gábor (eds.): *Ünnepi tanulmányok a 80 éves Máthé Gábor tiszteletére: Labor est etiam ipse voluptas [Festive studies in honour of the 80 years-old Máthé Gábor: Labor est etiam ipse voluptas]*. Budapest, 2021, Ludovika Egyetemi Kiadó, pp. 608-617.

[12] KÉPESSY, *op. cit.,* 2023, p. 112.

[13] On the details, see KASSAY, Adolf: *Általános magyar magánjog és törvénykezési eljárás az országbírói értekezlet szerint [General Hungarian private law and judicial procedure under the Confernece of the Justice of the Realm]*. Pest, 1865, Lampel Róbert, p. 326

[14] SZALAI, Ákos: *Közgazdaságtani fogalmak és módszerek jogászoknak [Economical concepts and methods for lawyers]*. Budapest, 2020, Pázmány Press, p. 201.

[15] HORVÁTH, *op. cit.,* p. 226.

design of which is, after all, a legislative, and, to some extent, a dogmatic decision),[16] to facilitate enforcement proceedings, since it could prove to be a suitable instrument in the hands of the bailiff, through the court's intervention, not only to obtain information about the property (and by extension any registered assets) of the person subject to enforcement, but also to expedite the fulfilment of property claims. This is a very important potential in relation to the introduction of the Austrian cadastral system, given that in previous eras the long process of debt recovery procedures such as the *liquidi debiti* lawsuit and the related enforcement proceedings created significant obstacles to credit recovery.[17]

4. Provisions on the land registry

The Article 145 of the Provisional Judicial Rules pursues a similar objective when it states that the Decree of 15th December 1855 on the Cadastre was sustained by the Conference of Justice of the Realm in the interests of legal certainty and property and in the national interest for the speedy establishment of a credit bank in Hungary. At first glance, the objectives of establishing a credit bank in Hungary as soon as possible may appear contradictory in relation to the meetings of the Conference of Justice of the Realm in 1861, in view of the establishment of the *First National Savings Bank of Pest* in 1840 and the *Hungarian Commercial Bank* in 1842, and the fact that three savings banks had appeared on the market by 1848.[18] This controversy may be explained by the fact that the *Hungarian General Credit Bank*, established in 1867, was

[16] KURUCZ, Mihály: Elmélkedések és álmélkodások: a konstitutív hatályú nyilvánkönyvi bejegyzéssel keletkező jogok keletkezésének időpontja kapcsán [Reflections and surprises apropos of the emergence date of the rights nascent from constitutive cadastral registration]. *Közjegyzők Közlönye [Notary Bulletin]*, No. 6., 2003, pp. 3-18.

[17] PÉTERVÁRI, Máté: Az első magyar csődtörvény országgyűlési vitája és a szabályozást meghatározó alapelvek [The parliamentary debate of the first Hungarian Bankruptcy Act and the principles of the regulation]. *Glossa Iuridica*, No. 4, 2022, p. 249.

[18] FÓNAGY, Zoltán: A bomló feudalizmus gazdasága [The economy of the decaying feudalism]. In GERGELY, András (ed.): *Magyarország története a 19. században [The history of Hungary in the 19th century]*. Budapest, 2005, Osiris Kiadó, pp. 35-36.

the first to make a profit from a full range of *crédit mobilier* activities, in addition to the rudimentary mortgage-like schemes that could be carried out under the legal instruments of the time and the income generated by the sale of government bonds, by including in its banking activities most banking transactions as we know them today, including the establishment of industrial companies, for which it was particularly important to have appropriate credit protection instruments.[19]

The rules on the cadastre have been supplemented with, among other things, provisions which may ensure that the cadastre can also fulfil its related tasks in order to make the enforcement procedure more efficient. In this context, Article 111 of the Provisional Judicial Rules refers to the creation of provisions to replace, as necessary, the provisions of the Act 20 of 1832/6 on the *Courts of Abridged Judicial Procedures* and the eleventh chapter of the Act 15 of 1840 on the introduction of the *Code of Bills of Exchange*, which deals with the enforcement of the decisions of the *Court of Bills of Exchange*.[20] It is worth noting that this provision of the Provisional Judicial Rules does not mention one of the most important rules of the enforcement procedure of the time, the Act 15 of 1836 on the judicial enforcement of sentences involving pecuniary condemnations, even if the Act 20 of 1836, as a *lex posterior*, or *lex specialis* in respect of the value of sixty Forints, as it came into force later, was not expected to apply to immovable property treated as a land register corpus. The newspapers of the period report rents of between forty Forints and hundred Forints in 1861,[21] so that even after the extension of the scope in the Act 11 of 1840 to two hundred Forints, the abridged judicial procedure concerning property and other *in rem* rights on land register corpus were not considered a realistic relevant legal instrument. However, in my view, this contradiction is answered at another point in the draft,[22] as in fact the Article 52 of the Provisional Judicial Rules makes applicable the rules of the Act 15 of 1836, which had

[19] TALLÓS, György: *A magyar általános hitelbank [The Hungarian General Credit Bank]*. Budapest, 1995, Közgazdasági és Jogi Könyvkiadó, pp. 74-77.
[20] *Képviselőházi Irományok [Papers of the House of Representatives]*, No. 1, 1861, p. 47.
[21] See for example *Szegedi Híradó [Szeged Newcast]*, No. 51, 1861, p. 107.
[22] *Képviselőházi Irományok [Papers of the Lower Board]*, No. 1, 1861, p. 41.

previously been the act of enforcement for expanded written actions, which, in accordance with the value dilemma described above, also contained provisions for the enforcement of immovable property as a potential land register corpus, instead of the act on the enforcement of abridged judicial procedure, which only provided that the judge (*absentia iure* quasi in discretion) shall ensure the enforcement of the judgment within eight days.

The acts mentioned in the Article 111 (the Act 15 of 1836, by referring to the Act 20 of 1836) establish two different, though in some respects, similar sets of procedures. An important distinction from the point of view of the land register corpus is that the enforcement rules of the Act 15 of 1840 on the Code of Exchange are much stricter, but as a general rule the debtor's immovable property was not subject to them.

The procedure was divided into two stages: the *insurance enforcement* and the *execution*. In any case, the impoundment of the debtor's movable property preceded the execution: if the creditor had applied directly for satisfaction of his claims under the bill of exchange, the taking of the debtor’s movable properties into account and their impoundment was also carried out before the auction was announced and conducted. The satisfactory auction was an auction of the debtor’s movable assets in accordance with an appropriate procedure: two closing dates had to be announced, the first of which did not allow sales below the upset price. The enforcement procedure was limited to the debtor's movable property, and his immovable property was only at risk if the claim against him could not be satisfied from his movable property and he had no other movable property to be found. This guarantee was not provided for the debtor in the general procedure outside the Code of Exchange, but the Act 15 of 1836 allowed the debtor, as a general rule, to designate the assets he wished to auction off, and in the case of immovable property, he was also entitled to the guarantees of the mandatory setting of two closing dates and the admissibility of a sale below the upset auction price. Regarding immovable property, the general procedure also made the transfer of property much smoother: under Article 15 of the Act 15 of 1836, all priority

of purchase at auction was abolished and, accordingly, the property did not have to be put up for pooling and was not subject to any other rights in rem.

The linking of the cadastre with the rules of the judicial execution can be considered a very progressive step in the development of Hungarian law and the turnover protection, and its direct antecedent may have been Article 15 of Act 15 of 1836, which exempted real estate from encumbrances during the auction. Without it, the auction of property could have been carried out by transfer,[23] which, prior to the abolition of the entailment and the *fiscalitas* in 1848 (which, in fact, envisaged part of the work of the Conference of Justice of the Realm)[24] could have led to serious complications in property law.[25] This disposition, and the establishment of this approach, in fact, made it possible, without giving rise to more serious anomalies in the application of the law, to add to the dispositions of the Provisional Judicial Rules on enforcement the provisions on the stabilisation of the cadastral system, which made it compulsory for the member of the court sent out for judicial enforcement to ensure the transfer of possession and the precise description of the change of the land register corpus itself or the *in rem* rights related to it to be registered to the cadastre,[26] in accordance with the principles of cadastral compulsion and registration, and after, the documents have been duly transmitted to the land registry authority.[27]

Regarding the enforcement procedure, the Conference of Justice of the Realm has introduced, in addition to simplifying the procedure, additional guarantees to resolve potential conflicts of interest surrounding the simplification of the judicial enforcement. It is possible that, although only one of the debtor's creditors (including all those entitled to a pecuniary condemnation against the debtor, whether due or potentially due) could initiate enforcement to satisfy his claim, the enforcement procedure would

[23] HOMOKI-NAGY, Mária: *A magyar magánjog történetének vázlata 1848-ig [The scheme of the history of Hungarian private law until 1848]*. Szeged, 2001, JATEPress, p. 69.
[24] KÉPESSY: *op. cit*., p. 28.
[25] HOMOKI-NAGY: *op. cit.,* pp. 54-55.
[26] *Ideiglenes Törvénykezési Szabályok: Az Országbírói Értekezlet javaslatai [Provisional Judicial Rules: The propositions of the Conference of the Justice of the Realm]*. Pest, 1862, Lampel Róbert, pp. 41-42.
[27] HORVÁTH: *op. cit.,* pp. 230-231.

not involve another creditor of the debtor who has a right to priority or general satisfaction over the property to be auctioned, and thus, because of – so to speak - *the community of the collateral*, it would be in conflict of interest with the judgement creditor, who could potentially benefit from a smaller share of the debtor's assets, but also, because of the competition between them, the judgement creditor could also impound assets which would actually increase the debtor's solvency through their income-generating capacity, in order to satisfy his own debts, exploiting his time advantage.[28]

In this case, the documents were referred to the competent county court,[29] which presumably had greater expertise in dealing with similar problems, given that the bankruptcy rules restored by the Provisional Judicial Rules of the Act 22 of 1840 on Bankruptcy,[30] in its current form, in view of the abolition of distinctions between persons and property in the Provisional Judicial Rules, had transferred the conduct of bankruptcy proceedings virtually entirely to the county courts, and where several creditors were involved in the enforcement, it was *per definitionem* bankruptcy.[31]

The procedural solution provided in the draft of the Conference of Justice of the Realm is itself very reminiscent of the bankruptcy rules. Indeed, in case of a judicial enforcement on movable or immovable property to which another creditor party had a proven right, a closing date was set for the creditors to assemble, with a notice to the interested parties published in the official bulletin of the court and, depending on the seriousness of the case, in the newspapers, inviting the other creditors to submit their claims, and then, after hearing the parties, deciding over the existence of the rights and the order of satisfaction, and then proceeding to the auction of the property.[32] This

[28] SZALAI, Ákos: A csődjog értékelési szempontjai – joggazdaságtani alapösszefüggések [The valuational aspects of bankruptcy law – basic law and economics correlations]. *Pázmány Law Working Papers*, No. 5, p. 7.
[29] *Ideiglenes Törvénykezési Szabályok, op. cit*. pp. 44-46.
[30] *Ideiglenes Törvénykezési Szabályok*, *op. cit*. pp. 69-71.
[31] APÁTHY, István: *A magyar csődjog rendszere [The system of Hungarian bankruptcy law]*. Pest, 1887, Eggenberger féle Akadémiai Könyvkereskedés, p. 3.
[32] *Ideiglenes Törvénykezési Szabályok*, *op. cit*. pp. 46-48.

was a very important guarantee, as the conflict of interest arising from the active creditor accumulation is one of the most common problems that can be expected in the judicial enforcement, and the bankruptcy-like procedure was designed to avoid the complications arising from the simplified judicial enforcement provisions through the cadastre. It is also worth noting that, in view of the simplification of the procedure, the Conference of Justice of the Realm would have guaranteed other means of legal remedies both in the case of basic judicial enforcement and in the case of bankruptcy-like judicial enforcement: the right of appeal and the complaint of nullity would have been available to judgement creditors seeking judicial enforcement and to creditors joining the enforcement, and these legal remedies were available for the joining creditors concerning the existence of a claim and the order of satisfaction too.[33]

5. Conclusion

Nevertheless, the Provisional Judicial Rules can provide us with important lessons for the history of Hungarian economic and commercial law, given that, based on the interpretation of the text, the Conference of Justice of the Realm was aware that the provisions were designed to meet the anticipated needs of the market, and that they could therefore have an impact as an incentive to Hungarian economic life rather than as means of satisfying existing social needs. This is evidenced by the legislative aim of developing the credit structure declared at the beginning of the cadastral chapter of the Provisional Judicial Rules,[34] but it is well known that these tendencies, due to the so-called *extreme national existence* of the country, actually pervade the development of Hungarian law. As far as I'm concerned, a dogmatic, social-historical and economic-historical analysis of similar legislative products or solutions will provide a broader picture of the aspects that should be considered to plan with the necessary care the

[33] *Ideiglenes Törvénykezési Szabályok*, *op. cit*. pp. 46-47.
[34] *Ideiglenes Törvénykezési Szabályok*, *op. cit*. pp. 49. See also Horváth: *op. cit.* pp. 234-235.

next steps to be taken in order to develop and give effect to the existing Hungarian law.

Szófia ÉLŐ: The development of Austrian citizenship law: Particular focus on the Roma community following the incorporation of Burgenland into Austria

University of Vienna, Faculty of Law

DOI 10.21862/siaa.9.2

1. Introduction: Citizenship and the problem of belonging

The sociologist Gwendolyn Gilliéron emphasizes in her book *Binational Origins and Belonging* (2022) that *"naturalization may resolve binationality at the legal level, but not the transnational and biographical ties within the family, nor the perception of being 'other' in society"* (author's translation).[1] This touches on an idea that has long shaped the history of citizenship: legal and social belonging do not necessarily coincide.[2] Citizenship determines rights and duties, yet it does not automatically mean that someone is also recognized politically, socially, and culturally as equally belonging.

The development of citizenship was therefore always tied to the question under what conditions people were not only legally registered, but also recognized as full members of the polity. The principle of equality formed an important point of reference in this regard, even if its historical reach remained limited. In Austria, this connection can be

[1] GILLIÉRON, Gwendolyn: *Binationale Herkunft und Zugehörigkeit. Biographische Aushandlungsprozesse junger Erwachsener in Marokko und der Schweiz* [*Binational Origin and Belonging. Biographical Negotiation Processes of Young Adults in Morocco and Switzerland*]. Opladen–Berlin–Toronto, 2022, Verlag Barbara Budrich, p. 17.

[2] In this connection, it should be noted that the terms "nationality" and "citizenship" are often used synonymously, although they are not entirely identical in historical and systematic terms. "Nationality" primarily denotes legal membership in a state, whereas "citizenship" places greater emphasis on the status of bearing specific rights and duties, and thus on political participation. A more detailed terminological distinction lies beyond the scope of this article. See WEIS, Paul: *Nationality and Statelessness in International Law*. 2nd ed. Alphen aan den Rijn, 1979, Sijthoff & Noordhoff, p. 5; HARNIK, Bianca: *Staatsbürgerschaftsrecht in Österreich – eine rechtshistorische Darstellung* [*Citizenship Law in Austria – A Legal-Historical Account*]. Graz, 2016, University of Graz, pp. 2–4.

seen, for example, in the Basic Law on the General Rights of Citizens of 21st December 1867, whose article 2 states: *"All citizens are equal before the law"* (author's translation).[3] Even here, it is evident that equality was tied to the status of citizen and that legal belonging did not necessarily coincide with social equality.

In this context, the present article asks what it meant, in legal terms, to belong, how the standards of belonging changed over time, and what obstacles arose for those groups whose belonging was repeatedly contested or restricted. It addresses these questions through a brief historical account of the development of Austrian citizenship regulations. Particular attention is paid to the legal and political framework conditions that shaped the lives of the Roma after the incorporation of Burgenland into Austria.[4] Their example makes especially clear that citizenship is not merely a formal legal status, but also an expression of social inclusion and exclusion.

[3] Art. 2 Staatsgrundgesetz vom 21. Dezember 1867, über die allgemeinen Rechte der Staatsbürger [Basic Law of 21st December 1867 on the General Rights of Citizens], RGBl. No. 142/1867 [Imperial Law Gazette 1867 No 142].

[4] This article uses the term "Roma" in accordance with current Austrian official usage. Other terms are used only where they occur in historical sources, administrative records, or newspaper reports. The Roma in Burgenland are of particular significance because they formed the historically most important autochthonous Roma group within Austria after the incorporation of Burgenland, and their legal and social position was shaped not only by general citizenship rules, but also by municipal belonging, administrative registration, and long-standing practices of exclusion. See Federal Chancellery of Austria: National Ethnic Minority Groups, https://www.bundeskanzleramt.gv.at/en/topics/ethnic-groups.html [Access on April 1, 2026]; Federal Chancellery of Austria: National Strategy for the Inclusion of Roma, https://www.bundeskanzleramt.gv.at/en/topics/ethnic-groups/roma-strategy.html [Access on April 1, 2026]; 6th Report of the Republic of Austria pursuant to article 25 (2) of the Framework Convention for the Protection of National Minorities. Vienna, 2024, pp. 3–4, https://www.bundeskanzleramt.gv.at/dam/jcr:5dcf5bb5-c219-4e1c-abbf-f9c7d2e7f5d3/6_at_staatenbericht_fcnm_en.pdf [Access on April 2, 2026]; LEONI, Thomas: *The Roma in Austria – A Historical Perspective*. Vienna, 2004, Austrian Institute of Economic Research, pp. 10–12; BAUMGARTNER, Gerhard: The Road Towards Genocide: The Process of Exclusion and Persecution of Roma and Sinti in the 1930s and 1940s. *S:I.M.O.N. Shoah: Intervention. Methods. Documentation*, Vol. 1, No. 1, 2014, pp. 5–7.

2. The concept of political belonging in the pre-modern period

To understand this development, it is first necessary to look at pre-modern forms of political belonging. In the Middle Ages, political order in the German-speaking lands was not based on a modern territorial state, but on personal relations of rule, the estates-based order, and local communities. In the so-called *Personenverbandsstaat*, belonging was not conceived in abstract state terms, but in personal terms and in relation to rule. Civic status was tied to the town and did not extend beyond its boundaries.[5] A uniformly delimited state territory and a modern understanding of state belonging did not yet exist.[6]

It was only in the early modern period that a territorially oriented understanding of rule gradually took hold. An important step in this development was the Peace of Augsburg of 1555 and, later, the Peace of Westphalia of 1648.[7] They strengthened territorial forms of rule and made the relationship between ruler, subject, and territory more clearly defined. At the same time, the *ius emigrationis* shows that belonging was becoming more visible in legal terms, even if such rights remained limited in practice.[8]

---

[5] ARBEITSGEMEINSCHAFT ÖSTERREICHISCHE RECHTSGESCHICHTE (ed.): *Manual Rechts- und Verfassungsgeschichte* [*Manual Legal and Constitutional History*], 6th ed. Vienna, 2023, facultas, Rz 0008, 1114 ff.

[6] HARNIK, Bianca, *op. cit.*, pp. 17–18; BURGER, Hannelore: *Heimatrecht und Staatsbürgerschaft österreichischer Juden. Vom Ende des 18. Jahrhunderts bis in die Gegenwart* [*Citizenship of Austrian Jews. From the End of the 18th Century to the Present*]. Vienna, 2014, Böhlau, pp. 51–52.

[7] On the legal significance of the Peace of Augsburg, it should be emphasized that it did not yet establish modern citizenship, but it did contribute to a clearer legal ordering of the relationship between ruler, confession, and territory. In this respect, the *ius emigrationis* is especially revealing, since it made forms of legally regulated departure visible at an early stage, even if these remained limited in practice. See KOHNLE, Armin: *Augsburger Religionsfrieden 1555* [*The Peace of Augsburg 1555*]. in: ARNKE, Volker H. G. – ROHRSCHNEIDER, Michael – SCHMIDT-VOGES, Inken – WESTPHAL, Siegrid – WHALEY, Joachim (ed.): *Handbook of Peace in Early Modern Europe*. Berlin–Boston, 2021, pp. 837–856; *Ius emigrationis of the Religious Peace of Augsburg (1555)*, German History Intersections, https://germanhistory-intersections.org/en/migration/ghis%3Adocument-58.pdf [Access on March 16, 2026]; HASSAN, Daud: The Rise of the Territorial State and the Treaty of Westphalia, *Yearbook of New Zealand Jurisprudence,* Vol 9, 2006.

[8] ARBEITSGEMEINSCHAFT ÖSTERREICHISCHE RECHTSGESCHICHTE (ed.), *op. cit.*, Rz 1052.

3. From subjecthood to citizenship in the Habsburg Monarchy

In the Habsburg lands, the status of subject later became more precisely specified in normative terms. For instance, the Josephinian Code of 1787 introduced a distinction between natives and foreigners.[9] The actual transition to modern nationality, however, came only with the revolutions of the late 18th century and the emergence of modern nation-states. With the Declaration of the Rights of Man and of the Citizen of 1789, belonging increasingly came to be understood as a legal relationship between the individual and the political community, even if the promise of equality was at first realized only to a limited extent.[10]

In Austria, the General Civil Code of 1st June, 1811 (*Allgemeines Bürgerliches Gesetzbuch*, ABGB) marks an important step. In §§ 28 to 34, the ABGB expressly regulated matters of citizenship for the first time within a general codification. The ABGB did not yet create an independent citizenship law, but it did recognize the concept of citizenship and tie the full enjoyment of civil rights to its possession. Paragraph 28 stated: *"The full enjoyment of civil rights is acquired through citizenship"* (author's translation).[11] At the same time, the Code distinguished between citizens and foreigners. Citizenship, however, long remained intertwined with *Heimatrecht* (right of domicile). This municipality-based relationship of belonging was of major practical

---

[9] HARNIK, Bianca, *op. cit.*, p. 17.

[10] Article 1 of the *Declaration of the Rights of Man and of the Citizen* of 1789 did indeed formulate the claim that human beings are born and remain free and equal in rights. In practice, however, access to political rights remained restricted for a long time. This is particularly evident in the gender-specific limitation of political participation, since women in France did not obtain the right to vote until 1944. See CONSEIL CONSTITUTIONNEL: *Déclaration des droits de l'homme et du citoyen de 1789* [*Declaration of the Rights of Man and of the Citizen of 1789*], https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789 [Access on March 11, 2026]; ASSEMBLÉE NATIONALE: *L'accession des femmes au droit de vote* [*Women's Access to the Right to Vote*], https://www.assemblee-nationale.fr/dyn/histoire-et-patrimoine/deuxieme-guerre-mondiale/l-accession-des-femmes-au-droit-de-vote [Access on March 12, 2026].

[11] HARNIK, Bianca, *op. cit.*, pp. 17–18; BURGER, Hannelore, *op. cit.*, pp. 52–53.

importance because poor relief, jurisdiction, and support obligations were tied to it. State membership and municipal belonging therefore existed side by side.[12]

This is particularly evident in the pre-March regulations on emigration and naturalization. Under the Emigration Patent of 1832, emigration generally required official permission. Unauthorized departure could result in the loss of citizenship. The civic status of women, too, remained highly dependent on family law. An Austrian female citizen could lose her citizenship by marrying a foreigner. The Court Chancellery Decree of 1833 also abolished the domicile principle, so that prolonged residence alone was no longer sufficient for obtaining citizenship. The procedure thus became more strongly tied to good conduct and political reliability.[13] In the later 19th century, citizenship also acquired clearer theoretical contours. Georg Jellinek defined nationality not as a subjective right, but as a legal status, namely as a lasting legal bond between a person and a state.[14]

This development also became clearer in constitutional law. From the March Constitution of 1849 onward, provisions relating to citizenship applied throughout the Monarchy.[15] After 1867, they covered the inhabitants of the kingdoms and lands represented in the Imperial Council. The Basic Law of 21st December 1867 was especially significant because it elevated citizenship to the constitutional level.

---

[12] BURGER, Hannelore, *op. cit.*, pp. 52–53; REILL, Dominique – JELIČIĆ, Ivan – ROLANDI, Francesca: Redefining Citizenship after Empire: The Rights to Welfare, to Work, and to Remain in a Post-Habsburg World. *The Journal of Modern History*, Vol. 94, No. 2, 2022, pp. 331–335.

[13] HARNIK, Bianca, *op. cit.*, pp. 18–19.

[14] JELLINEK, Georg: *System der subjektiven öffentlichen Rechte* [*System of Subjective Public Rights*]. 2nd ed. Tübingen, 1905, J.C.B. Mohr, pp. 116–118; THIENEL, Rudolf: *Österreichische Staatsbürgerschaft. Band I: Historische Entwicklung und allgemeine staatsrechtliche Grundlagen* [*Austrian Citizenship. Vol. I: Historical Development and General Constitutional Foundations*]. Vienna, 1989, Braumüller, pp. 26–27.

[15] HARNIK, Bianca, *op. cit.*, pp. 19–20; Reichs-Verfassung für das Kaiserthum Oesterreich *[*Imperial Constitution for the Austrian Empire], RGBl. No. 150/1849.

Citizenship was therefore no longer merely a matter of ordinary laws and administrative provisions but had become part of constitutional law.[16]

4. The integration of Burgenland and the legal significance of Heimatrecht

The collapse of the Austro-Hungarian Monarchy in 1918 marked a profound rupture. Citizenship was no longer a question of belonging to the Monarchy, but to the Republic of Austria. In this transitional period, *Heimatrecht* became particularly important, since the reorganization of nationality relations was determined to a considerable extent by existing domicile ties.[17] In the case of Burgenland, this transition was especially difficult because the transfer of Western Hungary to Austria, provided for in the postwar settlement, was delayed by resistance, violence, and international negotiations. The allocation of the affected population under nationality and domicile law therefore took place in a politically uncertain context.[18]

The Treaty of Saint-Germain-en-Laye of 1919 tied the acquisition of Austrian nationality by operation of law to the possession of *Heimatrecht* within Austrian territory.[19] With the Federal Constitution of 1920, a system of provincial citizenship and federal citizenship emerged. Provincial citizenship depended on *Heimatrecht* in a municipality of the respective province and at the same time served as the basis for federal

---

[16] Staatsgrundgesetz vom 21. Dezember 1867, über die allgemeinen Rechte der Staatsbürger *[*Basic Law of 21st December 1867 on the General Rights of Citizens], Staatsgrundgesetz vom 21. Dezember 1867, über die allgemeinen Rechte der Staatsbürger *[*Basic Law of 21st December 1867 on the General Rights of Citizens*]*, RGBl. No. 142/1867; HARNIK, Bianca, *op. cit.*, pp. 19–20.

[17] HARNIK, Bianca, *op. cit.*, pp. 22–25.

[18] KÖCK, Daniela: *Burgenland – ein Bundesland wird 100* [*Burgenland – A Federal Province Turns One Hundred*], 25 January 2021, https://www.onb.ac.at/mehr/blogs/burgenland-ein-bundesland-wird-100 [Access on March 26, 2026].

[19] *Staatsvertrag von Saint-Germain-en-Laye* [*Treaty of Saint-Germain-en-Laye*], Art. 64, StGBl. No. 303/1920 [*State Law Gazette 1920 No 303*]; HARNIK, Bianca, *op. cit.*, p. 24.: Art. 64 provides that Austria recognizes as Austrian nationals, by operation of law and without formality, all persons who at the treaty's entry into force possessed *Heimatrecht* on Austrian territory and were not nationals of another state.

citizenship.[20] The Federal Law of 30th July 1925 on the Acquisition and Loss of Provincial and Federal Citizenship then consolidated the relevant rules in a separate federal statute. At the same time, *Heimatrecht* remained of considerable practical importance, as is also shown by the parallel *Heimatrechtsnovelle* of 1925.[21]

In Burgenland, the practical consequences of this order became especially visible. Herbert Brettl shows how restrictively many municipalities handled its grant.[22] In Gattendorf, between 1923 and 1933, only 38 persons were granted *Heimatrecht*, while 82 applications, including those of Roma, were rejected.[23] The reasons most often given were the absence of ten years' residence and the lack of regular employment. Brettl also points to individual cases: Maria Niklos later had her *Heimatrecht* revoked, while Stefan Horvath was denied it because his father had not fulfilled the relevant conditions. Such cases show that, in the interwar period, legal belonging was shaped not only at the level of citizenship, but also through local decisions concerning *Heimatrecht*.[24]

For Roma in Burgenland, this situation had particularly serious consequences, as both access to poor relief and protection against expulsion depended on local legal status.[25] Brettl cites a 1922 letter from the municipality of Winden, which stated that, if these Roma were not deported, they would *"in time all acquire domicile rights here"* (author's translation). Such statements reflected not only ethnic resentment, but also concern among municipal authorities that granting this status could create future obligations

[20] HARNIK, Bianca, *op. cit.*, p. 25; *Bundes-Verfassungsgesetz* [*Federal Constitutional Law*], Art. 6
[21] BGBl. No. 286/1925; HARNIK, Bianca, *op. cit.*, pp. 26–27.
[22] BRETTL, Herbert: *Die örtlichen Behörden des Bezirkes Neusiedl am See und ihre unerwünschten Bewohner in den 1920er Jahren* [*The Local Authorities of the District of Neusiedl am See and Their Unwanted Inhabitants in the 1920s*]. In: KROPF, Rudolf – POLSTER, Gert (ed.): *Die Volksgruppe der Roma und Sinti bis 1938* [*The Roma and Sinti Ethnic Group up to 1938*]. Eisenstadt, 2016, pp. 313–316
[23] *Ibid.*, pp. 313–314.
[24] *Ibid.*, pp. 314–316.
[25] *Ibid.*, pp. 309–310.

to provide poor relief.[26] By the mid-1920s, municipal and administrative policies were also increasingly directed toward tighter control of settlement and closer surveillance.[27]

5. Newspaper discourse and the limits of belonging

How contested questions of belonging were in interwar Burgenland is evident not only in legislation and administrative practice, but also in the contemporary press.[28] Gerda Treiber and Brigitte Limbeck's analysis of Burgenland print media shows that reporting on the so-called "Gypsy question" concentrated above all on livelihood, housing, alleged character traits, and criminality.[29] The same pattern can be traced in newspapers available through ANNO: *Der Freie Burgenländer* called for special measures, while *Neue Eisenstädter Zeitung* treated the Roma as a distinct civic problem.[30]

A comparable tendency can also be seen in *Burgenländische Heimat* and *Burgenlandwacht*: whereas *Burgenländische Heimat* framed the issue in paternalistic terms of sedentarization and gradual civic inclusion, *Burgenlandwacht* in 1930 advocated stricter controls and a new "Zigeunergesetz."[31]

---

[26] *Ibid.*, p. 305; pp. 324–325.

[27] *Ibid.*, pp. 317–318, 324–325. Brettl describes mid-1920s measures for tighter settlement control and, after the 1925 *Heimatrechtsnovelle*, the creation of a basis for identifying and removing "heimatlose Personen".

[28] TREIBER, Gerda – LIMBECK, Brigitte: Die Roma ("Zigeuner") in den burgenländischen Printmedien der Zwischenkriegs- und NS-Zeit *[*The Roma ("Gypsies") in Burgenland Print Media during the Interwar and Nazi Period]. *Medien & Zeit [Media & Time]*, No. 2, 1990, pp. 1–9.

[29] *Ibid.*, pp. 6–9.

[30] *Ibid.*, p. 6, listing, among others, *Burgenlandwacht*, *Der Freie Burgenländer*, *Burgenländische Heimat*, and *Neue Eisenstädter Zeitung* as relevant newspaper examples. For ANNO as the Austrian National Library's historical newspaper platform, see Austrian National Library: ANNO – AustriaN Newspapers Online, https://anno.onb.ac.at/ [Access on April 3, 2026].

[31] TREIBER, Gerda – LIMBECK, Brigitte, *op. cit.*, p. 6, listing *Burgenlandwacht* (18.5.1930; 25.5.1930; 1.6.1930; 8.6.1930) and *Burgenländische Heimat* (20.10.1931; 6.8.1932) among the newspapers analyzed; see also *Ibid.*, pp. 7–8.

6. Conclusion: A future perspective on legal consolidation and social exclusion

This escalation culminated in January 1933 in Oberwart (Burgenland), where the so-called "Gypsy Conference" convened. There, politicians and officials discussed proposals including a special law, the withdrawal of civic rights from Roma without regular employment, harsher penalties, and compulsory labor.[32] Comparing administrative practice and public discourse thus makes clear how precarious belonging remained for the Roma in Burgenland during the interwar period. The development of Austrian citizenship law, viewed with this minority in mind, can therefore be read not only as a history of legal consolidation, but also as a history of exclusion in practice.[33] In this respect, the Burgenland case underscores the central point of this article: citizenship did not automatically produce equal belonging, but remained bound up with the question of recognition within the political community.

[32] BRETTL, Herbert – LEONHARDT, Ute: „Das haben wir uns nicht verdient". Zum Schicksal burgenländischer Roma und Romnija ["We Did Not Deserve This." On the Fate of Burgenland Roma and Romnija]. *Unterrichtsmaterialien des Hauses der Geschichte Österreich / erinnern.at* [*Teaching Materials of the House of Austrian History / erinnern.at*]. Vienna, November 2018, p. 10. The material records the Oberwart meeting of January 1933 and the proposals discussed there, including a special law, withdrawal of civic rights, harsher penalties, and compulsory labor.

[33] BRETTL, Herbert, *op. cit.*, pp. 309–310, 313–316; TREIBER, Gerda – LIMBECK, Brigitte, *op. cit*., pp. 6–9; BRETTL, Herbert – LEONHARDT, Ute, *op. cit.*, p. 10. These sources together support the concluding point about the instability of belonging in law, administration, and public discourse.

Ákos Zoltán JENEI: First Gear of the Legal Regulation of Motoring in Hungary, Focusing on the Civil Liability Related to Passenger Vehicles

Eötvös Loránd University, Faculty of Law

DOI 10.21862/siaa.9.3

1. Introduction

Both rail and road transport developed significantly in Hungary from the second half of the 19th century. In addition to the major development in the railways, modernisation of roads typically came to the fore around the turn of the century. In 1895, after the rapid spread of cycling,[1] the first passenger car – a one-and-a-half horsepower Benz Velo model – rolled onto the roads of Budapest.[2] It was just the beginning of the development of an ever-popular mode of transportation, which was starting to dominate everyday life and, of course, required legal regulation over time. This is how the initial legislation, restricting the driving motor vehicles, were developed. I will examine the primary phase of this development in my study, focusing on the civil liability associated with the motor vehicle, its operation and its utilisation.

2. Root causes of road transport regulation

[1] NYIRÁDI, Katalin – SALLAI, János: A KRESZ születése [The birth of the Highway Code]. *Határrendészeti tanulmányok [Border Police studies]*, 2021, No. 18/2, pp. 41-43.

[2] ENGI, József: A közúti közlekedés szervezési és vezetési vázlata: a kezdetektől a 19. századig végéig [Road transport organisation and management: from the beginning to the end of the 19th century]. *Négy keréken: közlekedéstörténeti tanulmányok I. [On four wheels: studies in the history of transport I.*], Szeged, 2001, Belvedere Meridionale, pp. 52-53.

Prior to the advent of motor vehicles, road traffic was already regulated, mainly related to the postal transport. However, in the second half of the 19th century, legislation ensuring road safety was beginning to be separated.[3]

The first comprehensive regulation, covering the majority of the Hungarian public road infrastructure was Act I of 1890,[4] which was designed to catalyse the development of public roads within the country. In order to achieve this, it divided roads into categories and laid down fundamental safety standards, such as left-hand traffic,[5] which later remained in force when motor vehicles entered the roads.[6]

It is worth mentioning here that territorial scope of the law did not extend to Croatia-Slavonia,[7] as it was laid down in Act XXX of 1868, commonly known as the Croatian-Hungarian Settlement: „The state roads (…) which are of common interests to Hungary, Croatia, Slavonia and Dalmatia, are common affairs to all the countries of the Hungarian crown (…)." In this sense, as it will be demonstrated in later documents, issuing traffic regulations within the state was under the jurisdiction of its Ministry of the Interior.[8]

The advent of motorisation, alongside with new opportunities brought previously unknown threats as well, first and foremost in the urban life of Budapest. Although the number of cars was approximately 100 at the turn of the century, there was a substantial increase in the first decade of the 20th century.[9] Due to this, the lack of any regulation and the unusual 'velocity' of cars in the time, may have led to Hungary's first

[3] BÍRÓ, Gyula: *A közlekedési bűncselekmények szabályozása és nyomozása hazánkban, különös tekintettel a megelőzésre [The regulation and investigation of traffic offences in Hungary, with special regard to prevention]*, Debrecen, 2012, Debreceni Egyetem, pp. 14-15.
[4] Act I of 1890 on roads and customs
[5] NYIRÁDI–SALLAI, *op. cit.*, p. 45.: During this period there were several states, where this was not regulated. For example, Austria, where, in the absence of uniform legislation, the system varied from province to province.
[6] BÍRÓ, *op. cit.*, p. 14.
[7] On the contrary, it extended to Rijeka.
[8] Act XXX of 1868 on the enactment of the convention between Hungary and the Croatian, Slavonic and Dalmatian Republics for the settlement of public law questions
[9] BÍRÓ, *op. cit.*, p. 15.

car accident in 1900, when József Törley, the famous champagne manufacturer, hit a street sweeper.

Later on, with the dynamically growing number of automobiles, the necessity of a uniform, nationwide regulation became obvious. and was ultimately fulfilled by the Decree of the Minister of Internal Affairs No. 57000/1910.[10] The legislation introduced, among others, a uniform speed limit and the use of various road signs. The decree was issued in connection with the first international automobile conference in Paris in October 1909,[11] where the participating countries agreed to regulate the international circulation of motor vehicles.[12]

After World War I, the growth rate of road transport received a new boost. The number of road vehicles was affected by the war, the Great Depression, but we can observe a steady increase between the crises, in the first half of the 20th century: according to some figures, before the First World War there were 3,319 vehicles in Hungary,[13] while in 1933 there were 20,387. Although this number has increased, it is still low compared to many European countries during this period: in contrast the number of road vehicles in Austria in 1933 was about 3.5 times the Hungarian figure, 70,822. [14]

The growth of road transport went hand in hand with the growth of trade and the development of motor vehicle technology, and the processes stimulated each other. In addition, a serious advantage of travelling by car was realised: it was not tied to railway line, and, in various aspects, it gave a more comfortable option compared to the rail passenger transport.[15]

---

[10] Decree No 57.000/1910. of the Hungarian Royal Minister of Internal Affairs on the public circulation of motor vehicles.

[11] ENGI, *op. cit.*, p. 58.

[12] Austria was also a member of the agreement, and its distinguishing sign was the letter "A", while Hungary's was the letter "H". The distinguishing sign of Croation cars was established in Decree of the Minister of the Interior No. 57000/1910, and they were marked with letter "C".

[13] ENGI, *op. cit.*, p. 63.

[14] MELLY, József: Balesetek Budapesten és más nagy városokban [Accidents in Budapest and other major cities]. *Statisztikai Közlemények [Statistical Reports]*, 1939, No. 84/2, p. 81.

[15] BARÁT, Sándor: *A gépjárműbaleseti felelősség magán- és büntetőjoga [Civil and criminal liability in the event of a motor vehicle accident]*. Budapest, 1932, Magyar Jogászegylet, p. 6.

This global tendency also contributed to the need of a new international regulatory agreement. This finally took place in 1926, in Paris, with Hungary, Austria and the Kingdom of Serbs, Croats, and Slovenes among the signatories. The part of the agreement relating to the traffic of motor vehicles was enacted in Act 12 of 1930 in Hungary,[16] but perhaps more importantly, it formed the basis for the issue of the Decree No. 250000/1929 of the Hungarian Royal Minister,[17] considered by many to be Hungary's first traffic law.

The regulation, known as the Transport Code, gave a precise description of the technical requirements for vehicles participating in traffic, introduced new speed limits, and detailed the required knowledge of every transport participant about the traffic rules.[18]

For a long time after the 1929 decree, there was no new, comprehensive regulation in the history of the Hungarian Highway Code, which would have generally covered the rules of traffic, only minor changes were made to the already existing legislation. On the other hand, we can mention the change in the direction of traffic. Although the Decree No. 250000/1929. still sticked to the left-hand traffic direction, it was changed in 1941, when the right-hand traffic direction, which is still in use until nowadays, was introduced, mainly due to Austrian and German (partly touristic, partly economic) influences.[19] The next edition of the Hungarian Highway Code was enacted after the Second World War, in 1950.[20]

3. The development of civil liability related to passenger vehicles

[16] Act 12 of 1930 on of the ratification of the International Convention relative to Motor Traffic, signed at Paris on 14 April 1926.
[17] Decree No 250000/1929 of the Hungarian Royal Minister of Internal Affairs and the Hungarian Royal Minister of Trade on uniform rules of road traffic and public order of the public roads.
[18] ENGI, *op. cit.*, pp. 63-64.
[19] BÍRÓ, *op. cit.*, p. 15.
[20] 2500/1950. (XII. 1.) Decree of the Minister of Internal Affairs on the on the regulation of traffic order and maintenance of order on public roads

As demonstrated by the preceding data, the increased presence of motor vehicles can be linked to the occurrence of accidents. Although in the above mentioned first road accident József Törley champagne manufacturer settled his liability for damages with an amicable settlement, as accidents became more frequent over the years, it was evident that, in addition to the establishment of road traffic regulations a solution had to be found for settling damages under civil law.[21]

Prior to the examination of the principles regarding the liability for damages, it is essential to define what constitutes a road accident. An accident should always be considered as an unforeseeable event, since it excludes any action linked to intentional, premeditated behaviour. However, it should be noted that the adjective „unforeseeable" does not signify the same thing as „accidental", as accidents are frequently caused by actionable human behaviour. In summary, it can be stated that a road traffic accident is any unforeseen event, in which someone dies, is injured, suffers damage to health or causes damage to property in connection with road traffic.[22]

The increase in the frequency of accidents was a global phenomenon. For example, according to the Metropolitan Life Insurance Company in the US, the number of their insureds per 100,000 people insured for car accidents mortality increased by 570% between 1911 and 1923, with analogous trends observed in Europe. Similar trends are found also in Hungary, since some statistics show that by 1930 there was one road accident for every 10 cars in the country that year.[23]

Related to this tendency, it was necessary to establish a judicial practice for determining liability for damages in the event of an accident. This segment of liability arising from an accident can be linked to the private law system, as opposed to criminal liability, which penalises and punishes behaviour that is dangerous to road safety.[24]

---

[21] BARÁT, *op. cit.*, pp. 8-9.
[22] VISKI, László – IMRE, Iván – TERNAI, Zoltán: *Közúti közlekedési balesetek elbírálása [Adjudication of road traffic accidents]*. Budapest, 1963, Közgazdasági és Jogi Könyvkiadó, pp. 12-14.
[23] MELL, *op. cit.*, pp. 82-85.
[24] VISKI–IMRE–TERNAI, *op. cit.*, p. 12.

4. The principle of civil liability related to public roads – the strict liability

In the initial period, in the absence of legal practice, in order for the jurisdiction to be able to establish liability in a given situation, the identification of the causal links, which could have led to an accident, was necessary. These factors could be rooted in the behaviour of the persons involved in the accident, such as the fault of the driver, or the inattention of other road users, and, on the other hand, causes often beyond the control of the persons involved, such as poor road and terrain conditions, vis maior, or possible problems arising from the hazardous operations of the vehicle. Obviously, of these possibilities the hazardous operations of the vehicle was the sole element that was typically associated with automobiles.[25]

In the early years of motor vehicle traffic in Europe, the liability was still based on the culpability. This practice was framed by the continental legal concept that „there is no liability without culpability". Consequently, at the dawn of the new system of adjudicating cases in Western Europe (including Austria), the onus was on the injured party to prove the fault or negligence of the tortfeasor. If the aforementioned party was unable to do so, or if the tortfeasor could prove that his negligence had reached the required standard, the injured party was not entitled to compensation.[26]

However, it has been demonstrated that the increasing volume of motor vehicle traffic on roads, as a mass phenomenon, cannot be categorised into liability based on culpability. It has been recognised that the automobile and its participation in traffic is in itself an activity which, by its very nature, represents a danger to other road users. This danger factor previously became part of the legal system in connection with the former major revolutionary means, the railways. It was the form of hazardous liability for railway accidents that was later extended by the legal system to all vehicles

[25] BARÁT, *op. cit.*, pp. 7-8.
[26] *Ibid*., pp. 12-15.

propelled by mechanical power. These vehicles, due to their technical characteristics, speed and size, posed a threat to public safety. As the referred Highway Code regulations represented, the technical characteristics (especially speed) were considered to be priority factors in the requirements.

The primary distinction between trains and cars was the aforementioned convenience of using the automobile as an individual mode of transport. However, apart from the mechanical specifications, the other factor that established the hazardous operation of motor vehicles was the problem of the mass situation, whereby the intensity, density, time constraints and thus the combined increased potential energy of these traffic factors triggered their perceived dangerous situation.[27]

All these factors stimulated the development of strict liability, which is defined by the principle that the liability does not stem from culpability; rather it states that persons are obliged to bear the damages of hazardous activities in which they engage and from which they benefit.[28] The owner of any hazardous operations must perceive its use as a risk of production of capital and,[29] and, according to judicial practice, possess the requisite financial resources to either prevent or, occasionally offer compensation for the damage caused (or presume that, given his ability to maintain the hazardous operations, probably he has the financial capacity to bear the cost of repairs as well). Consequently, with the increased liability of owners, the necessity to insure against potential damage has been realised, therefore the legislation had a stimulating effect on the motor insurance market.[30] In addition to the measures tightening liability, the extension of car market advanced the process as well, since the automobiles were

[27] *Ibid*., pp. 5-8 o.
[28] SÁNDORFI, Kamill: *Az autóbaleset büntető- és kártérítési joga (2. bővített kiadás) [Criminal law and tort law in car accidents (2nd extended edition)]*. Budapest, 1934, Lunger-féle Könyv és Lapterjesztő Vállalat, pp. 9-10.
[29] Curia Decision No. 1082/1901
[30] SÁNDORFI, *op. cit.*, pp. 12-14.

considered highly valuable assets. Based on these aspects, the Hungarian insurance legislation was among the first on an international scale.[31]

5. The development of strict liability in the Hungarian legal system

Act XVIII of 1874 on liability for deaths and bodily assaults caused by the railways *„1. § In case of any fatal or injury-causing incidents occurring on an iron railway that has not yet opened to public traffic, the railway company is liable for the damages caused, unless the company proves that the occurring death or injury was caused by force majeure, or by an act of a third party which cannot be prevented by the railway company, or by the fault of the deceased or injured party."*[32]

It was the cited article on railway transport, modelled on the German one, on the basis of which the Hungarian judicial practice later extended the concept of hazardous liability to the traffic of automobiles. The defined legal principles of exoneration applied to the owner of the vehicle in the same way as to a company, so he could only be exempted from liability if he proved that the damage was caused by force majeure or the unavoidable influence of a third party.[33]

After the idea of extension had already been appeared in the 1900 draft of the Civil Code, the judicial practice was unified in this matter in 1907,[34] becoming the second country in the world to do so, when the Curia Decision No. 9340/1906 laid down that the form of liability applicable to car accidents is strict liability.[35]

---

[31] KISS, Eszter, A kötelező gépjármű-felelősségbiztosításrövid története és alapvető jellemzői [Brief history and main features of compulsory motor-car insurance], *Debreceni Jogi Műhely [Legal Workshop Debrecen]*, 2013, No. X/3, 20-21. o.

[32] Act XVIII of 1874 on liability for deaths and bodily assaults caused by the railways

[33] SÁNDORFI, *op. cit.*, pp. 8-9.

[34] PUSZTAHELYI, Réka: *A veszélyes üzemi felelősség szabályozási környezete [The regulatory context for hazardous liability]*. Budapest, 2018, Nemzeti Közszolgálati Egyetem, p. 20.

[35] Curia Decision No. 9340/1906: "According to legal analogy, the same legal principle was to be applied to accident caused by the dangerous vehicle (automobiles) as to a hazardous industrial establishment,

In Austria, a similar law was enacted a year later, in 1908,[36] which introduced a mixed liability for motor vehicles, different from the Hungarian regulation, whereby the operator holds strict liability[37] in case of an accident, while the professional driver was liable based on culpability. The Austrian law made a clear distinction between the fault-based liability of the professional driver and the strict liability of the unprofessional driver.[38]

Emphasising another significant difference of perception, the Austrian (and German) legislation made the presumption that the driver involved in the accident was at fault. The Hungarian presumption, on the other hand, was that the accident was the result of the hazardous operation, from which strict liability was derived.[39]

In the first decades of the 20th century, strict liability was a constant topic among the Hungarian lawyer elite. After the 1913 draft of the Civil Code further expanded the scope of the strict liability in the Hungarian legal system, the 1928 Private Law Bill (hereinafter: the Bill) placed the principle of strict liability on a stable foundation by focusing on the principle of equity.[40] As Géza Marton said, on the basis of the provisions of the Bill, it can be established that fault-based and strict liability are compulsory. The aspect of risk bearing remained central to the former, as it is generally understood that the interests of the injured party are primary in the event of an accident caused of hazardous operations, so the rules are designed to allocate property for the compensation. In the light of the aforementioned developments, it can be stated that the concept of strict liability for hazardous operations had emerged as a prevailing concept within the judicial praxis of the 1920s and was capable of covering

where presumption is that the presumption is that the accident is the consequence of the hazardous operations."

[36] Although a bill was introduced in 1904, it has not been passed.

[37] In other words, it can be defined as 'actual liability.'

[38] BARÁT, *op. cit.*, pp. 31-32.

[39] BARÁT, *op. cit.*, pp. 46-47.

[40] 1928 Private Law Bill: Private Law Code of Hungary

the expanding array of the practical cases and technical aspects, as the extent or the nature of the accidental damage.[41]

5.1. Determining the extent of compensation

At the dawn of the car accident adjudication, the governing provisions regarding the extent of compensation could be found in the Act 18 of 1874. This regulation mainly provided compensation for the injuries suffered as a result of bodily harm, or for damages arising from the impairment of the injured party's earning capacity. As a typical illustration of the latter, the damage to career advance can be mentioned, where the aggrieved party could legitimately claim the necessary expenses for a change of career from the party liable for the damage. Several types of treatments occurred over the years, for example treatment in a sanatorium, or treatment for depression resulting from an accident.[42]

In addition to the one-off compensation, the tortfeasor may have been obliged to pay other, permanent accessory consideration (allowance), in which annuities, like maintenance and educational expenditures can be included in the event of the death or the loss of earning capacity of the victim.

Examining a specific case, where a "tender aged"[43] person (the aggrieved party), due to his injuries caused by the accident, he will be limited in the abilities regarding fulfilling parental duties, as he will be unable to perform physical work in the future. On the basis of the aforementioned reasons, the court awarded annuity as indemnification for the defendant, in order to insure the necessary education in the future.[44]

---

[41] PUSZTAHELYI, *op. cit.*, pp. 19-24.
[42] BARÁT, *op. cit.*, p. 53.
[43] A minor.
[44] Curia Decision No. 1765/1922

However, later both the claimant and the defendant could request to submit a request for the change concerning the amount of the allowance.[45] It was typically requested regarding the financial situation of the concerned party: for instance, the tortfeasor could request the suspension of the obligation for a period of imprisonment,[46] or the aggrieved party in connection with the further reduction in his or her further capacity to work as a result of the accident. However, as it was stated in one civil leading case of the Curia from 1923, it was not possible to reduce or increase the amount of an annuity on the basis of a change in economic circumstances alone.[47]

The Railway Act of 1874 did not yet concern the topic of the compensation for material damage, so it was subject to the general rules of indemnification.[48] However, this factor gradually emerged over the time, as it was awarded in a wider range of the hazardous operations (e.g. damages of railway transport), so the court finally prescribed the application of the strict liability in these cases as well.[49] It was the 1928 Private Law Bill, that clearly included this type of cases under the scope of liability for damages caused by hazardous operations.

5.2. The degree of due diligence – and its appearance in Hungarian Highway Codes

The required degree of driver's due diligence is also reflected in the Hungarian traffic regulations, alongside the evolution of case law. The Decree No 57.000/1910. of the Hungarian Royal Minister of Internal Affairs, in addition to establishing a speed limit, only prescribed that the individual behind the steering wheel must "exercise constant attention and great care". On the other hand, the 1929 Highway Code laid down stricter principles, diverging from the Western (including Austrian) approach, which set a

[45] BARÁT, *op. cit.*, p. 53.
[46] Curia Decision No. 5205/1926
[47] Leading case No. 86. of the Curia from 1923
[48] BARÁT, *op. cit.*, p. 53.
[49] PUSZTAHELYI, *op. cit.*, p. 19.

common standard of care. In addition to the revision of the 1910 legislation, it stipulated that drivers must be in sober state of mind and specified in detail that they are obligated to remain constantly vigilant for other road users, to adjust their vehicle's speed according to the current circumstances of the traffic situation, and to always monitor the vehicle's condition.[50]

5.3. The parties involved in the accident and their liability

Following the analogy of the railway company and the owner of the plant stated in the 1874 Act, judicial practice introduced the term "operator" to determine the liability of hazardous operations, in case of motor vehicle accidents.[51] The concept of "operator"[52] was laid down in the Curia Decision No. 3954/1917: „this actual liability (…) belongs to the person who, as the owner or possessor of the motor vehicle, keeps it in traffic."[53] This description refers to the most common cases; however, in the developing judicial practice over the years, the notion that the right of disposition forms the basis of the strict liability prevailed.[54]

Diverging from the general rules of indemnification, in this case the injured party did not have to prove the culpability of the other party, but the burden of proof was automatically placed on the operator. The operator, as mentioned above, had only two possibilities to be exempted. In the first case, the defendant would need to demonstrate that the accident was caused by force majeure, or, on the other hand, by an unpreventable action of a third part.[55]

Giving an example of how this exoneration mechanism works, there is a case from 1913, when a car ran over a dog. In this particular instance, witnesses provided testimony

[50] BARÁT, *op. cit.*, pp. 49-50.
[51] SÁNDORFI, *op. cit.*, pp. 11-12.
[52] In German: Halter
[53] Curia Decision No. 3954/1917
[54] BARÁT, *op. cit.*, p. 47.
[55] SÁNDORFI, *op. cit.*, pp. 8-9.

that the dog, unbeknownst to the potential dangers posed by the automobile, ran directly towards it. Furthermore, the court, in its judgment, also referred to the fact that, according to them, the dog, as animal of advanced ability, should have been recognised the approach of the vehicle, and thus exonerated the operator of the liability for damages.[56]

However, as it can be deduced from the aforementioned definition, the person titled as operator was not always the driver sitting behind the steering wheel. Naturally, it was originated from the idea stating that it should be in the interest of the operator, who benefitted from the hazardous operation, to avoid accidents, but the Hungarian legal practice occasionally interpreted this rule rather strictly.[57]

These factors mainly caused a widespread problem in the early days of motoring, when so-called "gentleman drivers" (i.e. car owners who drove their own cars) were not common, because chiefly the wealthier people could afford to possess a car, and in the vast majority they hired chauffeurs to drive it.[58] At this point, I would like to emphasize an important distinction: in contrast to Austrian law, in Hungary, the difference between the driver of the vehicle acting professionally (i.e. as a personal driver or a haulier) or acting from a friendly concession was not relevant.[59] Consequently, the civil liability of the operator of the vehicle remained unaltered.[60] Additionally, uncertainty surrounded the circumstances in which the professional driver did not choose the route assigned to him to drive home the automobile, or he used it for private purposes. In this case, the judicial practice permitted a possible way of exoneration, but it was difficult provide evidence for it.[61]

---

[56] Curia Decision No. 999/1913
[57] BARÁT, *op. cit.*, pp. 47-49.
[58] DÁVID, Ilona: Budapesti személy-autó közlekedés a két világháború között [Passenger car transport in Budapest during the two World Wars]. *Tanulmányok Budapest múltjából [Studies from Budapest's past]*, 2012, No. 36, p. 265.
[59] SÁNDORFI, *op. cit.*, p. 27.
[60] BARÁT, *op. cit.*, pp. 31-34.; pp. 47-49.
[61] DÁVID, *op. cit.*, p. 265.

The following example from 1915 illustrates this point perfectly, as when a chauffeur on the way home from theatre, not using the regular route caused an accident, the court pronounced that the vehicle operator held liability for the damages, as it was considered that the driver had been acting on the instructions of his principle, therefore the theft of use cannot be declared.[62] This ambiguity of legal practice gave rise to movement in 1930, that sought to abolish strict liability on the part of both the car owners and chauffeurs.[63]

Among the "actors" of transport, pedestrians are also worth mentioning. Their due diligence was already concerned in the Highway Codes, but their culpability and consequent liability has been a matter of discussion in judicial practice.[64] This phenomenon was particularly relevant in the early decades of motoring in Hungary and throughout Europe, due to people's inattention and lack of familiarity with automobiles.[65] This fact was so commonplace in the rumour mill that, in 1927, the carelessness of pedestrians was the subject of jokes even in the sessions of the National Assembly.[66]

The Curia laid down that pedestrians have a duty of care, for example when crossing the road. A case from 1909 provides a pertinent example, when the claimant tried to cross the frozen Andrássy road, running, disregarding the approaching vehicle, which was using its lights and horn. Then the plaintiff slipped on the roadway, fell and, despite the hard braking of the automobile, was run over by its wheels. Based on the narrative and the testimonies provided by the witnesses, the court concluded that there was insufficient evidence to determine the operator's liability for compensation, as the

[62] Curia Decision No. 8370/915
[63] DÁVID, *op. cit.*, p. 265.
[64] BARÁT, *op. cit.*, pp. 49-51.
[65] SÁNDORFI, *op. cit.*, pp. 3-4.
[66] *Felsőházi Napló V. kötet [House of Lords Journal Volume V]*. Budapest, 1929, Atheneum Irodalmi és Nyomdai Részvénytársulat, p. 327.

damage was caused by an unpreventable factor, therefore it cannot be the consequence of hazardous operations.[67]

5.4. Encounter of hazardous operations – car accident

Regarding the aforementioned cases, the question could arise as what happens when two hazardous operations "meet" each other. An illustration of this phenomenon can be observed in the case of a collision between a car and a tram, at a waterworks in Budapest in 1917, which resulted in serious damage to the car. The court, in its statement, laid down that since both activities would fall within the category of strict liability, the application of that principle was excluded in our case. The decision in question, which aligned with the prevailing judicial practice, prescribed that in the event of an encounter of hazardous operations, the general rules of indemnification shall be applied.[68] Finally, the judgment found the tramway operators liable for the damages, based on their culpability and as consequence of their gross negligence.[69] As it will appear in later decisions, the decision mechanism outlined worked in the same way in the case of a collision between two cars.

6. Conclusion remarks

Over the years, it became evident that with the development of machinery, including the significant increase in the number of automobiles, the emergence of new economic trends, the accidents resulting from these activities differed in character and in extent to the previous cases, therefore they needed different tort law regulations. As it was illustrated in the aforementioned examples, the extension of the concept of hazardous

[67] Curia Decision No. 4467/909
[68] BARÁT, *op. cit.*, p. 52.
[69] Curia Decision No. 7084/917

operations and the development of the liability regarding motor vehicles evolved case-by-case, with the focus always being on identifying the individual liable for the damages and determining the property to provide the basis of the compensation.

This is how the Hungarian legal practice reached its modern state, as it can be declared that by the period between the two World Wars, the concept of hazardous operations was widely recognised in the judicial practice. Of course, the development of technology and law, which were organically interconnected, did not stop here, and although due to the impact of Soviet-Russian civil law ideas in the post-World War II period the principles of liability based on fault highly influenced the Hungarian legislature,[70] finally the 1959 Hungarian Civil Code[71] unified the rule of exoneration for hazardous operations,[72] and laid down the principle of strict liability firmly within the Hungarian civil law system.[73]

[70] SÓLYOM, László, *A polgári jogi felelősség hanyatlása [The decline of civil liability]*. Budapest, 1977, Akadémiai Kiadó, pp. 156-158.
[71] Act 4 of 1959 on the Civil Code of the Republic of Hungary, § 345-346.
[72] PUSZTAHELYI: *op. cit.*, pp. 25-27.; p. 60.
[73] VISKI, IMRE, TERNAI: *op. cit.*, pp. 256-257.

Ante MAMIĆ: The Dalmatian Provincial Assembly (1861-1918)

University of Zagreb, Faculty of Law

DOI 10.21862/siaa.9.4

1. Introduction

The Dalmatian Provincial Assembly was one of the most interesting and most important Land Diets in then–Habsburg, and later Austro-Hungarian Monarchy. Its political importance and specific role in development of political scene in Dalmatia is subject of legal and historical debates even today. It is important to understand why it is so interesting for modern legal historians.

It is also important to emphasize political and historical context surrounding the creation and development of the Assembly. Furthermore, the Assembly, alongside the central government in Vienna, played a significant role in the economic and everyday life of the people in Dalmatia. Although the Assembly was not a state parliament, it had a considerable impact, not only on the development of political parties in Dalmatia, but also on the political situation in other Croatian territories, particularly at the beginning of the 20th century. For this reason, it is important to explain the creation of the Assembly, its role in 19th-century Dalmatia, the political parties that emerged from it, and its legal framework.

2. Historical and political context of creation of the Dalmatian Provincial Assembly

After a brief period of Austrian governance at the beginning of 19th century, followed by eight years of French occupation, Dalmatia formally became part of Austrian Empire

in 1814, when Franz I declared the unification of Dalmatia with the Austrian Empire.[1] From that moment until the dissolution of the Austro-Hungarian Monarchy and the formation of the State of Serbs, Croats and Slovenes in 1918, Dalmatia remained under Habsburg rule.

Before the creation of the Dalmatian Provincial Assembly, there was the Land Government in Zadar, which was the most important political body in Dalmatia in the mid-19th century, with a governor appointed by the central government in Vienna.[2] It is evident that political processes in Dalmatia at that time were strictly controlled by the central government.

In October 1860, under certain pressure, emperor Franz Joseph issued the October Diploma. This document established a provisional constitutional system and marked the beginning of the constitutional and political changes that would occur in the Monarchy in the following years.[3] It is important to emphasize that these changes were certainly necessary after the preceding period of absolutism.

The main political and legal impact of the October Diploma was the reorganization of the Monarchy through the recognition of certain Lands as constituent parts of the Monarchy, with a form of balance in the division of powers between the emperor and the central government in Vienna on one side, and the Lands on the other. The creation of these Lands was based on historical and political circumstances that had developed over preceding years and centuries.[4]

The position of Dalmatia within the Habsburg Monarchy was still uncertain. It is noteworthy that following the October Diploma, there were serious discussions

[1] ČEPULO, Dalibor: *Hrvatska pravna povijest u europskom kontekstu (Croatian Legal History in European Context*). Zagreb, 2023, Pravni fakultet Sveučilišta u Zagrebu, p. 219.
[2] *Ibid*., p. 221.
[3] *Ibid.,* p. 160.
[4] *Ibid*.

regarding the integration of Dalmatia into Croatia. Intense talks on this matter also took place between emperor Franz Joseph and Croatian ban Josip Šokčević.[5]

In February 1861, emperor Franz Joseph issued a new document, completing the intentions that had begun with the October Diploma. This document, known as the February Patent, established a bicameral Imperial Council[6] and, more importantly, provided for the creation of the Dalmatian Provincial Assembly, as stipulated in the third part of the Patent.[7]

3. Structure of the Dalmatian Provincial Assembly

The legal basis for the creation of the Dalmatian Provincial Assembly was provided by the Provincial order and the Electoral order for the Land Diet of the Kingdom of Dalmatia.[8] It is important to note that the main organizational provisions closely resembled those governing other Land Diets in the Austrian part of the Monarchy.

The seat of the Assembly was in Zadar, who was also the capital city of Dalmatia, and the Assembly's building was former Church of Saint Anthony. There were, however, some initiatives, mostly from representatives from Split and the southern parts of Dalmatia, proposing that the Assembly be moved to Split, as the geographical center of the region.[9]

The Assembly was most commonly convened once a year, with some exceptions. Between 1861 and 1918, it met forty-four times, and the longest session lasted from January to March 1863, spanning more than two months. The Assembly had a president

[5] PERIĆ, Ivo: *Dalmatinski sabor 1861.-1912. (1918.) (Dalmatian Provincial Assembly 1861.-1912. (1918.)*). Zadar, 1978, Centar Jugoslavenske akademije znanosti i umjetnosti u Zadru, p. 15.
[6] ČEPULO, *op. cit.*, p. 161.
[7] PERIĆ, *op. cit.*, p. 17
[8] ČEPULO, *op. cit.*, p. 221.
[9] PERIĆ, *op.cit.*, pp. 31-32.

and a deputy president, both appointed by the emperor. The president of the Assembly also served *ex officio* as the president of the Provincial Committee.[10]

The mere fact that the president of the Assembly was appointed by the emperor suggests that, contrary to modern parliamentary practice, the representatives were limited in their ability to decide who would preside over the sessions. Although there were some initiatives to change this provision, their proponents were ultimately unsuccessful.

The Assembly had committees, which were similar to modern parliamentary committees in terms of their purpose. It also operated under the Rules of procedure of the Dalmatian Provincial Assembly, which contained several notable provisions. Representatives were obliged to attend sessions, and both they and the Provincial Committee had the authority to propose drafts of laws. The election of members to specific committees was conducted by secret written ballot.[11]

The Provincial Committee of the Dalmatian Provincial Assembly functioned as the administrative and executive body. As mentioned earlier, the president of the Assembly served *ex officio* as the president of the Committee and was one of its five members, alongside four others. The Committee was responsible for managing provincial assets and buildings, and it also held certain tax-related powers.[12]

One of the foremost political issues in 19th-century Dalmatia was the question of the official language. Italian was the official language of Dalmatia throughout the 19th century, and at the outset of the Assembly's activities, it also served as the official working language of the Assembly. However, some representatives, particularly Mihovil Pavlinović[13], sought to introduce a proposal to make Croatian, alongside Italian, a

[10] *Ibid*., p. 35.
[11] *Ibid*., pp. 42-45.
[12] *Ibid*., pp. 50-51.
[13] Mihovil Pavlinović was one of the most prominent representatives of the Croatian National Revival and a leading figure of the People's Party in Dalmatia. As a deputy of the Dalmatian Provincial Assembly in 1861, at a time when the Autonomist Party held political dominance in Dalmatia, he delivered the first parliamentary speech in the Croatian language. In 1862, he emerged as one of the initiators and principal

working language of the Assembly.[14] This issue created conflict within the Assembly. Representatives of the pro-Italian and Autonomist party were strongly opposed to the use of Croatian, while pro-Croatian representatives were in favor of making parliamentary work bilingual. Interestingly, by the mid-19th century, the majority of the population in Dalmatia spoke Croatian. However, the background of language dispute was primarily political, and represented just one of the main points of contention between the Autonomist Party and the People's Party.

4. Election of representatives in the Dalmatian Provincial Assembly

The Dalmatian Provincial Assembly consisted of forty-three representatives serving six-year terms. Two members held their positions *ex officio*, the catholic Archbishop of Zadar and the Orthodox bishop, while the remaining forty-one representatives were elected.[15] It is noteworthy that members of the clergy served as *ex officio* members of the Assembly. This was a direct consequence of the ethnic and religious composition of 19th-century Dalmatia, where Italians and Croats were predominantly Catholic, and Serbs were predominantly Orthodox Christians.

The forty-one representatives were elected from four electoral classes ("*curiae*"). The first class, consisting of the highest taxpayers, elected ten members; the second class, representing the towns, elected eight members; the third class, comprising the trade chambers, elected three members; and the fourth class, representing the rural municipalities, elected twenty representatives. In the first three electoral classes, elections were conducted by secret and direct vote, whereas in the curia of rural

contributors to the official newspaper of the People's Party, *Il Nazionale – periodico politico e letterario* (with the supplement *Narodni list*), through which he published articles aimed at the broadest strata of the Dalmatian population in order to promote and strengthen national consciousness. PAVLINOVIĆ, Mihovil: *Hrvatska enciklopedija, mrežno izdanje [Croatian Encyclopedia, online edition]*. 2013, Leksikografski zavod Miroslav Krleža, https://www.enciklopedija.hr/clanak/pavlinovic-mihovil [Access on November 5, 2025]

[14] PERIĆ, *op. cit.*, pp. 46-48.

[15] *Ibid*., p. 17.

municipalities, elections were held publicly and indirectly, first at assemblies of voters in district centers and subsequently at assemblies of electors. Indirect elections in the rural municipalities were intended to select more capable representatives.[16] This curial system is particularly interesting from the perspective of modern democracy, as it was certainly neither fair nor equal, although it was common by 19th-century standards. A fundamental consequence of the curial system in the social and political context of Dalmatia was the overrepresentation of the urban population, from which all representatives of the first three curiae actually came, and the significant underrepresentation of the rural population. In reality, the rural population accounted for over 80% of the total population but was allocated less than half of the representatives. Indirectly, these consequences were also reflected in cultural and political spheres, particularly regarding positions on the central political issue: the question of the unification of Dalmatia with Croatia and Slavonia as well as the issue of the official language.[17]

Until 1873, the representatives in the Assembly elected among themselves the members of the Imperial Council in Vienna. After that, the Imperial Council members were chosen through a regular election procedure, which was largely similar to the one used for the Assembly.[18]

5. Powers of the Dalmatian Provincial Assembly

It is important to explain the powers of the Dalmatian Provincial Assembly and its role in the everyday life of 19th-century Dalmatia. The Assembly had the authority to enact laws, but only within certain specified areas.

[16] *Ibid*., pp. 18-19.
[17] ČEPULO, *op. cit.*, p. 221-222.
[18] PERIĆ, *op. cit*., pp. 27-28.

The Assembly enacted laws pertaining to education, healthcare, social welfare, and other economic interests. These laws came into legal force only after being confirmed by the emperor. Additionally, the Assembly had the authority to make certain decisions concerning agriculture, public buildings, charitable institutions, land taxes and both the regular and extraordinary revenues and expenditures of Dalmatia's budget.[19]

The Assembly's decisions were required to be in accordance with the laws of the Monarchy. The Assembly was also responsible for managing the assets and institutions of Dalmatia. As mentioned earlier, until 1873, the Assembly sent five representatives to the Imperial Council in Vienna. Interestingly, the Assembly was prohibited from having any contact with other provincial assemblies throughout the Monarchy.[20]

Additionally, the Assembly possessed notable tax-related powers. It could impose a surtax, but not exceeding ten percent of the direct state tax without the emperor's approval. The Assembly was also responsible for preparing the preliminary budget, reviewing the year-end financial statement, and managing land debt.[21]

It is clear that the Dalmatian Provincial Assembly did not possess significant powers, primarily because all its enactments required the emperor's approval. Nevertheless, its administrative and economic powers suggest that it had some impact on everyday life in Dalmatia. Furthermore, the Assembly's tax-related authority was relatively modern for that historical period.

6. Political parties in the Dalmatian Provincial Assembly

Undoubtedly, one of the most interesting aspects of the history of the Dalmatian Provincial Assembly is the question of the political parties that were active in Dalmatia at the end of the 19th and the beginning of the 20th century. As mentioned earlier, by

[19] *Ibid*., p. 29.
[20] *Ibid*., p. 30.
[21] *Ibid*.

the mid-19th century, the question of the unification of Dalmatia with Croatia and Slavonia had emerged as a first-order political issue. Soon after, two political parties clearly took shape. They were not merely political parties; they represented two entirely opposing visions for the political future of Dalmatia.

On one side, Autonomist party emerged. It was primarily an elitist, pro-Italian, and anti-unification party, composed of Italian irredentists as well as some individuals of Slavic origin who opposed unification with Croatia and Slavonia.[22] The members of the Autonomist party were largely influenced by the political and cultural traditions of the Venetian Republic, which had ruled Dalmatia for centuries. The Autonomist party enjoyed the support of the central government in Vienna, likely because it was perceived as a less threatening option compared to the People's party. Additionally, the Autonomists strongly promoted Italian culture, language, and influence in Dalmatia.[23] Some of the most prominent leaders and members of the Autonomist party included Špiro Petrović, Luigi Lapenna, Ante Bajamonti, Lujo Seragli, Nikola Trigari and Vjekoslav Ziliotto. The Autonomist party also published its own newspaper called *Il Dalmata* ("*The Dalmatian*").[24]

On the other hand, the People's party was a pro-unification and pro-Croatian party. Unlike the Autonomist party, its members were mostly young Dalmatian students, who were commonly referred to as the "*annexationists*".[25] The People's party maintained strong connections with certain parties in Croatia and Slavonia, as they shared similar political views and ideas. The People's party promoted the concepts of Croatian national unity and language, and, particularly in its early years, also advocated Slavic unity and language. Consequently, it is not surprising that some prominent members of the People's Party were Serbs, until the establishment of the Serbian Party in 1879. It is important to note that the People's Party did not adhere to a strict ideology; some

[22] TROGRLIĆ, Marko; ŠETIĆ, Nevio*: Dalmacija i Istra u 19. stoljeću [Dalmatia and Istria in 19th century]*. Zagreb, 2021, Leykam international, p. 48.
[23] PERIĆ, *op. cit.,* p. 54.
[24] *Ibid.,* p. 55.
[25] TROGRLIĆ, ŠETIĆ, *op. cit*., p. 48.

of its members were liberal, while others were conservative.[26] The most prominent leaders and members of the People's party included Miho Klaić, Mihovil Pavlinović, Natko Nodilo, Lovro Monti, Ivan Vranković, Gajo Filomen Bulat, and Pero Čingrija. Like the Autonomist party, the People's party published its own newspaper called *Narodni list* ("*People's newspapers*") and *Jedinstvo* ("*Unity*").[27]

The first elections for representatives to the Dalmatian Provincial Assembly in 1861 were unfavorable for the People's party. The Autonomist Party won twenty-nine seats, while the People's party secured only twelve. The Autonomists also prevailed in the next two elections; however, from 1870 onward, the People's Party gradually began to win a greater number of seats than the Autonomists.[28] One of the most prominent leaders of the People's party, Mihovil Pavlinović, argued that the Electoral Order of 1861 was unfair. At that time, approximately fifteen thousand Italians and four hundred and ten thousand Croats lived in Dalmatia. Under the Electoral Order of 1861, Italians elected twenty-three representatives, while Croats elected only twenty. [29] It is easy to arrive at the same conclusion as Pavlinović: the Electoral Order was indeed highly inequitable.

The first electoral victory for the People's party occurred in 1870. From that point until the dissolution of the Assembly, with one exception, the People's party remained the strongest political party in the Assembly. That exception was the final session of the Assembly, when the dominant party was the Croatian party, formed through the merger of the Party of Rights and the People's party.[30]

Additionally, it is important to note two significant political parties that emerged later in the Dalmatian Provincial Assembly: the Serbian party and the Party of Rights. Both played a prominent role during the last thirty years of the Assembly's existence. As

[26] PERIĆ, *op. cit*., pp. 53-54.
[27] *Ibid.,* p. 54.
[28] *Ibid*., p. 62.
[29] TROGRLIĆ, ŠETIĆ, *op. cit*., p. 49.
[30] PERIĆ, *op. cit*., p. 62.

mentioned earlier, some of the most prominent members and leaders of the People's party were Serbs. However, political conflicts between Dalmatian Croats and Serbs began after the Austrian occupation of Bosnia and Herzegovina.[31]

The Serbian party was established in 1879, when its members split from the People's party. As the central political organization representing Serbs in Dalmatia, the Serbian Party opposed unification with Croatia and Slavonia, similar to the Autonomist Party, which led to a degree of cooperation between the two. Their primary focus was on advocating for the rights of Serbs in Dalmatia and addressing issues related to the Serbian Orthodox Church.[32] Some of the most prominent leaders and members of the Serbian party included Sava Bjelanović, Đuro Vukotić, Nikodim Milaš, Antun Pugliesi, Vladimir Simić, and Dušan Baljak. The party also published its own newspaper called *Srpski list* ("*Serbian newspapers*").[33]

The Party of Rights was a radical, pro-Croatian party until its merger with the People's party in 1905. Founded in 1894, it initially opposed the People's party, as its members considered the latter too moderate in its relations with Vienna.[34] The Party of Rights in Dalmatia was closely connected with the Party of Rights in Croatia, which indicates a strong pro-unification stance. Some of its most prominent members and leaders were Josip Smodlaka, Ante Tresić Pavičić, and Ivan Majstorović.[35] It is also important to note that the Party of Rights experienced numerous splits, with various factions and individuals breaking away to pursue their own political paths.

[31] CETNAROWITZ, Antoni: *Narodni preporod u Dalmaciji [National revival in Dalmatia]*. Zagreb, 2006, Srednja Europa, p. 231.
[32] PERIĆ, *op. cit.,* p. 56.
[33] *Ibid*.
[34] *Ibid*.
[35] *Ibid*.

7. Conclusion

In conclusion, it is important to emphasize a few points. The Dalmatian Provincial Assembly did not possess crucial legislative powers and cannot be considered a parliament in the modern sense. Its authority was strongly constrained by the emperor's power to approve laws and to appoint the president of the Assembly. It was a typical provincial assembly, very similar to other provincial assemblies throughout the Monarchy, with a modest role in matters such as agriculture, public buildings, and taxation. Its primary significance lay in the development of political life in Dalmatia at the end of the 19th and the beginning of the 20th century.

It is also important to note that the Dalmatian Provincial Assembly was established in the context of an unclear political situation, not only in Dalmatia. The political conflict between Budapest and Vienna, which was later resolved through the Austro-Hungarian Compromise, had repercussions for Croatia and Slavonia, and consequently for Dalmatia as well. The question of unification between Croatia and Slavonia and Dalmatia began to emerge at the very start of Assembly's work. It was the first issue discussed and decided upon in the Assembly, along the question of language, which was closely connected to the unification issue.

Furthermore, the Assembly served as a political battleground for historical, political and cultural differences in Dalmatia. Conflicts between the People's party, and later the Party of Rights, on one side, and the Autonomist and Serbian parties on the other, were, among other things, culturally rooted. The differences between the pro-Italian, pro-Serbian, and pro-Croatian political parties reflected the demographic composition of 19th and early 20th-century Dalmatia.

Later, at the beginning of the 20th century, politicians from Dalmatia became leading and highly significant political figures in the Croatian territories. This development was largely due to the suppression of political rights in Croatia and Slavonia during the twenty-year rule of Ban Khuen-Héderváry (1883-1903). As a result, figures such as Ante

Trumbić and Frano Supilo emerged as prominent politicians in the period preceding the World War I. Therefore, political liberty in 19th century Dalmatia can be considered one of the most significant legacies of the Dalmatian Provincial Assembly.

However, the Dalmatian Provincial Assembly held its final session in 1912. After the World War I and the creation of the State of Serbs, Croats and Slovenes, later the Kingdom of Serbs, Croats and Slovenes, and subsequently the Kingdom of Yugoslavia, there were no serious initiatives to restore the Assembly, for a variety of reason. The main reason for this is the fact that interwar Yugoslavia was organized as a centralized state, and from 1929 onward pursued a unitary policy. Based on the Treaty of Rapallo of 1920, the former capital Zadar with its surroundings, as well as the dalmatian islands of Lastovo and Palagruža, were ceded to Italy.

During the interwar Yugoslav state, most Dalmatian politicians became closely aligned with politicians in Croatia, while Serbian politicians from Dalmatia established connections with politicians in Serbia. Italians were no longer a significant political force in Dalmatia, except in the areas under Italian rule, and by the end of the World War II, they had almost entirely disappeared from Dalmatia. The political parties that existed in 19th- and early 20th-century Dalmatia no longer existed, and the political ideas they promoted were then largely anachronistic, as they did not correspond to the challenges of the unstable political life in interwar Yugoslavia.

To sum up, the Dalmatian Provincial Assembly played a significant role in the development of political life in Dalmatia and beyond. From a legal-historical perspective, it was a very interesting political body, whose work remains a subject of discussion even today.

Matija MATIĆ: The rights of national minorities in the Republic of Croatia from the 1990s to the present

University of Zagreb, Faculty of Law

DOI 10.21862/siaa.9.5

1. Introduction to the paper

The system of norms governing the rights of national minorities represents a cornerstone of every constitutional and legal framework. Ethnic conflicts and frictions, rooted in diverse historical and social circumstances, unquestionably pose a complex challenge. The historical experiences and traditions of modern states shape their respective legal systems, revealing that international standards in this field remain insufficiently harmonized and unified.

This study concentrates on the Croatian legal framework concerning the protection of minority rights. It examines their historical evolution through three principal legal sources: the Constitution of the Republic of Croatia, the Constitutional Act on the Rights of National Minorities, and provisions enacted within Croatian electoral legislation. Finally, by analyzing the practice of the Constitutional Court, it evaluates the application of these regulations in practice and the extent to which normative guarantees align with real-life implementation. Of course, all of this should be viewed in the context of international treaties, particularly in the context of the Framework Convention for the Protection of National Minorities adopted by the Council of Europe and other accompanying documents within the framework of either the UN or the EU.

2. Constitution of the Socialist Republic of Yugoslavia

In order to better understand the first Constitution of the Republic of Croatia (also known as the Christmas Constitution), it is necessary to consider the constitutional provisions of earlier constitutions of the state community that ceased to exist with the establishment of the sovereign Croatian state. These are primarily the Constitution of the Socialist Federal Republic of Yugoslavia (further in text: SFRY) and the Constitution of the Socialist Republic of Croatia (further in text: SR Croatia). The last Constitution of the SFRY was adopted in 1974.

After Josip Broz Tito's death in 1980, Yugoslavia entered a period marked by the gradual breakdown of its constitutional and political structures. The country's stability was further undermined by systemic challenges and the political crisis in Kosovo, compounded by a severe economic downturn resulting from the clash between capitalist tendencies and the shortcomings of the socialist planned economy. Rising nationalism intensified tensions, as divergent political agendas emerged: Slovenia and Croatia pushed for decentralization and the elimination of federal funds, whereas Serbia aimed to reinforce political unity and central control. Beneath these political claims, however, lay ambitions for a Greater Serbia.[1]

Regarding the issue of national minorities, it is worth highlighting that the SFRY was a state whose sovereignty was constructed based on elements of the working class.[2] The Constitution mentions that the SFRY was a federal state in which "*the peoples and nationalities... united in a federal republic... and created a socialist community of working people*."[3] It can be observed that the introductory provisions of the Constitution do not

[1] ČEPULO, Dalibor: *Hrvatska pravna povijest u europskom kontekstu [Croatian Legal History in the European Context]* . Zagreb, 2021, Pravni fakultet Sveučilišta u Zagrebu, p. 369.
[2] TOLIĆ, Matej: Pitanje hrvatske državnosti i prava na samoodređenje i odcjepljenje u Jugoslaviji (1918.-1991.) [The Question of Croatian Statehood and the Right to Self-Determination and Secession in Yugoslavia (1918-1991)]. *Tema broja [Theme of the Issue]*, No. 15, 2021, p. 46.
[3] Osnovna načela točka 1., Ustav Socijalističke Federativne Republike Jugoslavije [Basic Principles, Article 1, Constitution of the Socialist Federal Republic of Yugoslavia]. https://www.yuhistorija.com/serbian/doc/Ustav_SFRJ_iz_1974.pdf [Access on July 1, 2025]

mention specific nationalities (such as Croats, Serbs, Slovenes, etc.). The citizens of the republics, or ultimately its citizens, were not the bearers of the sovereignty of the SFRY; rather, the bearer of sovereignty was the working class, which corresponds to the socialist internationalist doctrine that, in its own ideology, did not concern itself with debates about ethnic and national groups.[4]

The so-called citizen of the SFRY was given the right not to declare which people or nationality they belonged to.[5] A similar concept is followed in the republic's constitution of SR Croatia, but it is important to note that it does mention in its basic principles about the working class that it refers to the struggle of "*the Croatian people, together with the Serbian people and nationalities in Croatia*", and the same grammatical construction is used in Article 1 of the Constitution, which defines the concept of the Croatian national state.[6] However, the designation of SR Croatia as a national state was purely political in nature, as the bearer of sovereignty, just as in the Federation itself, was the working class.[7]

3. Christmas constitution of 1990

It is important to emphasize that Croatia, like the Socialist Republic of Yugoslavia (SR Yugoslavia), was a legal successor to the SFRY.[8] Due to newly arisen political tensions,

[4] TOLIĆ, *op. cit.*, p. 46.

[5] Čl. 170. Ustava SFRJ [Article 170 of the Constitution of the SFRY].

[6] Članak 1. Ustava SRH [Article 1 of the Constitution of the SR Croatia], https://www.scribd.com/doc/260890539/Ustav-SR-Hrvatske-1974 [Access on July 1, 2025]

[7] Although the working class remained the bearer of sovereignty, the Constitution of the SR of Croatia, analogous to the Constitution of the SFRY, elaborates the rights of the so-called "citizen." Specifically, Article 247 stipulates that the "freedom to express belonging to a nation, nationality, or ethnic group, the freedom to express national culture and to use cultural achievements, as well as the freedom to use one's own language and script" is guaranteed.

[8] Namely, Opinion No. 9 of the Arbitration (Badinter) Commission established that, based on international law and the concept of succession, each republic was also a legal successor of the SFRY. This primarily unsettled the Socialist Federal Republic of Yugoslavia, which sought to present itself to the international community as the sole successor of the former state, from which the other republics had "seceded." Indeed, in the Constitution of the SFRY (Official Gazette of the SFRY, No. 1/92 of 05.01.), the drafters largely attempted to attribute the rights guaranteed by the Constitution of the SFRY, so that

as well as the transition from a planned to a market economy, the First Croatian Constitution was adopted in 1990,[9] which became the foundation of Croatian sovereignty and statehood.

From the perspective of regulating minority issues, particular attention should be given to the Preamble of the Constitution. The Christmas Constitution speaks about the "*sovereignty of the Croatian people*" and states that: "*The Republic of Croatia is established as a national state of the Croatian people and a state of the members of other peoples and minorities who are its citizens: Serbs, Muslims, Slovenes, Czechs, Slovaks, Italians, Hungarians, Jews, and others.*"[10] Article 1 of the Constitution further states that: "*power arises from the people and belongs to the people as a community of free and equal citizens.*"[11]

As can be noticed, terms like "*working class*" and "*nationalities*" were removed from the text, which was expected, but it is certainly noteworthy that the "*Serb people*" were excluded, even though they were a constituent element of the statehood of the SR Croatia. The Constitution of the Republic of Croatia places Serbs on the same level as other national minorities. However, a different observation of the same issue (admittedly, in connection with the Constitution of the People's Republic of Croatia of 1948, but concerning a similar concept that also existed in the Constitution of the SR of Croatia) was given by Professor Stefanović as early as 1950. He considered the inclusion of the said provision to be redundant, since the Serbs enjoyed equality with the Croats even without it. According to his interpretation, the mention of the "*Serbian people*" in the constitutional text had a more symbolic character – an expression of

---

the provisions on national minorities largely reflected the provisions concerning "citizens" of the SFRY. However, due to the absence of legal remedies by which minority groups could claim guaranteed protection, the provisions of the Yugoslav constitution remained declaratory in nature. HORVATIĆ, Milenko: Jugoslavenski manjinski standardi i Hrvati u SR Jugoslaviji [Yugoslav Minority Standards and Croats in the Socialist Republic of Yugoslavia]. *Migracije i političke teme* [*Migrations and Political Issues*], No. 17, 2001, p. 106.

[9] Ustav Republike Hrvatske [Constitution of the Republic of Croatia, Official]. *Narodne Novine,* No. 56/90.

[10] Izvorišne osnove, Božićni ustav [Source Foundations, Christmas Constitution].

[11] Članak 1. Božićnog ustava [Article 1 of the Christmas Constitution].

recognition for the contribution of Serbs in the struggle for liberation during the World War II – rather than representing the granting of any special, let alone constituent, status in Croatia.[12]

What can be observed is that the Republic of Croatia agreed to a separate enumeration and listing of national minorities, but with the indication that "*others*" are also included in the list, making it clear that this is a general clause. From the perspective of sovereignty, Croatia is primarily constituted as a (national) state of the Croatian people. This provision should not be interpreted as discriminatory towards other peoples living within Croatia, as the right to self-determination and the creation of one's own state is an inalienable international right of all peoples, including the Croatian people.

The "*other*" nationalities are guaranteed full equality with the Croatian people by the "*democratic state*", as part of the "*community of free and equal citizens*". Therefore, the fundamental sovereignty belongs to the *demos*, the citizens, not to the *ethnos* or nation.[13] Moreover, not only is equality with the Croatian people guaranteed to other nationalities, but they are also assured additional "*national rights in accordance with the democratic norms of the UN and the countries of the free world"* under the guise of positive discrimination.[14]

4. Changes of the constitution

Regarding the amendments to the Constitution of the Republic of Croatia, the first change was made after the war in 1997. From the perspective of regulating national

[12] KOSNICA, Ivan: Koncept građanina u hrvatskom i jugoslavenskom ustavnom poretku od 1944. do 1990. godine [The Concept of the Citizen in the Croatian and Yugoslav Constitutional Order from 1944 to 1990]. *Pravni vjesnik: Časopis za pravne i društvene znanosti Pravnog fakulteta Sveučilišta Josipa Jurja Strossmayera u Osijeku [Journal of law and social sciences of the Law Faculty of University J.J. Strossmayer in Osijek]*, No. 3-4, 2022, pp. 49-50.

[13] REŠETAR, Vojko: O preambuli (Izvorišnim osnovama) Ustava RH [On the Preamble (Source Foundations) of the Constitution of the Republic of Croatia]. *Zbornik radova Pravnog fakulteta u Splitu [Collected Papers of the Faculty of Law in Split]*, No. 4, 2021, pp. 1085-1086.

[14] Izvorišne osnove, Božićni ustav [Source Foundations, Christmas Constitution].

minorities, this amendment is highly significant for two reasons. The first is the introduction of the term "*indigenous*" minorities, and the second is the removal of the Slovenian and Bosniak national minorities from the text. The term "*autohtoni*" (indigenous) should be distinguished from the term "*alohtoni*" (non-indigenous). Specifically, an "*autohtona*" (indigenous) minority is one explicitly defined in the Constitution, and in addition to general human rights and fundamental freedoms, it is guaranteed additional freedoms under the umbrella of positive discrimination. "*Alohtone*" minorities only enjoy general human rights and freedoms.[15]

The omission of Slovenes and Bosniaks from the constitutional text had negative effects for the Republic of Croatia on the international stage. I believe that the absence of the naming of a minority should not serve as an obstacle to the realization of additional freedoms. According to international law, it is not necessary to specify a community in legal texts in order for it to enjoy the status of a minority. It is sufficient for the minority to fall under the previously outlined definitions of international instruments.[16]

However, the problem arises specifically due to the constitutional division between "*autohtone*" and "*alohtone*" communities, as the further legal regulation, primarily through electoral legislation, moved in the direction of discrimination based on this distinction. With the amendments to the Constitution in 2010, Bosniaks and Slovenians were reinstated in the text of the Preamble, and today the Constitution recognizes 22 national minorities, including them.[17]

---

[15] HORVAT, Ana: Autohtone nacionalne manjine i ustavne promjene 2000.-2010. *[Autochthonous National Minorities and Constitutional Changes 2000–2010]*, in: SMERDEL, Branko; GARDAŠEVIĆ, Đorđe (eds.): *Izgradnja demokratskih ustavno-pravnih institucija Republike Hrvatske u razvojnoj perspektivi [Building Democratic Constitutional-Legal Institutions of the Republic of Croatia in a Developmental Perspective]*. Zagreb, 2011, Hrvatska udruga za ustavno pravo, p. 658.

[16] ANDRASSY, Juraj; BAKOTIĆ, Božidar; SERŠIĆ, Maja; VUKAS, Budislav: *Međunarodno pravo 1 [International Law 1]*. Zagreb, 2010, Školska knjiga, p. 410.

[17] Odluka o proglašenju promjene Ustava Republike Hrvatske od 16. lipnja 2010 [Decision on the Promulgation of the Amendment to the Constitution of the Republic of Croatia of 16 June 2010] *Narodne Novine*, no. 76/10.

5. Constitutional law on the protection of national minorities of 1991

Since recognition is a voluntary act, it can also be politically conditioned. In this way, the member states of the European Community (EC) conditioned the Republic of Croatia, as well as all other republics of the disintegrating SFRY, by stating they would recognize them if they met certain conditions. One of these conditions was the guarantee of rights to national minorities, which were contained in the provisions of the Conference on the Peace Settlement of Yugoslavia, as well as in other documents relating to the general protection of democracy, the rule of law, human rights, and similar matters.[18] Croatia responded to these conditions by adopting the Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia (in further text: Constitutional Law of 1991).

The Constitutional Law of 1991 guaranteed minorities a comprehensive range of rights on several occasions, primarily based on personal and cultural autonomy. In terms of local self-government, minorities that constituted a majority in municipalities were, for example, ensured the use of their language and script in addition to the Latin script and Croatian language.[19] The Constitutional Law also allowed members of national minorities, who represented more than 8% of the total population (which was factually only Serbs at the time), the right to proportional participation in the legislative, executive, and even in the highest judicial bodies.[20]

---

[18] What is certainly disheartening is the fact that the proponents of the Constitutional Act justified its adoption on the basis of the principle of reciprocity, that is, "if they do this to us, then we will do the same to them, and vice versa." When discussing the genuine struggle for the rights of national minorities, such rights should not be pursued on such grounds, because all people are born free and equal in their dignity and rights. ARLOVIĆ, Mato: *Pravo nacionalnih manjina u Republici Hrvatskoj [The Law on National Minorities in the Republic of Croatia]*, Zagreb, 2015, Novi informator, p. 194.

[19] Članak 7. stavka 2. Ustavnog zakona o ljudskim pravima i slobodama i o pravima etničkih i nacionalnih zajednica ili manjina u Republici Hrvatskoj (UZoLJP 1991) [Article 7, Paragraph 2 of the Constitutional Law 1991].

[20] Članak 18. stavka 1. UZoLJP 1991 [Article 18, Paragraph 1 of the Constitutional Law 1991].

Furthermore, the Constitutional Law of 1991 in Chapter V regulates the organization of "*municipalities with special self-government status*". Specifically, municipalities where a national minority made up a majority according to the 1981 census were required to adopt a special statute based on the provisions of the Constitutional Law of 1991.[21] What is interesting is that in such municipalities, Croats and other smaller national minorities, who held a smaller majority, enjoyed the same rights as the majority minority population, as well as all the special rights prescribed by the Constitutional Law for minority populations.[22]

However, the reception of the newly adopted Constitutional Law of 1991 among the EC member states was not satisfactory. The assessment of whether the state met the conditions set by the Conference on the Peace Settlement of Yugoslavia was conducted by the Badinter (Arbitration) Commission. The Commission was a body composed of 5 judges (under the presidency of Badinter, hence the name of the commission) established by the Council of Ministers of the EC, tasked with providing legal advice.[23] From the perspective of the rights of national minorities, it is important to highlight Opinions No. 2 and No. 5.

Opinion No. 2 concerned the issue of whether the Serbs as a community, as well as a people living in Croatia and Bosnia and Herzegovina, deserved the right to self-determination and, consequently, the right to create their own state. In this opinion, the Commission referred to the international rule of *uti possidetis*, which protects the borders that existed within the framework of the SFRY, but with the obligation to guarantee all rights to the Serbian national minority living in the territories of these republics.[24] Opinion No. 5, as previously mentioned, required Croatia, in order to be recognized, to supplement the Constitutional Law of 1991 by more precisely refining

[21] Članak 21. stavka 1. UZoLJP 1991 [Article 21, Paragraph 1 of the Constitutional Law 1991].
[22] Članak 24. UZoLJP 1991 [Article 24 of the Constitutional Law 1991].
[23] ČEPULO, *op. cit*., p. 384.
[24] *Uti Possidetis* was applied for the first time in Latin America in 1810 as a boundary line between newly created states. Specifically, the administrative territories of the former Spanish and Portuguese colonies were taken as the authoritative borders. Andrassy *et al., op. cit.,* p. 194.

Chapter 2 of the Convention of the Peace Conference of Yugoslavia, primarily focusing on additional protections guaranteed to national minorities.[25]

New amendments followed in 1992 with the amendments to the aforementioned Constitutional Law of 1991. The most significant change was the legal establishment of two municipalities ("*kotari*"), whose organization had to be regulated by a special statute. These municipalities, with an ethnic Serbian majority, were the municipalities of Knin and Glina.[26]

The military-police operations "*Storm*" and "*Flash*" led to the liberation of large areas of occupied parts of the Republic of Croatia, and as a result, a significant wave of emigration of the Serbian population was triggered. According to data from international organizations, 299,535 citizens of Serbian nationality emigrated from the territory of Croatia during the Homeland War.[27] From a legal regulatory standpoint, this caused significant challenges in the implementation of numerous regulations that relied on population numbers to determine the rights of these communities, which depended on their size. This primarily concerned the issue of the sustainability of the aforementioned Constitutional Law of 1991. Due to these events, the Constitutional Law on the Temporary Non-Application of Certain Provisions of the Constitutional Law on Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia was passed. This law primarily determined the suspension of provisions related to the regulation of the aforementioned special municipalities until the "*publication of the first census results of the Republic of Croatia*".[28]

---

[25] ARLOVIĆ, *op. cit.*, p. 197.

[26] The Knin district included the municipalities of Knin, Obrovac, Benkovac, Gračac, Titova Korenica, and Donji Lapac, while the Glina district encompassed Glina, Vrginmost, Hrvatska Kostajnica, Dvor na Uni, and Vojnić. Zakon o područjima županija, gradova i općina u Republici Hrvatskoj [Law on the Areas of Counties, Cities, and Municipalities in the Republic of Croatia], *Narodne Novine*, no. 90/92.

[27] ARLOVIĆ, *op. cit.,* p. 215.

[28] Ustavni zakon o privremenom neprimjenjivanju pojedinih odredbi Ustavnog zakona o ljudskim pravima i slobodama i o pravima nacionalnih i etničkih zajednica ili manjina u Republici Hrvatskoj od 21. rujna 1995. godine [Constitutional Act on the Temporary Non-Application of Certain Provisions of the

These reasons, along with the new amendments to the Constitution of Croatia in 1997, which introduced the concepts of "*autohtone*" and "*alohtone*" minorities into the Croatian legal system, made the amendment of the existing Constitutional Law inevitable.

Amendments to the Constitution of the Republic of Croatia and the ratification of the aforementioned Framework Convention for the Protection of National Minorities necessitated the adoption of a new (thus not an amendment of the existing one) Constitutional Law on the Rights of National Minorities.

6. Electoral legislation

With the recognition of the Republic of Croatia as a sovereign and democratic state, the environment was created for the holding of new multi-party parliamentary elections, this time under the framework of Croatian electoral legislation. In 1992, a package of electoral laws was adopted, and among the most important were the Law on the Election of Representatives to the Croatian Parliament and the Law on Electoral Districts for the Representative Chamber of the Croatian Parliament.[29] These electoral laws, even from the perspective of general voting, were overly complicated.

Regarding minorities, the law took a dual approach. The first approach concerned minorities whose share of the total population was more than 8% (which, at the time, applied only to the Serbian minority), while the second approach applied to all minorities with a share of less than that threshold. The Serbian minority elected their representatives to the Representative Chamber in the following manner: the proportion of Serbian minority representatives in the Representative Chamber of the Croatian

Constitutional Act on Human Rights and Freedoms and on the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia of 21 September 1995], *Narodne Novine*, no. 68/95.

[29] Among the other laws in the aforementioned package of electoral laws, it is worth mentioning Zakon o izboru predsjednika Republike Hrvatske [Law on the Election of the President of the Republic of Croatia], *Narodne Novine*, no. 22/92.

Parliament was calculated based on their share of the total population. If proportionality was not achieved, the President of Croatia was required to call for supplementary elections "*in as many special electoral districts as necessary to achieve proportionality*". These supplementary elections were to be held "*within 60 days from the first session of the newly elected Houses of the Parliament*".[30]

Other minorities were guaranteed the right to at least 5 representatives, of whom one had to be from the Italian minority, one from the Hungarian minority, one from the Czech and Slovak minorities, the fourth from the Rusyn and Ukrainian minorities, and the fifth from the German and Austrian minorities.[31]

In 1999, amendments to the Law on the Election of Representatives to the Croatian Parliament and the Law on Electoral Districts for the Election of Representatives to the Representative Chamber of the Croatian Parliament aligned electoral regulations with the constitutional definition of "*autohtone*" and "*alohtone*" minorities. These changes had a significant impact on "*alohtone*" minorities, as they were deprived of the right to elect their own representatives to the Parliament. The Serbian minority, though still the largest minority, faced a similar restriction. The law established that all "*autohtone*" minorities were entitled to 5 representatives in the Representative Chamber, but the Serbian minority was only allotted one representative, along with the Hungarian and Italian minorities.[32] This policy clearly disadvantaged the Serbian minority, especially given that their numbers were still considerable, despite the population decrease

[30] Članak 10. stavak 1. i članak 26. Zakona o izborima zastupnika u Sabor Republike Hrvatske [Article 10, Paragraph 1, and Article 26 of the Law on the Election of Members of the Croatian Sabor], *Narodne Novine*, no. 22/92.
[31] Članak 10. stavak 2. Zakona o izborima zastupnika u Sabor Republike Hrvatske [Article 10, Paragraph 2 of the Law on the Election of Members of the Croatian Sabor], *Narodne Novine*, no. 22/92.
[32] Članak 16. i 17. Zakona o izborima zastupnika u Hrvatski državni Sabor [Articles 16 and 17 of the Law on the Election of Members of the Croatian State Sabor], *Narodne Novine,* no. 116/99 i članak 13. Zakona o izbornim jedinicama za izbor zastupnika u Zastupnički dom Hrvatskoga državnog sabora [Article 13 of the Law on Electoral Districts for the Election of Members to the House of Representatives of the Croatian State Parliament], *Narodne Novine,* no. 116/99.

caused by military operations and migration during the Croatian War of Independence.[33]

The European Union's accession process prompted further reforms in Croatian electoral legislation. Controversial provisions in the Constitutional Law and Electoral Law of 2010 aimed to restructure the electoral system for national minorities and harmonize Croatian legal standards with European Union regulations. The laws reintroduced a dual electoral model, each with its own set of problems.

The first model applied to minorities with more than 1.5% of the population, which in practice applied only to the Serbian minority. The law guaranteed "*at least 3 seats for representatives of the national minority in the Croatian Parliament, elected based on general electoral rights through party lists of that minority or lists proposed by voters of that minority*".[34] This provision raised doubts, as it was paradoxical that minorities with general voting rights were given the right to elect representatives of their own minority. This created confusion, as their status was not aligned with being a minority, but rather with being part of the general population.[35] The Constitutional Court ruled that such a provision was unconstitutional, emphasizing that the Constitution does not allow for the guarantee of a certain number of seats for any minority based on criteria such as national, ethnic, gender, age, educational, or property status.[36] Any exclusion of a group of Croatian citizens based on any criterion, including national affiliation, was deemed unconstitutional and incompatible with the notion of "*the people*" in the Croatian Constitution, which constitutes the basis of authority.[37]

The second model concerned minorities with less than 1.5% of the population, which guaranteed them the right to elect 5 representatives in special electoral districts. This

---

[33] ARLOVIĆ, *op. cit.,* p. 225.
[34] Članak 19. stavak 2. Ustavnog zakona o pravima nacionalnih manjina [Article 19, Paragraph 2 of the Constitutional Act on the Rights of National Minorities], *Narodne Novine*, no. 80/10
[35] ARLOVIĆ, *op. cit.,* pp. 264–265.
[36] The article about the sentence of Constitutional Court in regards to electoral law is available at: https://informator.hr/strucni-clanci/ustavnosudska-ocjena-izbornih-zakona [Access on July, 1, 2025]
[37] *Ibid.*

provision was based on Article 15, Paragraph 3 of the Constitution, which was amended in 2001, and aimed to provide minorities with additional protection by allowing them to elect representatives.[38] While the intention was to offer normative protection for numerically smaller minorities through positive discrimination, it was clear that these provisions conflicted with the constitutional principles of equality, the equality of all citizens, and equal voting rights.

The Constitutional Court ruled that the provisions were unconstitutional and annulled them, citing violations of fundamental constitutional principles. This raised questions about the purpose of Article 15, Paragraph 3 of the Constitution, with some legal scholars arguing that this provision was essentially a *nudem ius* – a provision that had no legal force and should never have been applied in practice.[39]

7. The story of Vukovar

The decision that received significant media and public attention in Croatia was undoubtedly the one banning the holding of a referendum by the Civil Initiative of the Vukovar Defense Staff in 2014. The referendum sought to amend the provision of Article 12, Paragraph 1 of the Constitutional Law on the Rights of National Minorities, which guaranteed "*equal official use of language and script in a local self-government unit when the number of members of a national minority constituted one-third of the population of that unit*". The proposed change aimed to establish that equal use of language and script would only be guaranteed when the number of members of the minority constituted at least half of the population of that unit. The Constitutional Court did not find this stricter criterion appropriate, justifying its decision with arguments

[38] Članak 19. stavak 3. Ustavnog zakona o pravima nacionalnih manjina [Article 19, Paragraph 3 of the Constitutional Act on the Rights of National Minorities], *Narodne Novine*, no. 80/10.
[39] ARLOVIĆ, *op. cit.*, pp. 249–256.

based on the general provisions of the Constitution, with the Constitutional Court adopting the following positions:

1) The Constitution is not a legally neutral document.
2) The Constitution considers the freedom of minorities to use their language and script to be fundamental and essential to the protection of national minorities in Croatia.
3) The requirement for the Croatian people to show "*tolerance and understanding*" towards the minority population.
4) Increasing the threshold must have a "*clearly defined legitimate goal in the public interest, and it must be necessary in a democratic society*".
5) The Republic of Croatia (as a state) has a public legal obligation to implement positive discrimination measures to protect the minority population in Croatia.[40]

The Constitutional Court also emphasized that an exact threshold is not prescribed by the Constitution and that it depends on the will of the legislator. It was also noted that the previous Constitutional Law prescribed an even stricter criterion, which stated that "*the language and script of the ethnic and national community or minority will be in official use in those municipalities (not cities) where the members (...) constitute the majority of the total population*".[41] In response to the Vukovar Defense Staff's argument that the Serbian population, due to its majority, is not considered a minority in the city of Vukovar, the Constitutional Court deemed this argument irrelevant, stating that "*a national minority, even if it has 100% representation in the population of a city or municipality, remains a national minority*". In this regard, based on the *argumentum a contrario*, the thesis that a national minority, due to its majority share in a city or

[40] The sentence of Constitutional Court in regards to the banning of the referendum is available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2014_08_104_2021.html [Access on July, 1, 2025].
[41] *Ibid.*

municipality, should be granted additional "*constitutional status (a kind of statehood)*" was also considered irrelevant.[42]

With this decision, the Constitutional Court also obligated the City Council of Vukovar to, within one year, regulate and specify the aforementioned minority rights in the Statute "*to the extent that does not undermine the essence of those rights, while also respecting the needs of the majority Croatian people, which stem from the still-present consequences of the Greater Serbian aggression at the beginning of the 1990s*". Additionally, the Constitutional Court required the City Council to adopt a separate Statutory Decision on the implementation of the official use of the Serbian language and Cyrillic script. In a further course of events, in 2019, the Constitutional Court annulled several provisions of the Statutory Decision, particularly due to its discriminatory clauses, one of which included an additional obligation for councilors from the Serbian national minority to submit a special written request to receive written materials in Serbian language and Cyrillic script, with a specific indication of the requested materials.[43]

8. Conclusion

This paper has examined the historical development and provided an overview of the key international and national legal sources governing the protection of national minority rights in the Republic of Croatia, spanning from the 1990s to the present day, with a brief reference to the preceding socialist period. A notable trend emerges in the

[42] *Ibid.*

[43] Another provision of the statutory decision that the Constitutional Court annulled was the one stipulating that the right of councilors of the Serbian national minority to receive the aforementioned written materials was conditional on budgetary funds from the annual budget of the City of Vukovar, and that the councilors could exercise these rights only up to the amount allocated for that purpose in a given month. The Constitutional Court annulled this provision because, under the Act on the Use of Scripts and the Scripts of National Minorities, funds for these rights are in any case provided from the State Budget., https://narodne-novine.nn.hr/clanci/sluzbeni/2019_08_78_1636.html [Access on July 1, 2025].

form of frequent amendments and supplements to the principal legal instruments in this field, particularly the Constitution of the Republic of Croatia and the Constitutional Act on the Rights of National Minorities. These continual changes can be attributed to political circumstances, Croatia's accession to the European Union, and the legislature's ongoing uncertainty regarding the appropriate approach to minority rights regulation.

Despite the brevity and occasional inconsistencies of these legislative adjustments, the Constitutional Court has consistently served as the ultimate guardian of minority constitutional rights. Through its case law, the Court has based its decisions on principles of tolerance and respect, often endorsing measures aimed at promoting positive discrimination to protect minority interests.

In conclusion, the regulation of national minority rights should ideally be approached without political bias, relying instead on empirical evidence and comparative models from countries with cultural contexts similar to Croatia's. However, expecting such an approach to be fully implemented may be overly optimistic, particularly given the ethnic tensions and conflicts that have characterized the territories of the former Yugoslavia, including Croatia. The core challenge lies in the legal definition and status of national minorities, as well as in ensuring that their rights are effectively guaranteed and protected.

Felix NACHTLBERGER: From Sexual Morality and Maternity Protection to Sexual Self-Determination – A Tort Law Perspective

University of Vienna, Faculty of Law

DOI 10.21862/siaa.9.6

1. Introduction

Legal systems employ various means to protect different interests. These interests can, if they are of the same kind, be grasped as the concept of a legal good.[1] One such legal good today is undoubtedly sexual self-determination, which is regarded as a subset of personal freedom.[2] However, this concept is relatively new and only cemented itself in its current form in the late 20th century.[3] Of course, there were always some form of laws against some forms of sexual violence, even if it was under the name of the protection of honour, life or property.[4] This makes it difficult to pinpoint the moment where the protection of freedom – as in the freedom of sexual self-determination – became the dominant motivation behind the law.

Most studies of legal history look at the development of criminal law to answer this question.[5] This article will analyse those investigations but will then try to provide a different perspective by looking at the development of Austrian Tort Law, as well as

[1] FUCHS, Helmut – ZERBES, Ingeborg: *Strafrecht Allgemeiner Teil I [Criminal Law General Part I]*. Vienna, 2024, Verlag Österreich, pp. 3–5.
[2] PHILIPP: § 201 StGB Vergewaltigung [Art. 201 Criminal Code: Rape]. In HÖPFEL, Frank – RATZ, Eckart: *Wiener Kommentar zum Strafgesetzbuch² [Viennese Commentary to the Criminal Code, Second Edition]*. Marginal no. 5–7, https://rdb.manz.at/document/1141_26_stgb_p0201#S29tbWVudGFy_2 [Access on 24. November 2025].
[3] ALTMANN, Ludwig – JACOB, Siegfried (eds.): *Kommentar zum Österreichischen Strafrecht I Band [Commentary to Austrian Criminal Law Volume I]*. Vienna, 1928, Manz, pp. 330–331.
[4] BALTHASAR, Susanne – FLOßMANN, Ursula (ed.): *Die Tatbestände der Vergewaltigung und sexuellen Nötigung – Eine rechtsvergleichende Betrachtung des deutschen und österreichischen Rechts mit Schwerpunkt im 20. Jahrhundert [The Offences of Rape and Sexual Coercion – A Comparative Legal Analysis of German and Austrian Law with a Focus on the 20th Century]*. Linz, 2001, Universitätsverlag R. Trauner, pp. 3–24.
[5] *Ibid*.; LOETZ, Francisca: Sexualisierte Gewalt in Europa 1520 – 1850 [Sexualized Violence in Europe, 1520–1850]. *Geschichte und Gesellschaft [History and Society]*, 2009, Volume 35, Issue 4, pp. 565–568.

corresponding literature and judicature, from the late 19th and primarily from the 20th century. Specifically, the extent of compensation in case of a sexual tort can give some insight into the protected interests, as only those will be eligible for compensation.

With this new perspective existing narratives about the development of the right to sexual self-determination, which is seen as a product of the second feminist wave in the 1960s,[6] are to be examined.

2. The Development in Criminal Law

2.1. Criminal Code of 1852

Until the Criminal Code of 1974[7] came into force the Criminal Code of 1852[8] was in effect. The articles about sexual delicts remained unchanged in the decades between, but there were many unsuccessful attempts at reforming them.

Rape was regulated in Art. 125–127 Criminal Code of 1852. There were three different types, all of them only criminalised the act of intercourse itself and the victim could only be a woman. The woman either had to be unconscious, be made unconscious or be under 14 years old. Rape between marriage partners was also legal, as long as it was only done to the extent encompassed by martial duty. Other sexual assault was only forbidden as its own type of crime when it was against an unconscious or under 14-year-old person[9] – in all other cases only the broader crime of blackmail could constitute a sentence.[10] Other crimes in the same section as rape where in particular incestual or homosexual acts and bestiality.[11]

In legal literature the protected legal good in this section of the Criminal Code of 1852 was discussed, by the turn of the century the dominant opinion was that of Liszt, a leading figure of the positivist (sociological) school of criminology. He proposed that the protected interest was primarily the freedom of the women to choose her sexual partners, rather than the honour of the woman, which was the predominant opinion before. Although his opinion has gotten a dominant status through Liszts academic

[6] MANGOLD, Katharina – WEBER, Sascha: Baustellen der sexuellen Selbstbestimmung [Challenges in Sexual Self-Determination]. *Sozial Extra [Social Extra]*, 2018, No. 42, pp. 4–5.
[7] BGBl. Nr. 60/1974.
[8] RGBl. Nr. 117/1852.
[9] Art. 128 of the Austrian Criminal Code of 1852.
[10] BALTHASAR, *op. cit.*, p. 228.
[11] Art. 129–131 Austrian Criminal Code of 1852.

authority, the argumentation did not convince everybody, as other authors explicitly stated that the protection of sexual self-determination was a "strange" and nebulous legal good, that was situated between the protection of the body, honour and freedom. It can be said that there was no clear agreement on the question of "valid" interests concerning the sphere of sexuality.[12]

A smaller offence, which was situated in another section, was the dishonouring with a broken marriage promise in Art. 506 of the Criminal Code of 1852. It was fulfilled when a man successfully seduced (i.e. had intercourse with) a woman while promising her beforehand to marry her. Only "honourable" women were protected, although it was not always clear what this term meant. An old opinion subsumed only unmarried virgin women, but most of the literature was a bit more "progressive" and allowed all women that didn't practice extramarital intercourse, even widows, as victims of this offence.[13] Interesting is that Art. 506 constituted a "right to compensation" for the victim – which was interpreted as a reference to civil law compensation.[14]

2.2. Reform Discussions

In the early 20th century there have been attempts at reforming the laws on sexual violence, with the primary goal of criminalising other forms of sexual assault then rape as their own delict. There were also attempts to exclude merely "immoral acts" that did not pose a particular danger to the public from criminalisation and to extend the delict of rape to situations where the woman was not yet fully unconscious. The reform discussions were part of larger plans to reform or replace the criminal code as a whole. They failed because of the dissolution of the monarchy and then later discussions failed again because of the annexation into Germany. The Nazi-Regime did not change the laws on sexual violence in Austria during the occupation.[15]

After the war and liberation reform-discussions started again. Again, the extension of the protection for victims of sexual assault and the reduction of purely "moral delicts" were guiding ideas. The judicature was ahead of the legislature in some regard, as the delict of rape was now already interpreted in a very wide sense, so that many cases, were the consciousness of the victim was only partly impaired, were already subsumed

[12] ALTMANN – SIEGFRIED (eds.), *op. cit.*, 330–331.
[13] *Ibid.*, 1006.
[14] *Infra*.
[15] BALTHASAR, *op. cit.*, pp. 229–243.

under rape.[16] Eventually the reform discussions lead to the criminal code of 1974, whose sexual delicts were based on a first draft from 1909.[17]

2.3. Criminal Code of 1974

In the Criminal Code of 1974[18] articles about sexual delicts were classified as moral delicts and put in the second part of the catalogue of offences in the StGB, which was systematically reserved for crimes that damaged the public interest. A big change was the introduction of "coercion to sex", a crime where an impairment of the victims freedom of will was now enough for the action to be a crime, the victim did not have to be unconscious like for the delict of rape. Other types of sexual assault were now also criminalised, under the name of "forced fornication" and "coercion to fornication", which could even be committed by the husband – "marital rape", as long as it was in the scope of the marital duty, was still legal.

The offence of dishonouring under a broken marriage promise was no longer included in the Criminal Code of 1974. For some time, the courts subsumed the act under the offence of "deception". In recent decades this has stopped as well, which is in accordance with the will of the legislature, as it deliberately chose not to criminalise such conduct when it abolished Art. 506 of the Criminal Code of 1852 without introducing a new equivalent provision.[19]

Further reform efforts led to an amendment of Art. 201–204 of the Criminal Code in 1989. The terminology, which was perceived as outdated, was modernised (e.g. "*Notzucht*" was changed to "*Vergewaltigung*"). The delict of fornication was changed to a general sexual assault crime; the criterion of immorality was omitted. The reform also replaced the requirement that the rape-victim had to be unconscious with a new requirement: Now, the use of violence or threats only had to reach a certain level of intensity. This change shifted the burden of proof in favour of the victim. The delict of rape was extended to include sexual acts equivalent to intercourse, and men were now

[16] *Ibid.*, p. 254.
[17] *Ibid.*, p. 328.
[18] BGBl. Nr. 60/1974.
[19] SOYER, SCHUHMANN: § 108 StGB. Täuschung [Art 108 Criminal Code: Deception]. In HÖPFEL, Frank – RATZ, Eckart: *Wiener Kommentar zum Strafgesetzbuch*[2] *[Viennese Commentary to the Criminal Code, Second Edition]*. Marginal no. 19, https://rdb.manz.at/document/1141_8_stgb_p0108#rz0019 [Access on 25 November 2025].

also recognised as potential victims. For the first time, these offences could also be committed within marriage or domestic partnerships.[20]

This reform thus marked a shift from protecting societal morals to safeguarding individual sexual autonomy. However, it was not until 2004 that the heading of Section 10 of the Criminal Code was changed to "Criminal Offences Against Sexual Integrity and Autonomy," at which point the remaining minor privilege for rape within marriage or cohabitation was also abolished.[21] This completed the transition toward protecting the right to sexual self-determination for all individuals and away from protecting the "sexual honour". Today there are many special provisions referencing sexuality in criminal law, showing that the unique nature of this legal good is now firmly entrenched into our legal minds.[22] A shadow of the past remains only in the fact that sexual offences are still located in the part of the Criminal Code originally dedicated to protecting public legal goods.

3. The Development in Tort Law

3.1. Law of Damages

It is noteworthy that the core provisions of Austrian law of damages have remained largely unchanged since the entry into force of the Civil Code [*ABGB*][23].

Art. 1293 and 1295 ABGB adopt a broad conceptualisation of compensable damage, both for damages *ex contractu* and *ex delicto*. As a general rule, the injuring party is obligated to provide *restitutio in integrum*. Where such restitution is impossible or impractical, compensation in monetary form, but never in form of punitive damages, may be awarded – an approach that is, in cases of sexual offences, the only conceivable option.[24]

---

[20] BALTHASAR, *op. cit.*, pp. 317—323.
[21] PALLIN: Vorbemerkungen zu den §§ 201 ff StGB [Preliminary Remarks to Art. 201 ff. Criminal Code]. In FOREGGER, Egmont – NOWAKOWSKI, Friedrich: *Wiener Kommentar zum Strafgesetzbuch[1] [Viennese Commentary to the Criminal Code, First Edition]*. Vienna 1986, Manz, p. 1.
[22] PHILIPP: Vor §§ 201–221 [Before Art. 201-221 Criminal Code]. In HÖPFEL, Frank – RATZ, Eckart: *Wiener Kommentar zum Strafgesetzbuch[2] [Viennese Commentary to the Criminal Code, Second Edition]*. Marginal no. 15, https://rdb.manz.at/document/1141_26_stgb_vorp0201 [Access on 24. November 2025].
[23] JGS Nr. 946/1811.
[24] WELSER, Rudolf – ZÖCHLING-JUD, Brigitta: *Grundriss des bürgerlichen Rechts Band II[14] [Outline of Civil Law Volume II]*. Vienna, 2015, Manz, p. 390.

3.2. Types of monetary compensation

A distinctive feature of Austrian law on damages is found in Art. 1323 of the Civil Code, which differentiates between "actual loss" [*erlittener Schaden*] and "loss of profit" [*entgangener Gewinn*], and the concept of "reparation for the caused insult" [*Tilgung der verursachten Beleidigung*]. It is undisputed that compensation could be claimed for actual loss, understood strictly as the pecuniary harm suffered. This form of compensation is granted in cases where full satisfaction is not postulated or where a special statutory provision so prescribes.[25] Beyond this, the notion of "full satisfaction" [*volle Genugtuung*] encompasses not only the recovery of actual loss but also loss of profit and reparation for the caused insult. Full satisfaction is granted in cases of violation of contracts, intentional torts, negligent torts in cases of gross negligence or in special torts, where full compensation is explicitly postulated by law.[26]

However, the exact legal meaning of the phrase "reparation for the insult caused" has been subject to debate – specifically, whether it merely constitutes a tautological restatement of "full satisfaction" or represents a doctrinal opening for the recognition of immaterial damages and compensation of non-pecuniary harm.[27]

In the early 19th century, Austrian courts still recognised claims for non-pecuniary damages in cases of full satisfaction. However, this recognition ceased in the course of the following decades. The turning point appears to have occurred after the turn of the century, influenced by the German Civil Code [*BGB*], which contains an explicit provision restricting non-pecuniary damages to cases where the law expressly permits them.[28]

The Austrian Supreme Court, however, did not explicitly refer to the German Civil Code in its reasoning. Instead, after it had already abandoned its earlier jurisprudence on the matter, the Court justified its position by invoking the views of the Austrian Civil Codes original drafters.[29] This line of reasoning in that particular case, which was about illegitimate seduction, is not without foundation, insofar as a discussion during the

[25] *Ibid.* pp. 391–393.
[26] *Ibid.*
[27] *Infra.*
[28] BYDLINSKI, Franz: Der Ersatz ideellen Schadens als sachliches und methodisches Problem [Compensation for Non-Pecuniary Damage as a Substantive and Methodological Problem]. *Juristische Blätter [Juristic Pages]*, 1965, No. 87, p. 178.
[29] GIUNF. 4185 = Judikat Nr. 184, 1908.

making of the Civil Code with Zeiller in 1806 on the matter had concluded that non-pecuniary harm to one's sexual honour was, as a rule, not subject to compensation.[30]

What is particularly noteworthy, however, is that legal doctrine evolved in the opposite direction during this period, increasingly acknowledging the legitimacy of non-pecuniary claims despite the restrictive stance of the courts.[31]

3.3. Sexual Torts

As the extent of compensation is dependent on the type of tort, it is important to differentiate between them. In Art. 1325 ff. of the Civil Code there are special provisions for certain harmful acts, but if a criminal act does not fall under those provisions, the general rules of Art. 1323 and 1324 of the Civil Code order the compensation of full satisfaction only in cases of intentional harm or gross negligence.

Even though the compensation of immaterial damages was controversial in most cases, there was consensus on the compensation of pain in cases of bodily harm per Art. 1325 of the Civil Code.[32] In cases of rape this type of compensation was plausible in most cases, although there was no consensus if the pain of a pregnancy was eligible to compensation. The courts granted compensation in cases of severe and unusual pain and suffering, while the predominant opinion of scholars was against any compensation.[33]

Art. 1328 of the Civil Code – which was under the marginal heading referring specifically to bodily harm – constituted merely a special provision addressing the case of the seduction of an unmarried woman that resulted in the conception of a child. In such

---

[30] OFNER, Julius: *Der Ur-Entwurf und die Berathungs-Protokolle des Österreichischen Allgemeinen bürgerlichen Gesetzbuches. 2 [The Original Draft and the Consultation Protocols of the Austrian General Civil Code. Part 2]*. Vienna, 1889, Hölder, pp. 195 ff.

[31] PFAFF, Leopold: *Zur Lehre von Schadenersatz und Genugthuung nach österreichischem Recht : eine Replik [On the Doctrine of Damages and Satisfaction under Austrian Law: A Reply]*. Vienna, 1881, Hölder.

[32] KIRCHSTETTER, Ludwig von – MAITISCH, Ferdinand (ed.): Commentar zum Oesterreichischen Allgemeinen bürgerlichen Gesetzbuche : mit vorzüglicher Berücksichtigung des gemeinen deutschen Privatrechts *[Commentary on the Austrian General Civil Code: With Special Consideration of Common German Private Law]*. Leipzig – Vienna, 1894, Brockhaus, pp. 653–655.

[33] WOLFF, Karl. In KLANG, Heinrich (ed.): *Kommentar zum Allgemeinen bürgerlichen Gesetzbuch Vierter Band [Commentary on the General Civil Code, Volume Four]*. Vienna, 1935, Österreichische Staatsdruckerei, p. 137.; EHRENZWEIG, Armin: *System des österreichischen allgemeinen Privatrechts Zweiter Band Erste Hälfte: Das Recht der Schuldverhältnisse [System of Austrian General Private Law, Volume Two, First Half: The Law of Obligations]*. Vienna, 1920, Manz, p. 605.

cases, the father was obligated to cover the costs of childbirth and postpartum care, next to other paternal duties.

This meant that incidents involving violations of sexual self-determination had to be addressed under the general rules of tort law. As shown previously, Art. 506 of the Criminal Code of 1852 also established a civil liability for seducing and dishonouring a woman with a later broken marriage promise, which likewise had to be resolved in accordance with the general rules of compensation law. But claims for actual pecuniary damages caused by a breach of an engagement could also be asserted under Art. 46 of the Civil Code.

3.4. Partial-Amendments to the Civil Code

The partial amendments [*Teilnovellen*] to the Civil Code during the First World War introduced substantial revisions to the law of obligations and tort. The first partial amendment established a legal obligation for every father to cover childbirth and postpartum costs for a period of six weeks.[34] Today, this provision is found in Art. 235 of the Civil Code and extends the obligation to eight weeks. With this, the duty to provide damages, which had previously been grounded in the old Art. 1328 of the Civil Code, was generalised and made applicable to all fathers.

The third partial amendment[35] now revised that Art. 1328 into a regulation for compensation in cases of sexual violence. The new wording drew upon Art. 825 of the German Civil Code, while extending its scope by adding the alternative of any criminal act instead of just deceit, coercion, or abuse of authority, thereby extending applicability to a broad range of sexual offences.

Another difference to the German Civil Code was, that the compensation of immaterial damages was explicitly excluded. Even the Austrian terminology of "full compensation" was avoided. Instead the "compensation of the suffered damage", which was meant to mean the actual pecuniary loss and loss of profit was explicitly postulated. This legislative choice was based on the assumption – revealed in a report from the House of Lords – that the courts continued to award non-pecuniary damages as they had in

[34] Art. 167 of the Civil Code in the version of RGBl. Nr. 276/1914.
[35] RGBl. Nr. 69/1916.

the 19th century.[36] There was, however, broad consensus that compensation for the loss of sexual honour was not to be granted.[37]

The new provision, which postulated compensation of both lost profit and actual loss, was a change insofar as it permitted the recovery of lost profits even in cases of only slight negligence. The legislature deliberately avoided the terminology of full satisfaction in order to definitely exclude claims for non-pecuniary damages. Another notable change was that the reform introduced a shift in liability, assigning it to the primary instigator of the act rather than the person who engaged in the sexual act, although those two were mostly the same person.

From today's perspective, this reform left certain gaps: for example, no compensation was provided for violations occurring within marriage or for non-coital sexual acts.

At this stage, the notion of sexual self-determination had not yet entered the legal discourse in civil law, despite its emerging role in criminal law debates. Compensation for the immaterial damages of pain and suffering [*Schmerzengeld*] continued to be available under Art. 1325 of the Civil Code.

A point of doctrinal controversy after the amendments concerned the compensation for loss of marriage prospects. Scholars debated whether compensation should be available for the mere reduction of marital prospects in general, or only for demonstrable pecuniary loss resulting from a specific lost opportunity to marry.[38]

A Change in Course: These provisions of the Civil Code remained in force throughout the Second World War and the subsequent period of occupation and afterwards. But there occurred a change in the legal discourse. Developments in Germany once again served as an impulse for Austria. The enactment of the Basic Law [*Grundgesetz*] in Germany prompted the German Federal Court of Justice to depart from the restrictive wording of Art. 253 of the German Civil Code and to recognise claims for non-pecuniary damages.[39] This judicial evolution inspired renewed interest among Austrian legal scholars and practitioners.

Both courts and legal scholars called increasingly for legislative reform that would permit compensation for immaterial harm. However, in 1965, the law professors Rudolf

---

[36] Bericht der Kommission für Justizgegenstände [Report of the Commission for Judicial Matters], *Stenographische Protokolle des Herrenhauses [Stenographic Records of the House of Lords]*. XXI Session, 78, pp. 277 ff.

[37] STRASSER, Rudolf: Zum schadensrechtlichen Schutz der Geschlechtssphäre [On the Protection of the Sexual Sphere under Tort Law]. *Juristische Blätter [Juristic Pages]*, 1965, No. 87, p. 574.

[38] WOLFF in KLANG, *op. cit.*, p. 157.; EHRENZWEIG, *op. cit.*, p. 605.

[39] BYDLINSKI, *op. cit.*, pp. 175–177.

Strasser[40] and Franz Bydlinski[41] argued that the existing Austrian legal framework already allowed for a broader recognition of non-pecuniary damages than had previously been assumed.

With regard to the special provision in Art. 1328 of the Civil Code, however, Bydlinski continued to oppose the inclusion of non-pecuniary damages in the compensation in cases of sexual torts. He emphasised that the legislature had, on two separate occasions, explicitly rejected such an extension.[42] Strasser, by contrast, advocated for their compensation even in this context. He suggested that a wider interpretation of the provision, that strayed away from the historical will of the legislature, could permit such compensation, insofar as the term "suffered damage" might be understood to include immaterial harm.[43]

Strasser's argumentation was a change in course in another respect as well: he explicitly stated that Art. 1328 served to protect the freedom of the sexual sphere, rather than the honour associated with it. In support of this position, he noted that the notion of sexual honour appears only in Art. 506 of the Criminal Code of 1852, and even there, only to limit the extension of the delict, not as an autonomous protected interest.[44]

In 1985, the Supreme Court followed Strasser's reasoning and granted compensation for non-pecuniary harm in cases of rape and violent sexual abuse.[45]

Clarity was ultimately achieved through the Protection Against Violence in Families Act in 1996[46], which marked a decisive turning point. On one hand, the amendment introduced the marginal heading "Violation of Sexual Self-Determination" for Art. 1328 of the Civil Code, thereby explicitly re-framing the protected legal interest. On the other hand, the requirement that the act had to occur outside of marriage was abolished, and the provision was no longer limited to sexual intercourse; any form of sexual violence was now enough to trigger liability. Moreover, the amendment expressly ordered the compensation for the impairment suffered – that is, for non-pecuniary damage. With this, the concept of sexual self-determination was definitively established as the protected legal good.[47]

---

[40] STRASSER, *op. cit.*, p. 576.
[41] BYDLINSKI, *op. cit.*, pp. 180–181.
[42] *Ibid.*, pp. 238–246.
[43] STRASSER, *op. cit.*, pp. 576–577.
[44] *Ibid.,* p. 574.
[45] OGH 7 Ob 566/85.
[46] BGBl. Nr. 759/1996.
[47] REISCHAUER: § 1328 ABGB [Art. 1328 Civil Code]. In: RUMMEL, Peter (ed.): *ABGB-Kommentar3 [Civil Code Commentary]*., https://rdb.manz.at/document/1101_abgb_p1328 [Access on 24. November 2025].

4. Conclusion

In comparison to the development of the discourse in criminal law it took longer for the idea of sexual self-determination as a legal good to gain a foothold in the discourse in civil law. A similarity was, that in both cases the legal scholars first proposed the change, the courts then tried adapting within the existing legal framework to the new ideas, and lastly the legislature changed the law.

If one looks at all the small steps that led to today's understanding of the legal good of sexual self-determination, one cannot attribute it to a single movement, like the second feminist-wave, although it was during that time period, that the discussion between Strasser and Bydlinski took place. But many different discussions, about the meaning of existing laws, the general question of compensation of immaterial damages, and actual reform discussions concerning laws on sexual violence all had different influences on the discussed development, which shows that different lines of development can collide with each other in a concrete case.

Lucija PAPEŠA: The position of women in the criminal law of the Interwar Yugoslav state

University of Zagreb, Faculty of law

DOI 10.21862/siaa.9.7

1. Historical context

With the end of the World War I in 1918, the political and territorial map of Europe was significantly redrawn. Following the dissolution of the Austro-Hungarian Monarchy, several new states emerged, among them the Kingdom of Serbs, Croats and Slovenes. The newly formed state inherited a fragmented legal framework, encompassing six distinct legal areas corresponding to the diverse legal traditions inherited from the Austro-Hungarian, Serbian and Montenegrin systems of law. These were the Croatian-Slavonian, the Dalmatian-Slovenian, the former Hungarian territory, the Bosnian-Herzegovinian, the Serbian and the Montenegrin legal areas. This pluralism persisted in the domain of criminal law until 1929, when the new Criminal Code was promulgated, entering into force in 1930.[1]

The timing of the codification wasn't coincidental. That same year also marked a decisive political rupture: King Alexander I proclaimed the so-called 6th of January Dictatorship, which brought an end to the parliamentary system and officially renamed the state the Kingdom of Yugoslavia.[2] Whereas attempts at codificatory unification had proven unfeasible under parliamentary conditions, the authoritarian framework of the dictatorship accelerated and ultimately enabled their realization through the enactment of the new Criminal Code. The Criminal Code of 1929 was not merely a

[1] PASTOVIĆ, Dunja: Unification of Criminal Law in the Interwar Yugoslav State (1918–1941), *Krakowskie Studia z Historii Państwa i Prawa*, No. 4, 2019, pp. 555-556.
[2] *Ibid.*, pp. 555-556.

technical instrument of state harmonization, but a manifestation of broader state-building strategies.[3]

2. The Criminal Code of 1929

King Alexander dissolved the National Assembly and abolished the 1921 Constitution, effectively declaring a dictatorship. With the dissolution of the National Assembly, the process of unification gained momentum and as a result of this harmonization, the new Criminal Code was adopted.[4]

The earlier dualistic sanctions based on gender were omitted: a woman became a fully independent subject of the law with the same rights and obligations as a man. Before the authorities, both women and men were equally responsible, regardless of sex. Men were not granted any prerogatives in of criminal law compared to women. The equality was not explicitly prescribed, as in some other codes, but arose from the will of the legislator in the written regulation and the very organization of substantive criminal law.[5]

However, an *expressis verbis* declaration of equality does not necessarily imply actual equality. What truly matters are the underlying problems and how are they resolved: what legal interests of women are primarily protected, and in what manner does criminal law treat women as legal subjects?[6] It is therefore necessary to examine the position of women prior to the adoption of the new Criminal Code.

---

[3] ČULINOVIĆ, Ferdo: *Jugoslavija između dva rata. Knjiga II [Yugoslavia between two World wars. Book II]*. Zagreb, 1961, Historijski institut Jugoslavenske akademije u Zagrebu, pp. 10-11.
[4] PASTOVIĆ, *op. cit.,* p. 568.
[5] ČULINOVIĆ, Ferdo: *Žena u našem krivičnom pravu [Woman in our criminal law]*. Beograd, 1934, Globus, pp. 31-33.
[6] *Ibid.*

3. The position of women in criminal law until 1929

As already noted, prior the unification of criminal law in the Criminal Code of 1929, six different legal regions existed within the Yugoslav state. Each was governed by its own inherited criminal legislation, valid only within its respective territory. The position of women was undoubtedly more difficult before the adoption of the 1929 Criminal Code, and it differed depending on the legal area to which they belonged. Below are examples from two codes that were in force in two of the legal areas.

The position of women was especially difficult in the Criminal Code of Sebia of 1860, according to which women had a very subordinate position, especially in the family to the head of the household. According to § 349 a husband could be punished with up to thirty days in prison if he was extremely inhumane towards his wife and beat her mercilessly. If it was not possible to prove extreme inhumanity or merciless beating, the husband would not be punished. That provision is found in Chapter 37, which deals with heads of households and their families, masters and servants. The placement of the provision in that Chapter shows how women were viewed. They were not part of a relationship between family members but rather more part of a relationship between of a master and servant.[7]

Women were not left completely unprotected by the Criminal Code of Serbia, but they were protected to a certain extent. A good example of this is provided by § 199 of the same code, which stipulates that "*whoever, besides his living, undivorced wife, keeps a mistress in the house, and the wife sues him*..." will be punished with a prison sentence of a minimum of one month and a maximum of six months. Such a criminal offense certainly protects the wife, but to the extent that the husband can be released from liability only if he does not keep the mistress in the same place as his wife. However, he will not be excluded from liability if he commits fornication in public or if they live

[7] *Ibid.*, pp. 25-29.

together "*to the public scandal*", in which case the provision of item 11 of § 369 will apply and the husband will be punished with a prison sentence.[8]

The position of women living in the Croatian-Slavonian and Dalmatian-Slovenian legal areas, where the Austrian Criminal Code of 1852 governing crimes, offenses, and misdemeanors was in force, was no more favorable. The woman was subordinate to her husband and this is evident in § 96, which is comparable to § 197 of the Criminal Code of Serbia, which reads "*When a married woman is taken away from her husband by force or cunning or even with her will*...", the perpetrator shall be punished with imprisonment. It is completely irrelevant whether the woman was kidnapped, deceived or left her husband of her own free will, because her will is irrelevant. Such a norm concludes that the legislator's intention was not to protect the woman's freedom or respect her wishes, but rather that the intention was something else. It is not the violation of bodily integrity and freedom of a woman, but rather the violation of the sanctity of marriage that is punished, thus protecting this sacred institution instead of a woman, her free will and her personal rights.[9]

4. The general position of women in the interwar Yugoslav state

Through feminist movements, women fought to improve their position, as well as to contribute to society and politics. The emancipation of women is one of the preconditions for the progress of society and that struggle required active involvement of women and the support of men. Of course, to get the support of men, it's a given that men should have felt the need for emancipation of women as a must, or at least a necessity.[10] The process of women's emancipation in interwar Yugoslav state took place in a highly patriarchal society. However, as women during the First World War

[8] *Ibid.*
[9] *Ibid.*
[10] LUKNAR, Ivana: Doprinos žena u međuratnoj Jugoslaviji (1918.-1939.) [The contribution of women in the Interwar Yugoslav state (1918.-1939.)]. *Nacionalni interes,* No. 3, 2022, pp. 254-256.

performed various jobs, previously men's jobs as men were at war, the interwar period was made a better environment than the pre-war period for success in improving the position of women.[11]

During the World War I, women's involvement became essential. After two years of war, women in Britain accounted for half of the employed population and three-quarters of those employed in the production of mines. That period brought a new dynamic in male-female relations: those men who returned from the war were not the same men they were before as they had difficulty accepting their disabilities and the psychological consequences of the war. That made it difficult for them to remain breadwinners for their families. And as a result, women became the family's financial backers. One of the reasons why they were able to do so was that they were cheaper labor than men.[12]

The post-war years were the years in which universities began to admit their first female students, and so in 1920, University of Oxford granted women full membership by statute and allowed full formal enrollment and obtaining a degree.[13] For comparison, the first female students who wanted to enroll in the Faculty of Law in Zagreb were able to do so in the academic year 1919/1920. There were 20 of them in total who did so. This became possible because of the Act of 12th September 1918 on Amendments to the Act on the Organization of the University of 1874 and 1894 that allowed women to attend the Faculty of Law. Related to this was the Order of the Government of the National Council of Slovenes, Croats and Serbs of 6th November 1918, No. 32443, which stipulated that "*women may enroll as full-time and part-time students in the Faculty of Law and Political Science under the same conditions as male students*". By the end of the interwar period, in the academic year of 1940/1941, the share of the female student population made up one sixth of the total number of enrolled students.[14] It is safe to

[11] *Ibid.*

[12] BEDANJEC, Tatjana: Kako je Prvi svjetski rat utjecao na položaj žena u društvu? [How did World War I affect the position of women in society?], https://www.profil-klett.hr/kako-je-prvi-svjetski-rat-utjecao-na-polozaj-zena-u-drustvu [Access on November 10, 2025].

[13] *Ibid.*

[14] *Pravni fakultet Sveučilišta u Zagrebu*, *Prilozi za povijest fakulteta*, *Sv.1*. *[University of Zagreb, Faculty of law, Contributions to the history of the faculty, Vol. 1]*. Zagreb, 1996, Pravni fakultet, pp. 352, 395.

assume that the interwar period was fruitful for the emancipation with just this one example. The higher the level of education a woman has, she becomes more financially independent from man, which is a serious step forward to gender equality.

5. The position of women in criminal law in the interwar Yugoslav state

According to Ferdo Čulinović, a Croatian legal scholar and historian of law, in order to decide whether the new Criminal Code has improved the position of women and how much, it is crucial to investigate whether the key issues affecting the most important interests of every woman have been properly resolved. In order to find an answer to that question, it is not the principled equality of the sexes that is of primary importance to, but what are the new Code's solutions to the many legal interests of women.[15]

That is why he divides the provisions of the Criminal Code that refer to women into two groups. The first group of provisions refers to criminal offenses concerning the violation of a woman's personality. These criminal acts relate primarily to the protection of women from violations of her physical integrity, especially sexual integrity. These include criminal acts such as abortion, rape, kidnapping of women, prostitution and the transmission of venereal diseases.

The second group of provisions refers to the protection of the institution of marriage, although it can also be said that the woman's personality is protected to a lesser extent. In this group we can include criminal offenses such as adultery, bigamy and *raptus in parentes*. In this group are also included provisions that apply to an unmarried woman who is a mother.[16]

[15] ČULINOVIĆ, *op. cit.,* pp. 34-36.
[16] *Ibid.*

The aforementioned provisions are substantive in nature. Ferdo Čulinović also mentions a division into provisions of procedural and substantive naturel, but the focus of the analysis of this paper will be on the substantive legal provisions.[17]

5.1. Protection of women's personality rights – bodily integrity and bodily freedom

For the protection of a woman's personality rights (i.e., her bodily integrity), the normative regulation of abortion is certainly of the greatest importance. Our older criminal law systems regulated this issue differently, but voluntary abortion was always a criminally punishable act. It is interesting to note that according to Hammurabi's Code, the punishment of abortion had the primary goal of criminally protecting women and their bodily integrity. Namely, according to it, the person who would cause an unwanted termination of pregnancy was punished. It was not about punishing a pregnant woman or punishing a person who performs an abortion to which the woman has consented, but rather one performed against her will. There was no prison sentence for the convicted, the punishment was only a fine.[18]

In the earlier criminal laws of the Yugoslav state region, abortion was always considered the taking of a human life for which one was held accountable. The fetus was protected under criminal law from any claim to its legal sphere, including from the woman who carried it in her womb.[19]

5.1.1. Abortion

The regulation of voluntary abortion is one of the most important issues in the protection of women's personal rights. The decision to have children and how many

[17] *Ibid.*, pp. 34-36.
[18] *Ibid.,* pp. 37-38.
[19] *Ibid.,* p. 42.

children to have, are extremely important decisions that a woman must be able to decide freely in order to be an equal participant in society, in the sense that she can live her life without being constrained by law, by other people's ideas and views of her as a woman and her role. Abortion is regulated more liberally in the new Criminal Code compared to previous legislation and as such constitutes a commendable attempt to truly equalize gender equality.[20]

However, the new regulation still did not meet the needs of women at the time. It restricted their basic personal rights: the right to bodily integrity and personal freedom of women to decide if they want to legally terminate the pregnancy or not, which is why it cannot be said that the new Code adequately protected women's interests, especially in the matter of abortion, which is one of the most important interests of women.[21]

In older legislation, every abortion was considered the killing of a human being and, like the murder of a born human being, was invariably punishable by law. Although the fetus did not have legal personality in the sense that its personal private rights, such as its right to life, could be protected, it did in fact have it in the sense that it was protected from any interference with its legal sphere. A human being acquires legal personality at birth and at the same time becomes a natural person, the bearer of rights (such as a right to life, bodily and mental integrity, privacy, honor and others) and obligations. Its bodily integrity was protected by criminal legislation, regardless of the fact that it did not have legal personality, even against its mother, the bearer of the fetus, without whom the fetus could not live independently.[22]

There are different criminal offenses under the Criminal Code that concern the criminalization of abortion, and their differences in an important part relate to the

[20] *Ibid.,* p. 37.
[21] *Ibid.*
[22] *Ibid.*, p. 42.

person responsible for the committed crime, as well as whether the abortion was done with the woman's consent or against her will.

5.1.1.1. Direct abortion of a fetus (§ 171)

§ 171 of the Criminal Code regulates the criminal offense of direct abortion of a fetus, stipulating that only a pregnant woman who either performs the abortion herself or consents to another person performing it can be held liable for this offense, and prescribes a penalty of imprisonment for up to three years. However, in less severe cases, the court may, at its discretion, reduce the sentence or completely exempt a pregnant woman who is unmarried and has performed the abortion without the assistance of others. The offense is considered complete upon the abortion of the fetus, and an attempt to commit this criminal offense itself is not punishable.[23]

5.1.1.2. Abortion of the fetus with the consent of the pregnant woman (§ 172)

§ 172 of the Criminal Code regulates the indirect abortion of a fetus with the consent of a pregnant woman. From the very name of the criminal offense, it can be concluded that the woman does not perform this type of abortion on her own, but rather someone else performs the procedure with her consent. The first paragraph of the provision reads: "*Whoever, at her request or with her consent, gives a pregnant woman any means, or causes her to abort, shall be punished with strict imprisonment*." A person who intentionally performs an abortion, whether by causing it with abortive means or by performing it, shall be punished with a prison sentence of at least seven days and a maximum of five years. The act is completed when the fetus is aborted from the uterus

[23] DOLENC, Metod: *Tumač Krivičnog Zakonika Kraljevine Jugoslavije [Commentary on the Criminal Code of the Kingdom of Yugoslavia]*. Zagreb, 1930, Tisak Tipografija d. d., pp. 241-242.

and, as with the criminal offense under § 171, an attempt to commit the offense is not punishable. However, if the abortion is performed by a medical professional, the aforementioned paragraph does not apply, as it then constitutes an aggravated form of the criminal offense.[24]

Section 2 of § 171 regulates the qualified form of this criminal offense, which reads: "*If it is performed by a doctor, pharmacist, midwife or a person who performs it for a reward, he shall be punished with imprisonment of up to 5 years*." As with the previous forms, the criminal offense is completed when the fetus is aborted from the uterus, however, the qualified form of the criminal offense also provides criminal liability of the attempt to carry out the procedure. [25]

The rationale for imposing harsher penalties on doctors is clear: abortions performed by medically trained professionals would likely lead to a greater number of procedures, as they would be carried out according to established professional standards. The extent of the effort to dissuade doctors from performing abortions can be seen from section 3 of the same provision, according to which a doctor who performs an abortion that has already begun must notify the competent authority within three days. Failure to do so will result in a prison sentence of up to one year.[26]

Between the interest of protecting a woman's right to freely decide on having children and, if she so chooses, to have an abortion performed according to the highest medical standards, and the interest of the state in protecting every fetus, the latter prevailed.

[24] *Ibid.*, 242-244.
[25] *Ibid.*
[26] *Ibid.*

5.1.1.3. Abortion of the fetus without the consent of the pregnant woman (§ 173)

§ 173 regulates the indirect abortion of a fetus without the consent of the pregnant woman. Any person who performs such an abortion without her consent, if found criminally liable, shall be punished with imprisonment. The maximum penalty for intentionally causing a miscarriage against a pregnant woman's will is five years' imprisonment, and if this act results in the death of the woman, the minimum sentence is five years.[27]

This act is punishable only if it is committed intentionally, therefore if it is not committed intentionally, there is no illegality of the act because the essence of the criminal act is not fulfilled. To complete the criminal act, it is necessary that the fetus is aborted from the pregnant woman's body, and if this does not happen, the criminal act remains an attempt. However, in this case the attempt is also punishable because of the severity of the offence: it is only necessary that the crime of abortion was attempted with the intention of terminating the pregnancy and that the woman did not consent to the termination. This is sufficient for criminal liability to exist.[28]

5.1.1.4. Under what circumstances was performing an abortion not punishable?

As a rule, especially in earlier legislation, if there was a conflict of interest between a pregnant woman and her fetus, the woman's interests would be sacrificed. It made a paradoxical situation in which the interests of a future person (in the legal sense, a person who has not acquired legal personality as it hasn't been born and therefore cannot be the holder of rights, e.g., the right to life that can be protected) were more

[27] *Ibid.*, pp. 244-246.
[28] *Ibid.*

protected than the interests of the woman who carried it in her womb and who was a fully developed and social being.[29]

There is no conflict between a woman's right to her bodily integrity and bodily freedom and a fetus's right to life because humans acquire such rights only at birth. Only a person who has acquired legal subjectivity has certain rights (such as the right to life) and the possibility of protecting these rights. Therefore, the fetus as an unborn human being cannot (or its representative for him) protect his right to life because he doesn't have it. *Nasciturus* can be cited as a counterargument to this claim. And indeed, in it, it is the case that the unborn child is given legal subjectivity, but this is only in relation to its property rights, not its non-property rights, which include the right to life.[30] The prohibition of voluntary abortion is actually a matter of the public law power of the state, which regulates society with its criminal norms, in accordance with prevailing social values, and with its legitimate apparatus of power.

Section 3 of § 173 introduces some changes in the previous protection of a woman's bodily integrity. The provision reads: "*A doctor who, with prior notification to the authorities and on the basis of a medical commission's opinion, properly induces a termination of pregnancy or an abortion in order to save her life or eliminate an unavoidable danger to her health, when this is not possible in any other way, will not be punished*". This established a new legal method for abortion in which there is no criminal liability. That means that doctors could in moments of great danger to the mother's life file a report and wait for the conclusion of the medical commission to carry out a legal abortion. However, such a regulation is not a viable solution because in life-threatening situations, more often than not, a quick reaction is necessary. Before a report is filed and the commission meets, the woman may die. Therefore, if a doctor

[29] ČULINOVIĆ, *op. cit.,* p. 43.
[30] *Ibid.*

acted without the commission meeting, he acted on his own responsibility. Whether he would be punished for it depended on whether it was a state of extreme necessity.[31]

However, it also has to be said that this kind of termination of pregnancy is not a type of voluntary abortion because it depends on external, other circumstances, and not on the consent of the pregnant woman. In fact, the procedure is done out of state of extreme necessity. This provision does not actually provide the woman with criminal protection and protection to her right to bodily integrity: it only satisfies the principle of impunity for abortion performed in extreme necessity.[32]

5.1.1.5. Application of section 3 of § 173 of the Criminal Code

The application of the provision was in reality extremely difficult and it could apply only to a small number of cases. Reports that a pregnant woman wanted or needed to have an abortion had to be sent to a specific state body and this report, in order to avoid inconvenience for the woman, was regularly made by a doctor.

After the report of the intention to have an abortion, the pregnant woman had to be examined by a medical commission that was supposed to give its opinion. The medical commission was regulated by the Decree on the composition of the medical commission from 16th April 1930, and according to the Decree, three members of the commission or exceptionally two should be present for the examination. Based on the examination and official records, the commission would give its opinion and only if that opinion was unanimous, a legal termination of pregnancy could occur. In the event that the commission's conclusion was not unanimous, then the commission can decide by majority vote of the members whether and when the pregnant woman will be examined again.[33]

[31] DOLENC, *op. cit.,* pp. 245-246.
[32] ČULINOVIĆ, *op. cit.,* pp. 48-49.
[33] *Ibid.*, pp. 49-50.

According to Ferdo Čulinović, such a procedure was too difficult to implement in practice, and he believed that only a few women could actually undergo it. He noted that the accessibility of such abortions for women living in rural areas was not adequately considered, since even in these regions, where there is often only one doctor, a medical commission is required.

According to section 3§ of § 173, an abortion could not be performed without the opinion of a medical commission, which was particularly difficult to obtain in rural areas. Under this legal provision, obtaining an abortion in life-threatening situations, especially for women in the countryside, was almost impossible. Fortunately, the previously mentioned Regulation on the Composition of the Medical Commission also addressed this situation in more detail. Although the general rule stated that the medical commission must consist of at least three members, the regulation allowed, as an exception in urgent cases (e.g., in the case of eclampsia), for the doctor to terminate the pregnancy without prior approval from the commission. In such cases, the doctor was obliged, whenever possible, to involve at least one additional physician and to prepare a record of their joint work. Since this provision was much easier to implement, it effectively allowed circumvention of the medical commission requirement under Section 3 of § 173 of the Criminal Code.[34]

5.1.2. Rape (§ 269)

The provision of § 269 of the Criminal Code regulates the criminal offense of rape and is included in Chapter 24, which addresses criminal acts against public morality. In addition to safeguarding public morality, the protection of a woman's bodily integrity and personal autonomy is no less important.[35] A person shall be punished for rape by imprisonment of up to ten years: "*who forces a female person with whom he is not*

[34] *Ibid.,* pp. 51-53.
[35] *Ibid.*, p. 97.

married to by force or by threat of simultaneous danger to life or body; or who previously renders her unconscious or otherwise incapacitates her for defense."

The object of this criminal offense is an unmarried woman, because rape between married spouses is not a criminal offense. Rape is a criminal offense that falls under the chapter of criminal offenses against public morality, and as such, the public displays of immorality must be punished.[36] Marriage is a private institution that people enter into, among other things, for the sexual component of it. It seems that this criminal offense was based on the idea that by entering into marriage the spouses agree to sexual intercourse whenever, as it is one of the expected components of the marital relationship, and even an obligation, and as such is not punishable by law.

The method of committing this crime is the joining of the genitals of two persons of different sex, and it does not require sexual maturity for either the woman or the man, nor does it require *ejaculatio seminis* for the man. The perpetrator of the crime can only be a man, while a woman can participate either as an accessory or an instigator. The victim of the crime can only be a woman who is sexually mature, meaning she has reached the age of 14.[37]

It is noteworthy that this criminal offense is punishable only if committed with premeditation, that is, when the perpetrator acts with the knowledge that the woman is not his wife, that she does not consent to sexual intercourse, and that he is forcing her or threatening her with simultaneous danger to her life.[38] The very notion that rape could be committed accidentally or negligently is difficult to conceive, as is the idea that a man could defend himself by claiming he believed the woman was his wife. Moreover, if she were his wife, the act would not constitute rape at all, as marital rape was not recognized as a criminal offense at that time. This construction of the provision illustrates how legislation was still largely shaped through the prism of patriarchy.

---

[36] DOLENC, *op. cit*., p. 346.
[37] *Ibid.,* p. 347.
[38] *Ibid.*

The positive side of this provision is that it gives criminal protection to all women, even prostitutes. However, there are further negative aspects, one of which is that an act would not be considered rape if a woman is forced under the threat of material damage. The definition of the crime of rape, as stipulated in § 269, refers only to threats to life or bodily integrity. It is reasonable to argue that a threat of property damage could also be of significant importance to a woman, as it would be, for example, damage to her reputation. Such interests, however, are not protected under the scope of this provision. Another major drawback is that this crime is prosecuted *ex officio*, rather than through private initiative, which deprives the woman of the ability to initiate the early stages of criminal procedure at her own discretion. Furthermore, such proceedings often caused more harm than benefit to the victim, as they made public the fact that she had been raped.[39]

While the intention to ensure that such crimes are always reported is commendable, it is questionable whether this approach serves the best interests of each individual woman. Not only were women deprived of the choice to initiate the criminal proceedings, but they were also compelled to endure an entire process that might not even result in a conviction.

This legislative approach reveals more than a simple gap in legal protection, it exposes the underlying social and moral framework of the interwar Yugoslav state. By defining rape as an offense against public morality rather than as a violation of a woman's personal integrity, the legislator effectively shifted the focus from the protection of the individual to the preservation of social order. The exclusion of marital rape from the scope of criminal protection clearly illustrates the patriarchal notion that a woman, by entering marriage, permanently consents to sexual relations with her husband. Within such a framework, a woman's bodily autonomy was not legally recognized, as marriage itself was regarded as the legitimizing source of a man's sexual rights. In this way,

[39] ČULINOVIĆ, *op. cit.,* pp. 98-99.

criminal law, rather than protecting women's freedom, functioned as an instrument for upholding traditional, patriarchal values embedded in both family and society.

5.2. Protection of marriage and patriarchal family values

The 1931 Constitution of the Kingdom of Yugoslavia lists the institution of marriage as one of its the important social values. Article 21 of the Constitution stipulates that family, marriage and children are of utmost importance to the state, that is, they are under the protection of the state.[40] In accordance with the Constitution, the Criminal Code of 1929, also relied on the family as a fundamental institution worthy of protection. The protection of the woman's personal rights was occasional and rarely a primary focus of the provisions.

5.2.1. Adultery (§ 292)

The criminal offense of adultery is one of the most repressive provisions in the Criminal Code, yet it should be noted that it is relatively more liberal compared to previous legislation. Under the former Serbian Criminal Code, § 365, a woman who committed adultery was punished more severely than a man who committed the same offense. In the Criminal Code of 1929, women and men as adulterers are equal in responsibilities and sanctions for that crime, and this is a commendable development for the equality of the genders. The criminal prosecution for adultery was left to the private lawsuit of the party whose legal interest has been violated.[41]

However, one must question the rationale behind criminalizing adultery. If marriage is understood as a contract freely entered into by two individuals and that contract remains in force, why is adultery regulated under criminal law when there are civil law

[40] *Ustav Kraljevine Jugoslavije [Constitution of the Kingdom of Yugoslavia],* Beograd, 1931, Državna štamparija Kraljevine, p. 8.
[41] ČULINOVIĆ, *op. cit.,* pp. 109-110.

remedies, such as divorce, that can address breaches of marital obligations? Another question naturally arises: what is the purpose of suing a person for adultery if one does not intend to seek a divorce? Perhaps it served as a tool of revenge in the hands of the wronged spouse.[42] In such cases, divorce remains fully at the disposal of the wronged party. As Ferdo Čulinović observed: "*What depends on the good will and disposition of the spouses should not be sought by criminal law sanctions*." Such matters should be left to the courts of civil jurisdiction. However, it should be borne in mind that during the period in question, widespread poverty meant that divorce offered little benefit to the wronged spouse. For women in particular, divorce would not improve their social position; rather, it would make life significantly more difficult, especially from a financial standpoint.[43]

The persistence of adultery as a criminal offense shows that the legislator viewed sexual loyalty as a public concern, not a private choice. In this way, criminal law intruded into the most intimate sphere of life, transforming marital fidelity into a tool of moral discipline rather than mutual trust.

5.2.2. Raptus in parentes (§ 293)

Among the offences protecting the institution of marriage and family, the Criminal Code included the criminal offense of *raptus in parentes,* or the abduction of an underage girl with the intent of marriage without the guardian's permission. The crime is completed when the girl is brought to the place where she is to be married and it's punishable by up to three years in prison, unless it is a more serious criminal offense (for example, that the girl's consent was obtained under deception). Criminal

[42] *Ibid.*, pp. 109-110.
[43] *Ibid.*

prosecution was initiated only upon a proposal, and in the event that a marriage took place, then only if the marriage was annulled.[44]

Although it is presented as a criminal offense that protects bodily integrity and bodily freedom, it is more about protecting social order and morality, in fact the patriarchal order, and that is why it is placed in a group of provisions that primarily protect the family and marriage. Of course, underage girls should be protected from underage marriage, but that is not the primary goal of this criminal offense. This crime is based on the right of the father to decide on matters concerning family honor, and when an action undermines traditional social values, and this was done with the abduction, the perpetrator must be punished.[45]

This criminal offense differs from the classic offense of kidnapping a woman regulated in § 246, in that the latter involves the perpetrator forcibly abducting a woman or threatening her to move her to another location for the purpose of marriage.[46] In contrast, in *raptus in parentes*, the abducted girl gives her consent, but this consent is not considered legally valid.

Even where the law ostensibly intervened to protect women's dignity, it did so within the constraints of a paternalistic framework that equated the interests of the woman with those of her family and community. In this sense, *raptus in parentes* stands as another example of how interwar criminal law preserved traditional gender hierarchies under the guise of moral order and family integrity. Although seemingly protective of the woman's freedom, this provision in fact safeguarded paternal authority and family honor. It reveals that legal protection of women operated only insofar as it reinforced the social hierarchy between fathers, husbands, and daughters.

---

[44] RUSPINI, Ivan Angelo: Krivična djela protiv braka [Criminal offences against marriage], *Bogoslovska smotra [Theological Review*], No. 3, 1931, p. 258.
[45] *Ibid.*
[46] DOLENC, Metod; MAKLECOV, Aleksandar: *Sistem celokupnog krivičnog prava Kraljevine Jugoslavije [The entire criminal justice system of the Kingdom of Yugoslavia],* Beograd, 1935, Izdavačko i knjižarsko preduzeće Geca Kona, p. 260.

6. Women as offenders

Criminological theories often attributed female criminality to biology. The menstrual cycle, pregnancy, menopause, and similar "*female states*" were deemed to influence women's reason and morality. Although now outdated, such theories persisted in legal systems for a long time, not only in Yugoslavia, but also in many other states, shaping legislators (all men) and thereby the regulation of criminal law.[47]

Statistical data of the time shows that the most common female perpetrators of criminal offenses were women under the age of 25, women who were married, and women of lower socio-economic status. The concept of "*female crime*" was predominantly linked to moral deviation rather than to a rational or deliberate choice, reflecting the prevailing belief that women's actions stemmed from emotional instability or a failure of virtue rather than autonomous intent.[48] Women who committed crimes were often viewed through the lens of moral weakness or emotional instability, rather than rational intent. This perception shaped a paternalistic approach to female offenders, in which the woman was at once blamed and excused. The best example of this is the crime of infanticide (§ 170).

The criminal act of infanticide occurs when a mother, during childbirth or immediately thereafter, while still under the mental state induced by the birth, takes the life of her child. This act was punishable by imprisonment. A distinction was made between the birth of a legitimate child, which carried a sentence of strict imprisonment, and the birth of an illegitimate child, for which a lesser term of imprisonment was prescribed. In particularly minor cases, the court could, at its discretion, impose a lighter sentence, but it could never fully acquit the woman. That was due to the seriousness of the criminal act itself. However, since it is a crime where there was question of the mental

[47] DOLENC, Metod: Žensko pitanje u kaznenom pravu [The woman question in the criminal law], *Policija [Police],* No. 7-8, April 1927, p. 232.
[48] *Ibid.*, pp. 232-233.

state in which the woman found herself, the attempt of this criminal act was not punishable.[49]

Metod Dolenc, a Slovenian legal scholar who specialized in criminal law, pointed out that other countries did not distinguish in punishment between the infanticide of a legitimate and an illegitimate child, whereas the domestic legislator adopted a paternalistic and protective approach toward women who bore children out of wedlock and their difficult life circumstances. In this way, the legal system acknowledged female vulnerability while simultaneously denying women moral and legal agency. Women were still not perceived as autonomous individuals responsible for their actions, but rather as subjects whose behavior was understood as stemming from emotional or social distress.[50]

The differentiated treatment of married and unmarried mothers shows that compassion in criminal law was conditional on conformity to moral expectations. Even leniency was a form of control, the woman was forgiven, but never trusted to act as a rational and autonomous agent.

7. Conclusion

The 1929 Criminal Code of the Kingdom of Yugoslavia formally established gender equality before the law, but this equality remained largely declarative. The Criminal Code removed gender distinctions that had existed in earlier legal systems, yet its substantive provisions continued to reflect a deeply patriarchal social order. Women were recognized as legal subjects, but only within limits set by male-defined notions of morality, family, and social order.

The protection offered by criminal law was thus ambivalent: while women were shielded from certain forms of physical harm, they were at the same time constrained

[49] DOLENC, Tumač Krivičnog Zakonika Kraljevine Jugoslavije, *op. cit.,* p. 240.
[50] *Ibid.*

by legal norms that reinforced their subordinate social position. The regulation of abortion, for example, subordinated a woman's right to bodily integrity to the abstract moral interest of the state in protecting the unborn, while the regulation of rape treated the offense primarily as an affront to public morality rather than a violation of a woman's autonomy. The exclusion of marital rape from criminal protection most clearly illustrates that the legislator's ultimate concern was not women's freedom, but the preservation of patriarchal family relations. Even when the law appeared to show leniency toward women, as in cases of infanticide, it did so from a paternalistic standpoint that denied female agency, portraying women as victims of emotion or circumstance rather than rational actors. In this sense, the criminal law did not emancipate women but redefined the boundaries of their obedience within a modernized legal framework.

The unification of criminal law in 1929 therefore marked not a genuine transformation in gender relations, but a codified continuation of traditional hierarchies. Equality before the law was proclaimed, but the law itself remained a tool of patriarchal control. The interwar Yugoslav legal order granted women visibility as legal subjects, yet it stopped short of recognizing their full autonomy. In that paradox lies the essence of their position: women were equal on paper, but not in the eyes of the law's creators.

Dániel PINTÉR: Separation from bed and board: a civil legal institution born from a real compromise between the government and the church

Eötvös Loránd University, Faculty of Law

DOI 10.21862/siaa.9.8

1. Introduction

The legal institution of separation from bed and table, in other words, separation[1], originated in canon law. The subject of my thesis, however, is a civil law version of it, created by the legislator in the Act 31 of 1894 on Marriage Law. However, before I go into the analysis of the various sections of the statute, I will first try to explain the political path that led to its creation, which, in my opinion, will help to understand the inclusion of separation in it. In doing so, I have drawn largely on the documents and diaries of the National Assembly from the autumn of 1893 onwards, both in the House of Representatives and in the House of Magnates. Then, with the help of the ministerial justification in particular, I shall describe the legal institution itself in detail, with reference to international practice.

2. The road to civil marriage

2.1. The period prior to the submission of the bill

The demand for civil marriage was always present in the politics of the Dualist era. This is hardly surprising, especially considering that Napoleon introduced it in France as early as 1804[2], a move that was followed by many other states over the course of the

[1] In latin: *separatio a mensa et toro*.
[2] Article 63 of the Code Napoléon.

century. The first draft bill on this matter appeared in Hungary in 1870, initiated by József Eötvös, Minister of Religion and Public Education. At that time, however, the proposal merely aimed to declare, as a matter of principle, the civil contractual nature of marriage – it did not contain any further provisions regarding of it.[3]

In addition to Eötvös, other prominent figures of contemporary politics also took a stand on the issue. Both Ferenc Deák and Dániel Irányi supported the institution. However, a difference arose between the two: while the latter urged swift legislation[4], the former considered a cautious, step-by-step political approach to be more appropriate.[5] Despite all this, Prime Minister István Bittó ultimately decided to postpone the idea.[6]

Later, under the premiership of Kálmán Tisza, the principle of quieta non movere prevailed; the liberal politician believed that introducing civil marriage would risk the essential church support needed to maintain the stability of his power, and therefore deemed it unwise.[7] There was, however, a clear demand for it: in connection with the 1881 bill concerning civil marriages contracted abroad[8], the House of Representatives – regardless of party affiliation – expressed that it wanted more, specifically a law on civil marriage.[9] Nevertheless, the political situation led to such a bill being introduced only at a later time.

---

[3] CSIZMADIA, Andor: *A magyar állam és az egyházak jogi kapcsolatainak kialakulása és gyakorlata a Horthy-korszakban* [*The development and practice of legal relations between the hungarian state and the churches during the Horthy era*]. Budapest, 1966. Akadémiai Kiadó, p. 84.

[4] HERCZEGH, Mihály: *Magyar házassági jog. 1894: XXXI. törvényczikk. (Szentesitve 1894 deczember 9-én, kihirdetve 1894 deczember 18-án.) A hazai és külföldi jogforrások, törvényjavaslatok és Országgyülesi elömunkálatok felhasználásával* [*Hungarian Marriage Law. 1894: Act XXXI. (Sanctioned on December 9, 1894, promulgated on December 18, 1894.) Based on domestic and foreign legal sources, legislative proposals, and preparatory work of the National Assembly*]. Budapest, 1896. Pallas Irodalmi és Nyomdai Részvénytársaság, p. 24.

[5] CSIZMADIA, *op. cit.*, p. 85.

[6] 1872/75 House of Representatives Journal, Volume XI, pp. 55–70.

[7] CSIZMADIA, *op. cit*., p. 85.

[8] 1881/84 House of Representatives Journal, Volume XV, p. 237.

[9] HERCZEGH, *op. cit.*, p. 25.

2.2. The debate on the bill in the House of Representatives

The draft on civil marriage was finally introduced in the House of Representatives on 12th February 1892.[10] Dezső Szilágyi, Minister of Justice and the presenter of the proposal, formulated three essential requirements. Firstly, he considered it important that all key regulations be included in a single, unified law. Secondly, he deemed the unified jurisdiction of civil courts indispensable, as these were fundamentally meant to take over the authority of ecclesiastical courts in matters of marriage. Thirdly, he took a position on whether civil marriage should be mandatory or whether it would suffice to make it merely optional for those wishing to marry. In his view, the former approach was the correct one, as he believed it benefited not only the state but also the church, by preventing ambiguous situations.[11]

The government's actions were not free from criticism, even after the submission of the bill. Although the content of the proposal was less frequently criticized in the House of Representatives, opposition politicians resented the amount of time it had taken to reach that point. Moreover, Pál Drakulics, a representative of the National Party, even reminded Parliament that at the beginning of the parliamentary term, the ruling party had considered the introduction of civil marriage to be "an assault against the national sentiment."[12] Thus, the opposition sought to highlight that the Liberal Party's support for civil marriage was not rooted in genuine conviction, but rather emerged after weighing considerations of political power.

It is important to return to the previously made statement that the bill received little substantive criticism in the House of Representatives. Ignác Helfy, a representative of the Independence and '48 Party, remarked that the situation at the time most closely resembled the "fog of Chlum" – referring to the scenario in which Austrian soldiers, due to poor visibility, were shooting at one another, despite fighting on the same side

[10] 1892/97 House of Representatives Documents, Volume XV, p. 1.
[11] 1892/97 House of Representatives Journal, Volume XV, p. 83.
[12] 1892/97 House of Representatives Journal, Volume XV, p. 266.

against the Prussian forces.[13] The analogy is thus easy to grasp: the Austrian soldiers represent the members of Parliament, their shared goal is civil marriage, yet instead of confronting the real opposition[14], they end up fighting each other.

However, it was not only the parliamentary opposition that voiced opinions on the matter; even the Hermit of Turin, Lajos Kossuth, spoke out: "Wekerle's church policy program is like a child who – considering the reasons for its conception – was not exactly born in a respectable bed, but nevertheless, it was born; and so I would not focus on whose calf it is, but only on whether it is worthy of being raised."[15] It is thus clear that even the government's harshest critics were dissatisfied only with the circumstances, while they fully supported the introduction of civil marriage.

2.3. The debate on the bill in the House of Magnates

Before describing the situation in the House of Magnates, it is necessary to briefly examine how the Pope himself viewed the contemporary changes in Hungary. On 2nd September 1893, Pope Leo XIII found the situation so alarming that he issued an encyclical specifically addressed to the clergy of Hungary, in which he called for a kind of mobilization. Among other things, he emphasized the importance of having as many church-sympathizing representatives as possible, who could strengthen the advocacy of ecclesiastical interests. These calls were made using strong rhetorical elements; for example, he labeled the potential civil transformation as a danger and likened the population to a flock entrusted to the care of the clergy.[16] Undoubtedly, the encyclical had a significant impact, especially when members of the House of Magnates later voted on the law institutionalizing civil marriage.

[13] 1892/97 House of Representatives Journal, Volume XVII, p. 29.
[14] Helfy was most likely referring here to the Church and its political sympathizers.
[15] Kossuth's letter from Turin to Ignác Helfy, dated May 27, 1893. Budapest, 1904. The Papers of Lajos Kossuth, Vol. X, p. 401.
[16] CSIZMADIA, *op. cit.*, p. 88.

At this vote in the House of Magnates, the proposal was defeated: its general adoption did not pass on 10th May 1894, falling short by 21 votes.[17] The arguments guiding the votes of the more clerically inclined members of the Upper House are well summarized by Frigyes Korányi. In his view, the first and most important consideration was, naturally, the diminishing role of the Church, which could potentially lead to a significant wave of people abandoning their religion. However, other arguments also emerged: concerns over increased emigration and the strengthening of ethnic minority movements.[18] These latter two reasons were ultimately less influential during the vote, but the former clearly had a strong impact on the members of the Upper House – an effect that is hardly surprising given the ongoing ecclesiastical mobilization at the time.

Later, however, on 22nd June 1894, the House of Magnates ultimately succeeded in passing the bill on civil marriage – even in detail – though only by a margin of four votes.[19] This outcome, however, was by no means solely the result of changing personal convictions. The government had managed to persuade Emperor Franz Joseph to appoint three lifelong members to the Upper House within the limits set by law, all of whom were clearly intended to support the implementation of the government's agenda. Appointing hereditary members for this purpose was not possible, so the emperor chose a somewhat subtler means instead: he persuaded certain members of the House of Magnates to replace their opposing votes with abstentions, in order to help the bill pass.[20] Thanks to these manoeuvres, the proposal was adopted and was eventually sanctioned on 9th December.

[17] 1892/97 House of Representatives Documents, Volume XX, p. 178.
[18] 1892/97 House of Magnates Journal, Volume III, pp. 222-224.
[19] BALLABÁS, Dániel: A főrendiház örökös jogú tagsága az 1885. évi reform után In: *Parlamentarizmustörténeti tanulmányok* [Hereditary Membership in the House of Magnates after the 1885 Reform. In: *Studies in the History of Parliamentarism*]. Eger, 2020. Eszterházy Károly Egyetem Líceum Kiadó. pp. 219-241, p. 235.
[20] *Ibid.*, p. 237.

3. The separation from bed and board

3.1. The establishment of civil separation

Summing up the above, we can conclude that the Church's efforts to assert its interests in connection with the bill on civil marriage proved to be quite forceful. This was due not only to the votes of the Catholic high clergy, but also to the support of several other members of the Upper House influenced through lobbying – lobbying directly encouraged by the Pope himself. Although their efforts ultimately failed – since the bill was passed on the second attempt – there is no doubt they had an impact during the drafting process at the Ministry of Justice. This likely explains how the legal institution of separation, known also in canon law, came to be included in the law in civil form – thereby respecting the freedom of conscience of Christians, particularly the majority Catholic population. The aim of separation from bed and board is essentially to create an obstacle to entering into a new marriage, thereby clearly expressing that the marriage has not, in fact, ceased to exist simply due to the will of the spouses.[21]

The clerical side also had its own idea of how this legal institution should be incorporated into the text of the law. During the detailed discussion of the proposal, Kolos Vaszary, Archbishop of Esztergom, suggested an amendment according to which separation would have had legal consequences regarding property even if it were established solely by an ecclesiastical court. Naturally, this would have inflicted a significant wound on the state's exclusive jurisdiction, and thus Minister of Justice Dezső Szilágyi was unmoved – even by the Archbishop's argument that a dying person seeking divorce would find it easier to turn to a nearby priest.[22] Although separation did offer some concession to the Church, even in this regard the ecclesiastical side could not be entirely satisfied. It is worth noting that the proposed amendment would have applied only to Roman Catholic and Greek Orthodox ecclesiastical courts, clearly

[21] 1892/97 House of Representatives Journal, Volume XV, p. 86.
[22] 1892/97 House of Magnates Journal, Volume III, p. 303.

illustrating that the Catholic struggle was consistently supported by the Orthodox Church as well.

3.2. The content of separation

Act 31 of 1894 on Marriage Law addresses the independent legal institution of separation from bed and board in Chapter VI, across four sections. However, there is another manifestation of separation: in cases where a lawsuit is filed for the dissolution of a marriage, the judge is often required to first order the separation of the spouses, and only after a certain period may the dissolution take place. This regulation is not the subject of analysis in this present thesis; in the following, only the independent form of separation will be discussed.

First of all, according to Section 104, separation may be requested if the conditions for divorce are met. This regulation reflects less of the liberalism typical of contemporary European systems, as there are numerous examples of more progressive formulations. For instance, under Dutch law, the spouses may request separation after two years of marriage, while in Hesse, a joint request is sufficient if both parties are of legal age. There are, however, countries with a similar approach to the institution, viewing it as a conscience-based alternative to divorce: the French Code Civil, which contains regulations identical to the Hungarian law, also requires the conditions of divorce to be fulfilled.[23]

It is also important to mention that the claim for separation can be asserted not only in the form of a claim but also as a counterclaim. However, if the original claim concerns divorce and the response is a counterclaim for separation, then divorce will necessarily prevail. The reasoning behind this is that from the perspective of the party requesting the divorce, it would be unjustified to reduce their claim to separation; meanwhile, the

[23] Justification of Act 31 of 1894 on Marriage Law.

other party has already fulfilled their conscience-based convictions by ensuring that the dissolution of the marriage did not directly result from their own decision.[24]

The same section also contains the provision that a petition for separation may be converted into a petition for divorce up until the delivery of the judgment at first instance. According to the ministerial justification, the basis for this lies in the fact that the same objections can be raised against both claims. The justification also addresses why this convertibility is subject to limitations. On the one hand, it would be unfair to the defendant to remain in prolonged uncertainty; on the other, it would delay proceedings, as the first-instance judge would be forced into supplementary procedures – among other things, because a different form of separation must be applied in the case of divorce.[25] However, there are European counterexamples to this solution. For instance, French and Dutch law do not permit the conversion of the claim at all, although in the former case this is not determined by legislation but rather by judicial practice.[26]

Section 105 of the law is a referral provision, stating that the legal consequences of divorce are to be applied, as appropriate, in cases of separation as well. There are, however, two important exceptions to this: firstly, of course, the marriage does not dissolve; and secondly, the wife retains the right to use her husband's surname without restriction. Additionally, it is stipulated that the property law effects applicable to divorce are also part of the consequences of separation. This principle is also adopted by Dutch law, whereas the French Code Civil, with the exception of the division of community property, takes a contrary stance; for instance, the obligation of fidelity between the spouses remains in force.[27]

---

[24] MÁRKUS, Dezső: *A házassági jog és az anyakönyvi törvény kézikönyve* [*The handbook of marriage law and the Civil Registry Act*]. Budapest, 1895. Grill Károly Cs. és Kir. udvari könyvkereskedő, p. 141.
[25] Justification of Act 31 of 1894 on Marriage Law.
[26] HERCZEGH, *op. cit.*, p. 237.
[27] *Ibid.*, p. 239.

According to the following section, the spouses may at any time re-establish their marital cohabitation by mutual consent. As a consequence, the legal effects of separation also cease, but only if the spouses report the renewed cohabitation to the court that handled the case. This requirement exists because it would not be appropriate to make the rights of third parties dependent on an event that is difficult to prove; thus, the obligation to report is considered the most reasonable solution.[28] Stricter regulations do exist, however. For example, under French practice, in order to restore community property, the spouses must enter into a separate joint agreement before a notary, rather than merely reporting it.[29]

Finally, Section 107 addresses the question of whether a separation can later be converted into a divorce decree. According to this provision, either party may request the dissolution of the marriage two years after the separation judgment has become final and binding, ensuring that neither party is left in a vulnerable position due to the need for the other's consent. In terms of duration, this regulation is relatively lenient, since for example under French law, such a request is only possible after three years, and under Dutch law, after five years. In the latter case, it is particularly noteworthy that the other party could, in fact, object to such a request.[30]

4. Summary

After the first part of this thesis aimed to explore the political circumstances surrounding the creation of the Act 31 of 1894 on Marriage Law – which necessarily included the institution of separation from bed and board as well – it was established that the contemporary Church possessed a remarkably strong lobbying presence. It was then pointed out that this influence ultimately manifested in the establishment of civil separation. In the second part of the thesis, I outlined the concrete legal content

[28] MÁRKUS, *op. cit.*, p. 143.
[29] Justification of Act 31 of 1894 on Marriage Law.
[30] HERCZEGH, *op. cit.*, p. 241.

of this institution. During this analysis, it became apparent, among other things, that the legal effects of separation essentially mirror those of divorce, and its conditions are also the same; furthermore, with mutual agreement, it can be converted into a divorce at any time after two years by either party. All of this clearly leads us to conclude that, under contemporary Hungarian law, separation represented a morally acceptable alternative to divorce rather than a more permissive option. Thus, the content of the institution of separation reinforces the same message as the political context of the law: the purpose of this legal measure was to give effect to the freedom of conscience of the religious population.

Dorottya SZILVÁGYI: The legal institution of oblation, in the perspective of Ferenc Széchenyi's voluntary donation for the foundation of the Hungarian National Museum

Eötvös Loránd University, Faculty of Law

DOI 10.21862/siaa.9.9

1. Introduction

In the first half of the 19th century, the interest in education, science and cultural heritage in Hungary underwent significant changes. Between 1825 and 1848, the political, social and cultural transformation was intertwined with the strengthening of national consciousness and the need for a constitutional reform. Hungary's political status, economic situation and social structure were closely linked to Vienna, the centre of the Habsburg Empire, through which culture, art and science were transmitted into the country.

As a result of these external influences and the growing internal demands of society, the Hungarian aristocracy felt the need to present Hungarian culture and history in museums independent from the imperial court. An outstanding moment was Ferenc Széchenyi's donation of his family library and medal collection to the nation in 1802. This step laid the foundations for the establishment of the Hungarian National Museum, which not only served the preservation of scientific and artistic values, but also stood for strengthening the Hungarian identity in accordance with the social and political changes of the reform era.

The political and cultural significance of the reform era is inescapable in the interpretation of the museum's foundation. The aim of the Hungarian political elite was to promote social, economic and political growth and modernisation. The nobility and

bourgeoisie called for the expansion of political rights, national self-determination and for the demolishment of the prior feudal system. Major reformers such as István Széchenyi, Lajos Kossuth and József Eötvös sought to achieve social progress along liberal lines. The Hungarian language, history and culture took centre stage and new cultural trends emerged. The aim of the language reform was to make the Hungarian language suitable for scientific and literary life, in which József Eötvös played a prominent role.[1]

In their literary works, authors and poets strove to express themes of national consciousness and the aspiration for freedom. Nationalism also appeared in art, sculpture and music: the fusion of folk-art elements and classical traditions resulted in new artistic forms. The rediscovery and integration of Hungarian folk art and heritage into bourgeois culture began. Education and scientific life also developed significantly: new schools, scientific societies and public libraries were created, these institutions facilitated the dissemination of knowledge and made scientific careers a means of social mobility, no longer a career option only for the aristocracy.

The Hungarian National Museum, as a scientific and cultural collection, became a symbolic institution reflecting the essence of the Reform Era and contributing to the strengthening of national consciousness.[2] Its creation and development clearly show that Hungarian society in the first half of the 19th century not only wanted to follow European patterns, but also to define its own identity through its cultural and scientific institutions.

The aristocracy, advocating for national interests, played a pivotal role in the cultural and educational progress of the Reform Era, complementing the efforts of contemporary intellectuals. A prominent role was played by Palatine József, who

[1] KOSÁRY, Domokos: *Művelődés és tudomány a XIX. század első felében. [Culture and Science in the First Half of the 19th century]* Budapest, 1980. Akadémiai Kiadó, pp. 45–78.
[2] ZÁVODSZKY, Géza: *A magyar reformkor története. [The History of the Reform Age in Hungary]* Budapest, 2001. Osiris Kiadó, pp. 102–140.

actively supported the revival of Hungarian culture through his voluntary contributions. It was in this intellectual and social environment that the noble donations were made, one of the most significant of which was that of Ferenc Széchenyi.[3]

2. Historical overview

Oblatio, a popular form of donation in the reform era, has its historical roots in Roman law. This legal institution provided the legal framework for voluntary donations, usually in support of a public or charitable cause - such as hospitals, libraries, or children's homes. *Oblatio* was not only a legal act, but also a moral obligation, reflecting a sense of responsibility towards the community and an expression of active participation in public life.[4]

Its defining characteristic lies in the fact that the contributor acts voluntarily, free from external coercion—highlighting the altruistic nature of the gesture, since nothing is expected in exchange. Donations were made within a legal framework, which ensured their validity, enforceability, transparency and verifiability.

In Roman society, wealthy citizens often supported the poor, churches and public services, thus strengthening community cohesion. In addition to Roman law, canon law played a crucial role in the consolidation and dissemination of the institution of *oblatio*, and its survival can largely be attributed to the influence of canon law. In such cases, the voluntary contribution of the nobles of the landed gentry, whether in kind or in other services, helped the priest to make a living.

Other types of voluntary services were also provided as the range of goods given to the church widened. One such service was the institution of *praestatio*, which was

[3] KOVÁCS, Erika: „A reformkor kulturális intézményei és a nemzeti identitás kialakulása" [The cultural institutions of the Reform Age and the birth of national identity] *In: Századok*, 2010, No. 3., pp. 521-545.
[4] HITES, Sándor: Az adományozó Sézchenyi és a nemzeti ajándékökonómiák. [The Donor Széchenyi and National Gift Economies] *Irodalomtörténet, [History of Literature]* 2022. No. 3. p., 101.

usually linked to special occasions such as marriage, blessing or ordination. Initially non-binding, it could later become legally binding as a promise in a written contract.[5] Later, a unilateral declaration by will or order also made it possible to transfer property to a specific institution or person. In all cases, *oblatio* reflected a genuine desire to advance the welfare of the community, with the donor's actions standing as a moral and civic example for society. This practice continues to exist in modern legal systems: charitable donations and other voluntary gifts are still regulated by law, ensuring transparency, public trust and fostering social cohesion.

In the development of Hungarian private law, *oblatio* is a unilateral contractual declaration, which is an expression of the legal will and has legal effect if accepted by the beneficiary (*acceptatio*). The difference between *oblatio* and *donatio* is thus primarily in the formal framework and purpose: while donations are mostly for private purposes, *oblatio* is often for the benefit of public or charitable institutions.[6] In the history of Hungarian private law, *oblatio* has been used in connection with the law on foundations and the enrichment of the assets of public bodies. Donations may have been made for the benefit of schools, universities, churches or public cultural institutions. As regards application and practice, Articles 938 to 956 of the Civil Code of Austria, for example, regulate in detail the cases of donations, including donations for public benefit (like *oblatio*). To have legal effect, the donor must be a person with legal capacity and must be able to dispose of the property. Legal title: the purpose and object of the donation must be lawful. In addition, acceptance by the beneficiary, in writing or by imputation, was necessary for a valid donation to be made.[7]

[5] *Ibid*., p. 101.
[6] HORVÁTH, Attila: *A magyar magánjog történetének alapjai. [Foundations of the History of Hungarian Private Law]* Budapest, 2006. Gondolat Kiadó, pp. 53-55.
[7] *Ibid*., pp. 210-212.

3. Oblation in the reform era

During the reform era, noble *oblatio*, or voluntary donations in the public interest, were also an expression of community responsibility and national identity. Historians believe that *oblatio* in this period also carried a symbolic meaning: it was not seen as a mere moral duty, but also as a political and cultural statement against the Habsburg oppressor.[8]

The best-known and most influential noble donation of the period, which benefited public culture and education, was undoubtedly the donation of Ferenc Széchenyi in 1802, when he gave his own library, manuscripts, collection of medals and antiquities to the Hungarian nation.[9] In the second half of the 18th century, apart from a few outstanding collections from schools, monasteries and noble priests, the number of volumes in libraries owned mainly by nobles or preachers and accessible to only a few rarely exceeded a few hundred, and especially few exceeded a thousand, and the nobility or serfs rarely owned more than a few books. Individual cases were rarer, but such was the case with the valuable library of the only university in the country, the University of Pest, which was supported by the Palatine Joseph, among others, with regular financial contributions to facilitate its operation.[10] In Transylvania, the work of Count József Teleki, who established the Teleki Library in Târgu Mures, later considered one of the most important scientific libraries of the period, should be mentioned.[11]

Ferenc Széchenyi, a prominent representative of the Hungarian aristocracy and culture, recognised the need for an institution to collect, organise and present Hungary's historical, artistic and scientific heritage to preserve national culture. The idea of

---

[8] HORVÁTH, Sándor: „Széchenyi Ferenc és a Magyar Nemzeti Múzeum: a nemzeti kultúra intézményesülése a reformkorban" [Ferenc Széchenyi and the Hungarian National Museum: The Institutionalization of National Culture in the Reform Era] In*: Magyar Történelmi Társulat Évkönyve*, *[Yearbook of the Hungarian Historical Society]* 2015, No. 124., pp. 87-112.

[9] KÓSA, László (szerk): *Magyar művelődéstörténet*. *[History of Hungarian Culture*] Budapest, 2006. Osiris Kiadó, p. 366.

[10] KOSÁRY, Domokos: *A felvilágosodás és a reformkor eszmerendszere*. [*The Ideological System of the Enlightenment and the Reform Era]* Budapest, 1999. Osiris Kiadó, pp. 71-95.

[11] KÓSA, *op. cit.*, p. 367.

founding a museum was first proposed in 1802, but it was Ferenc Széchenyi who took the decisive steps in 1807 to establish the Hungarian National Museum. The aim of the museum was not only to collect art and historical artefacts, but also to provide a central place for the display of Hungarian national treasures, which could also help to organise Hungarian culture and history. In line with general European practice, further library foundations were often accompanied by the donation of museum collections. A museum was almost never established without a library.

One of the founding aims was to make Hungary's rich history and culture accessible to future generations. In keeping with the expectations of the reform era, the museum was also committed to promoting scientific research alongside national values, and thus Ferenc Széchenyi's activities were intertwined with the founding of modern Hungarian scientific and cultural life.

In addition to emphasising the willingness of the nobility and the aristocracy to participate in the transformation, this service for the common good also played a role in enhancing the reputation of the individual and the family. In the case of the Széchenyi family, intergenerational patronage, in addition to bringing culture to a wider audience by transmitting the Enlightenment, helped to consolidate national identity.[12] As a medium, culture not only sought to reduce the distance between the elite and the people, but also strengthened national cohesion. Through the promotion of the arts, science and education, an intellectual infrastructure was created which, in the long term, laid the cultural foundations of the modern nation-state.

The promotion of the national language, the establishment and maintenance of Hungarian-language theatres, periodicals and schools no longer served only aesthetic

[12] HÖRCHER, Ferenc: Intézményalapítás és polgári kultúra. A Széchenyiek útja a főuri mecenatúrától a Bildungsbürger eszményéig. [Institution Building and Bourgeois Culture: The Széchenyis' Path from Aristocratic Patronage to the Ideal of the *Bildungsbürger*] In. HÖRCHER, Ferenc, LAJTAI, Mátyás és MESTER, Béla (szerk.) *Nemzet, faj, kultúra a hosszú 19. Században Magyarországon és Európában. [Nation, Race, and Culture in the Long 19th Century in Hungary and Europe]* Budapest, 2016. MTA Bölcsészettudományi Kutatóközpont Történettudományi Intézet, p. 155.

and entertainment purposes but became a means of expressing collective consciousness. The democratisation of culture was thus closely linked to social and political modernisation: the patronage of the nobility contributed to the expansion of the public sphere and the organic integration of the national idea into public thought. In this process, patrons emerged as donors, but also as shapers of the national narrative, redefining the role of the social elite - not as mere privileged but as responsible for the cultural and intellectual well-being of future generations.

In Hungary, it is well known that a culture of citizenship has emerged with considerable resistance and difficulty. The nationalism that emerged in the early 19th century was the result of the bourgeois national programme of culture launched the institutionalised patronage of the aristocracy. The manifestations of this patronage were mostly in support of the Austrian side - financing the designs of Austrian architects, publishing books by writers, staging operas. At the beginning of the 19th century, German-language and Latin culture was even more widespread, with public collections and public libraries containing publications available in German and Latin. From the point of view of the Hungarian side, this corresponded to the transmission of a foreign, oppressive culture. The paradigm shift observed from the 1820s onwards brought with it, along with national consciousness, the transcendence of bourgeois culture beyond the private interests of the bourgeoisie and made it an objective to make culture accessible to all. The form of expression provided by the role of patronage enabled both the court and the country to support these aspirations, as a kind of compromise, since the original idea was precisely to make culture accessible to all. In addition to emphasising the willingness of the nobility and aristocracy to participate in the transformation, service to the common good also played a role in enhancing the reputation of the individual and the family. As in the case of the Széchenyi family, it was an intergenerational act of patronage, in addition to bringing culture to a wider audience by transmitting the Enlightenment.

The Széchenyi foundations of cultural institutions strongly reflected ideas based on foreign experience. Both Ferenc Széchényi and his son István had been confronted with the practical realisation of civilisation in Britain during their earlier travels there, and their diary entries show that they wished to transmit the achievements of the spirit of the age to Hungary. As Ferenc Hörcher puts it, the Széchenyi family embodied the democratisation of culture.[13]

"*Please allow me to donate to the country your special collection of books and its supplementary parts, which represent the development of Hungarian culture and are also intended to promote it, so that it may serve as a public library for anyone interested*."[14] This is how Count Ferenc Széchényi expressed his loyalty to the Hungarian nation and his commitment to public culture in his founding letter of 25th November 1802, when he put his collection, which he had collected with great care and sacrificial financial expenditure over decades, at the service of the country. The collection, which included works directly or indirectly related to Hungarian history, was solemnly donated to the country he called "*dear"* and to the public good, to the exclusion of any further personal or family claims. The foundation charter was not only a noble gesture on Széchényi's part, but also a precisely regulated establishment of an institution. He expressed his wish that the collection should always remain independent and not be absorbed into other library units, even if the university moved to another city. He also set out the organisational background for its maintenance and development: the salaries of the library's keeper, clerk and servant were to be paid from the Royal University's funds, and the administration of the institution was to be under the authority of the Governor or the Governor's Council.

Széchényi also stipulated that, to ensure the continuation of his work, he should have the right to further expand the collection and to publish his new acquisitions in the

---

[13] MÉSZÁROS, András: *A Magyar Nemzeti Múzeum története. [The History of the Hungarian National Museum]* Budapest, 2022. Magyar Nemzeti Múzeum kiadványa, pp. 15–39.
[14] BERLÁSZ, Jenő: *Az Országos Széchényi Könyvtár története. [The History of the National Széchényi Library]* Budapest, 1981. Országos Széchenyi Könyvtár, pp. 185-189.

form of a printed supplementary catalogue. He also made provision for succession: his family would also have had the right to propose library staff, subject to certain conditions. Lastly, the final part of the founding charter stipulates, as a specific heritage gesture, that the library building should bear the name of the Széchényi family, a reference to the example of the ancestors and the ethos of national service.[15]

The foundation of the National Museum was enacted in 1807, under the Act 25 of 1807, which was approved by the Supreme Council. This law formally established the legal basis for the institution. This was followed by Act 8 of 1808, which clarified the framework of the museum's operation, stating that the direct management of the institution would be vested in the Nader, who would thus act as its director. Thanks to the Palatine, the organisational regulations were also drawn up, which laid down the internal rules of operation of the institution. It also provided for the continuation of the collections necessary for the museum, so that the Institute's collections could be constantly enriched. The Act 8 of 1808 also confirmed the donation of Count Henrik Grassalkovich, who gave the museum a plot of land in Hatvani Street in exchange for the university's grass garden.[16]

The development of the National Museum continued to receive support after its foundation. Act 35 of 1827 and Act 38 of 1832/6 were intended to promote further expansion of the museum's collections. These Acts recognised the importance of collection development and helped the museum to develop into a cultural institution of national importance. Of particular importance was Act 38 of 1832/6, which provided the museum with a large volume of comprehensive funding. Within this framework, the legislature allocated five hundred thousand Forints for the construction of a permanent museum building, thus laying the foundations for the National Museum to be housed independently. It also provided one hundred twenty-five thousand

[15] HÖRCHER, *op. cit.*, 2016. p. 155.
[16] *A magyar nemzeti múzeum. [The Hungarian National Museum]* Budapest, 1896. Magyar Királyi Tudomány Egyetemi Könyvnyomda, pp. 6-9.

Hungarian Forints for the acquisition of the *Jankovich Collection*, one of the most important private Hungarian collections of its time, which has greatly enriched the institution's holdings. The law also provided that the surplus income of the noble rebellion fund, originally earmarked for military purposes, should be temporarily used to maintain and enrich the National Museum. This decision not only ensured the security of the institution's operations, but also helped to ensure that the most important collections could continue to be enriched, thus strengthening the museum's scientific and national role.

The Hungarian press during the Reform Era closely followed the establishment of the Hungarian National Museum, regarding it as a significant milestone in the development of national culture and science. '*Through the generous donation of Ferenc Széchényi, the Hungarian nation has an institution that worthily preserves the intellectual and material treasures of its past, and thus strengthens national consciousness*.'[17] This statement reflects the conviction of the society of the time that the creation of the museum was an indispensable step in the preservation of national identity. The Budapest Gazette of 10th March 1845 also emphasised the symbolic importance of the museum and praised Ferenc Széchényi as the donor. '*This museum is not merely a collection of objects, but a symbol of respect for the Hungarian past and hope for the future of the nation, made possible by the enthusiasm of the reform era and the personal commitment of Ferenc Széchényi*.'[18]

4. Summary

The Hungarian press during the Reform Period deliberately praised the founding of the National Museum, regarding it as a fundamental milestone in preserving and

[17] *Vasárnapi Újság*, *[Sunday Times Newspaper]* 1843, No. 23.; *Pesti Hírlap [Pest Newspaper]*. No. 15th February 1847
[18] *Budapesti Hírlap*, *[Budapest Newspaper]* No. 12, 1845

strengthening national identity. Contemporary public discourse clearly reflected that the institution was perceived by society as more than a mere cultural establishment: it was also considered a political and identity-forming gesture, symbolizing cultural resistance against the Habsburg rule.

It is important to emphasize that the establishment of the museum cannot be separated from the system of *oblatio* the voluntary, public-spirited donations made by the nobility during the Reform Era. These acts served as expressions of the nobility's sense of responsibility and national consciousness. The legal institution of *oblatio*, originally referring to material contributions for the benefit of the community, evolved during this period into a form of political and cultural statement. Count Ferenc Széchényi's 1802 donation of his library and collections stands out as a prominent example of this form of *oblatio*, intended to promote public education and to be among the first offerings toward the institutional realization of Hungarian national culture. These voluntary noble donations *oblations* came to represent a kind of social obligation in the Reform Era, through which the nobility supported nation-building objectives with both material and intellectual resources. Through these contributions, the nobility assumed a communal role in addition to their status as landowners, thereby reinforcing social cohesion and the sense of national unity.

The institution, deemed indispensable, became a central stage for the history, art, and science of the Hungarian nation, not only preserving but also making national culture accessible to the public. This elevation of its role paved the way for later political and social transformations. Thus, the founding of the National Museum, while a defining cultural event, can also be interpreted as a significant step in the development of Hungarian national consciousness and community building. Its impact extends far beyond its own time, remaining a foundational element in the institutional framework of Hungarian national culture to this day.

Marcos TSITSOPOULOS: The Vienna Housing Tax of 1923 and its Reception in the Media

University of Vienna, Faculty of Law

DOI 10.21862/siaa.9.10

1. Introduction

Housing is one of the most important issues of our time. With all the surrounding crises resulting in energy prices constantly going up and high inflation, housing prices have subsequently risen over the past years. However, this problem is not new. The last century had even worse crises, resulting in housing problems. How did society deal with these problems then? How did the city of Vienna find its unique solution which has effects on this day? And how did the media at that time react?

2. The Societal Context

2.1. Living in Vienna before 1918

The housing situation in Vienna was very precarious before the outbreak of World War I. Both in terms of quality and quantity, the supply of apartments was far from ideal.

Part of the problem was also the rapidly growing population in Vienna: while 842,951 people lived in Vienna in 1869, this number had risen to 2,072,556 by 1914.[1] In order to cope with this increase, private investors built during this period so-called "tenement houses" in the suburbs. A total of 268,448 apartments were built between 1891 and 1924. But even this was not enough to satisfy the great demand for new housing.[2]

[1] FELDBAUER, Peter; HOFFMANN – Alfred, MITTERAUER, Michael (eds): *Stadtwachstum und Wohnungsnot: Determinanten unzureichender Wohnungsversorgung in Wien 1848 bis 1914* [*City Growth and Housing Shortage: Determinants of Inadequate Housing Supply in Vienna from 1848 to 1914*], Munich, 1977, Verlag für Geschichte und Politik, p. 314.
[2] HAUTMANN, Hans – HAUTMANN, Rudolf: *Die Gemeindebauten des Roten Wien 1919 – 1934 [The Municipal Housing of Red Vienna 1919 – 1934]*, Vienna, 1980, Schönbrunn-Verlag, p. 99.

For a large proportion of tenants, the apartments in Vienna were of poor quality: by 1917, 92% of apartments did not have their own toilet and 95% did not have their own water supply.[3] In addition, they were quite cramped: on the one hand, one-room apartments were the predominant type of apartment. On the other hand, more than 4, and in some cases up to 8, people were usually crowded into these apartments.[4] The reason for this was the system of "bed-goers": these were people working in industrial labor force or other precarious jobs, who could only afford to sleep in other peoples rented apartments for an hourly fee. This system was a result of the exorbitantly high rents: since many families or households could not afford the rent, they were forced to take in bed-goers or subtenants in order to pay the rent.[5]

2.2. The political situation in Vienna after 1918

The initial situation for Vienna as a city was extremely difficult at the end of the First World War. Austria-Hungary, a large monarchy with 56 million inhabitants, no longer existed; What remained was the new Republic of German-Austria with 6.5 million inhabitants, a quarter of whom lived in the federal capital Vienna.[6] At that time, Vienna was still politically part of the federal state of Lower Austria and was therefore also represented in the Lower Austrian state parliament, but as a city it also had its own municipal council, which was elected separately.

The new republic was launched on 12th November 1918, with the proclamation of the Republic of German-Austria (Later renamed the Republic of Austria) by the Provisional National Assembly.

For the first time, from 1918 onwards, there was also equal, secret, and free suffrage for men and women at the federal level. At the state level, too, a municipal election ordinance was passed by the Lower Austrian state parliament in Vienna on 12th March

---

[3] SPEISER, Wolfgang: *Paul Speiser und das rote Wien [Paul Speiser and red Vienna]*, Vienna – Munich, 1979, Jugend und Volk Verlag, p. 51.
[4] FREI, Alfred Georg: *Die Arbeiterbewegung und die „Graswurzeln"am Beispiel der Wiener Wohnungspolitik 1919-1934 [The Labour Movement and the "Grassroots" using the Example of Viennese Housing Policy 1919-1934]*, Vienna, 1991, Braumüller, p.121.
[5] FREI, op. cit., p.121.
[6] WEIHSMANN, Helmut: *Das Rote Wien: Sozialdemokratische Architektur und Kommunalpolitik 1919 – 1934 [Red Vienna: Social Democratic Architecture and Municipal Policy 1919 – 1934]*, Vienna, 2019, Promedia, p.18.

1919: This stipulated that every citizen with Austrian citizenship aged 20 and over was eligible to vote in the Vienna municipal elections.[7]

In the subsequent municipal council elections for the city of Vienna and the elections to the Lower Austrian state parliament on 4th May 1919, the Social Democratic SDAP achieved a major electoral victory: They won an absolute majority in the municipal council and, for the first time in history, could appoint a mayor. They also won an absolute majority in the Lower Austrian state parliament and were able to appoint Lower Austria's first democratically elected governor from the SDAP.

Politically, Vienna was still part of the federal state of Lower Austria at that time. However, this was not in the interests of the two major parties, the CS and SDAP, as they both feared losing control of their heartlands. Finally, on the 29th December 1921, the Vienna City Council, acting as the state parliament for Vienna[8], and the Lower Austrian state parliament[9] passed the "Separation Act" in Vienna and Lower Austria, which led to the final separation of the two federal states.

This gave Vienna the status of an independent federal state for the first time.

However, the new city government faced numerous challenges: In addition to the problematic housing market, the economy was in ruins after the World War I. The most important sectors, like heavy industry, the textiles' industry, and the consumer goods' industries, were all struggling with serious structural problems, as they were designed for the economy of an imperial capital with supplies from all parts of the empire rather than for the economy of a smaller, Central European republic.[10]

Unemployment was therefore rampant: in 1919, of the 147,192 unemployed people in Austria, 111,976 lived in Vienna.[11]

3. Legal Aspects

3.1. Legal Position of tenants until 1918

Until 1917, there was virtually no legal protection for tenants in Vienna. Tenants were heavily dependent on the decisions of their landlords; they could be evicted for any

[7] Gemeindewahlordnung für die Stadt Wien vom 12. März 1919.
[8] LGBl. für Wien Nr.153/1921.
[9] LGBl. für das Land Niederösterreich-Land Nr.346/1921.
[10] FREI, op. cit., p. 86.
[11] FREI, op. cit., p. 96.

reason and without notice, e.g. if they or their children were too noisy.[12] There were also no restrictions on rent levels. Tenants were therefore fully exposed to the free market and its forces. Pricing and the duration of rental contracts were determined autonomously by the market and were not restricted, despite the increasingly dire situation.[13]

This did not change until 1917: Austria-Hungary was already in its fourth year of war, and the loyalty of the masses was slowly beginning to wane in the face of deteriorating living conditions. In response, Emperor Karl I issued the "Ordinance on the Protection of Tenants" on the 26th January 1917.[14]

The right of landlords to terminate leases was largely restricted; this was intended to protect soldiers' families from losing their homes. A rent cap was also established, whereby tenants only had to pay a fraction of the pre-war rent to their landlords. This tenant protection did not apply to apartments and business premises that received building permits after the 27th January 1917 (Art 3 paragraph 2 of the ordinance). This emergency ordinance greatly strengthened the legal position of tenants.

It was followed by two other emergency ordinances on 20th January 1918[15] and the 26th October 1918[16] which expanded the length of the ordinance, with the latter one expanding it indefinitely.

This third regulation had an enormous economic impact: after the war, the gold crown, the currency of Austria-Hungary, lost more and more of its value due to high inflation. In 1914, 100 gold crowns had an approximate value of around €724.48 in today's currency. By 1922, 100 gold crowns were only worth the equivalent of €0.14. On the other hand, rents remained constant due to the regulations that were still in force; the rents that had to be paid after the war were therefore only a fraction of their original value.[17] This meant that homeowners and landlords were no longer able to make a profit.

[12] FREI, op. cit., p. 123.
[13] STAMPFER, Michael: *Die Anfänge des Mieterschutzes in Österreich [The beginnings of tenant protection in Austria]*, Vienna, 1995, Manz, p. 18–19.
[14] RGBl. Nr.34/1917.
[15] RGBl. Nr.21/1918.
[16] RGBl. Nr.381/1918.
[17] WEIHSMANN, op. cit., p. 34.

3.2. The Vienna Housing Tax of 1923

As mentioned earlier, the new Vienna city government faced a very difficult task. On the one hand, there was a severe shortage of affordable, high-quality housing for the Viennese population. On the other hand, the private companies that had previously been responsible for housing construction were unwilling and unable to build. It was now up to the city of Vienna to solve this problem by building its own municipal housing.

However, the necessary financial basis had to be created first. The city of Vienna was in a difficult situation because the current taxes would never be sufficient to finance such a costly construction project.

An important factor that enabled the city of Vienna to realize the municipal housing projects was the division of the federal states of Vienna and Lower Austria, as discussed earlier. The federal state of Vienna thus had exclusive authority over public buildings financed by state funds and, above all, in matters of state finances.[18] At the same time, Vienna also received the municipality's and the federal state's share of taxes collected jointly with the federal government. As a federal state in its own right, Vienna now also had tax sovereignty and was thus able to levy the taxes necessary for the construction of municipal housing on a large scale.

On 20th January 1923, the Vienna City Council decided to "levy a housing tax in the city of Vienna," which came into effect on 1st February 1923. This law was published in the "Landesgesetzblatt für Wien" (Vienna Provincial Law Gazette) No. 30, which was issued on 16th March 1923.[19] The housing tax was amended by law on 22nd February 1924[20], and 10th October 1924[21], whereby the tax was increased through surcharges.

The tax was designed exclusively as a special-purpose tax. It served solely to pay interest on a housing bond and mainly to finance the housing construction activities of the municipality of Vienna. During the period of social democratic municipal administration until its removal, it was the only tax levied on all Viennese apartments and business premises.

[18] HAUTMANN – HAUTMANN, op. cit., p. 36.
[19] LGBl. für Wien, Nr.30/1923.
[20] LGBl. für Wien, Nr.26/1924.
[21] LGBl. für Wien, Nr. 54/1924.

The assessment basis for the housing construction tax was the so-called "Friedenszins" (Peace Rent). This was the annual rent in gold crowns that the person had paid on 1st August 1914, i.e., during peacetime.

Subsequently, the tax burden was calculated based on this Peace Rent as a multiple of the respective Peace Rent, whereby it was highly progressive and staggered.

It must also be said that the actual rent which the tenants had to pay only amounted to a fraction of the value of "their" Peace Rent. As previously described, the continuous devaluation of the gold crown after the war, combined with the rents remaining constant due to the tenant protection introduced in 1917, led to ever cheaper rents for all social strata. Even if the amounts to be paid from the tax were added to the current rents, they still did not reach the pre-war level.[22]

Overall, the housing construction tax was a success from the perspective of the Social Democratic city government. 519,413 of the cheapest apartments and commercial premises, which accounted for 82% of the rented properties in Vienna, contributed only to 22% of the tax revenue. In contrast, 3,426 of the most expensive rented properties, representing 0.54% of all properties, contributed a full 45%. The 89 most expensive rented properties in all of Vienna rendered 4,173,848 Schillings in housing construction tax annually—as much as the 350,000 apartments of workers and employees who had to pay up to 600 gold crowns in rent per year before the war.[23]

The City of Vienna collected 14,640,000 Schillings from the housing construction tax in 1924, 37,910,000 Schillings in 1925, and 38,470,000 Schillings in 1926. While this was still not enough to cover the city's expenditures for housing construction, the tax at least covered a full third of the expenses for housing construction.[24]

Through the housing construction program of the City of Vienna, a total of 58,563 apartments in 335 housing complexes and 42 settlement groups, as well as 2,150 commercial premises, were built by the end of 1933.[25]

---

[22] CZEIKE, Felix: *Wirtschafts- und Sozialpolitik der Gemeinde Wien: in der ersten Republik, 2. Teil [Economic and Social Policy of the Municipality of Vienna: in the First Republic, 2nd part]*, Vienna, 1959, Verlag für Jugend und Volk Wien, p. 39.

[23] DANNEBERG, Robert: *Zehn Jahre neues Wien [Ten years new Vienna]*, Vienna, 1929, Verl. der Wiener Volksbuchhandlung, p. 21.

[24] HAUTMANN – HAUTMANN, op. cit., pp. 46ff.

[25] STATISTISCHES AMT DER STADT WIEN (ed.): *Statistisches Taschenbuch der Stadt Wien für das Jahr 1933 [Statistical Yearbook of the City of Vienna for the Year 1933]*, Vienna, 1934, p. 22.

4. Reception in the Media

4.1. In the conservative media

The conservative media in Austria, in particular one of the most well-known newspapers being the "Reichspost", were naturally against the Housing Tax as it was a project of the political enemy.

In the article "Dr. Breitner's War on the tenants", published in the "Reichspost" on the 2nd February 1922[26], the Housing Tax was called an "abomination from city hall". (Hugo Breitner was the city counsellor responsible for the tax, in collaboration with another social democratic politician, Robert Danneberg)

Interestingly, one of the main points of critique in the article was that every citizen had to pay the tax, even the very poor ones. Another one was that the richer citizens wouldn't have to pay that much tax relative to their wealth.

The takeaway from the article is also that the money would never be enough to build anything to improve the situation.

4.2. In the social-democratic media

The social-democratic media on the other hand, were of course very supportive of the tax. The main social-democratic newspaper, the "Arbeiter-Zeitung" (Workers Newspaper), was, according to its masthead, also the "Central Organ of the Austrian-German Social Democracy".

A good example of their support and position on the tax is the article entitled "For the homeowners or the building of apartments?" published in the "Arbeiter-Zeitung" on the 3rd November 1921[27]. In the article, the leader of the conservative CS is attacked, referring to a speech he had held on a prior occasion. In the article, the lines and divisions between the urban SDAP and the agrarian-rural CS also become clearly visible. E.g., they accuse him of favoring the agrarians or farmers by granting them tax

[26] Dr. Breitners Krieg gegen die Mieter, [Dr. Breitner's War on the tenants], *Reichspost*, 2.2.1922, Nr. 33, p. 6.
[27] Für die Hausherren oder für den Wohnungsbau? [For the Homeowners or the Building of Apartments?], *Arbeiter-Zeitung*, 3.11.1921, Nr. 302, p. 1.

privileges while he demanded the reversal of the tenant protection created by the emperor during World War I, something which they found to be hypocritical.

The article exemplifies the division between the two main political currents of the 1st republic and shows clearly that tensions were already running high at that time.

4.3. In the national-socialist Media

The reception of the tax in the national socialist media was, perhaps unsurprisingly, also negative.

The tax was heavily criticized in a short article entitled "Natürlich – wer sonst" ("Naturally—who else") in the 4th December 1925[28] edition of the weekly newspaper "Der Eiserne Besen" ("The Iron Broom"). This paper, according to its masthead, was a "Radikal-antisemitisches Wochenblatt" ("radical antisemitic weekly newspaper").

The article stated:

"*In Vienna, the City Hall Marxists are building houses with the housing construction tax, the apartments of which are mostly allocated to immigrated Eastern Jews.*"

The paper further pointed out that the company sign of the first tenant was already prominently displayed on the new building, named the "Lassallehof": "Schenkelbach, Federbettenverkauf (featherbed sales)".

The author's conclusion was that the new building was named "Lassallehof" after the first Jewish Social Democrat, and the first tenant was a Polish Eastern Jew.

Generally, it can be said regarding the reception of the tax in far-right/national socialist media that it was viewed very negatively as a project of the political opponent. However, instead of substantive criticism, the opposition often led to antisemitic elaborations, as demonstrated.

The fact that Breitner and Danneberg, the two creators of the tax, were also Jewish, was of course used by the media and resulted in quite some smear articles. Tragically, after the so called "Anschluss" of Austria into Nazi Germany, they were both persecuted. Breitner managed to escape to the USA[29], but Danneberg, on the other hand, was not

[28] Natürlich- wer sonst, [Naturally- who else], *Der Eiserne Besen*, 4.12.1925, Nr.49, p. 4.
[29] https://www.geschichtewiki.wien.gv.at/Hugo_Breitner [Access on November 15, 2025].

so lucky: He was arrested by the Nazis in March 1938 and was later deported to the Concentration Camp Dachau, then to Auschwitz, where he was murdered in 1942.[30]

4.4. In the tabloids

For the discussion of the tax's reception in the boulevard media, the "Illustrierte Kronen Zeitung" (Illustrated Crown newspaper) will be analyzed, a newspaper which continues to be published until today.

In the first mention of the tax by name, especially in the edition of 12th January 1922[31], the tax was sharply criticized. Similarly to the Reichspost, the tax was denounced as an additional burden on tenants. It was also criticized that the tax would be far from sufficient to build new houses, and to try to convince the population otherwise was "ridiculous."

At the end of this article, a solution was proposed that one would call populist today: The housing shortage, which was aggravated after the end of the First World War, was only created by the almost morbid proliferation of all possible municipal and state offices.

What was the suggested solution? All ministries of the Republic could be conveniently housed in the former War Ministry.

They wrote: "*Anything that doesn't fit there doesn't need to exist at all.*"

All remaining buildings could be converted into residential space.

It can therefore be observed that the boulevard media of the time were also quite critical of the tax. It was primarily viewed as a further financial burden on Viennese citizens and not as part of a solution to the problem of missing apartments in Vienna. Furthermore, rather populist solutions were proposed, such as converting all government buildings into residential space, but no long-term ones that would have led to affordable housing for everyone.

---

[30] https://www.geschichtewiki.wien.gv.at/Robert_Danneberg [Access on November 15, 2025].

[31] Eine Wohnbausteuer in Wien, [A Housing Tax in Vienna], *Illustrierte Kronen-Zeitung*, 12.1.1922, Nr.7908, pp. 3-4.

4.5. In the homeowners Media

The largest medium representing homeowners during the First Republic was the "Hausbesitzer-Zeitung" ("Homeowners' Newspaper"). Unsurprisingly, its articles were hostile towards the new housing-construction-tax from the very beginning. After all, the new tax was directed against homeowners to a certain extent. On the one hand, they were still not allowed to raise rents; on the other hand, the money that homeowners could have earned through higher rents was instead collected by the municipality through the tax and invested in the construction of new municipal housing. Until then, housing construction had also been in the hands of private entities, including the homeowners themselves.

Thus, in the first mention of the housing construction tax in the Hausbesitzer-Zeitung on 1st February 1922[32], the tax was criticized severely; they stated:

"*The Housing Construction Tax Law is not only unconstitutional, but also the greatest brutality committed against the domestic population in living memory; it is a contribution (levy) that no enemy invading a foreign country would want to impose more heavily on a population.*"

Again, we can see that tensions regarding the tax were running high and that the homeowners of that time feared deeply that their right of property was under attack.

4.6. Conclusion

The Vienna Housing Tax of 1923 has been one of the largest political projects in Vienna, transforming the city to this day.

The idea that housing is a human necessity and not a commodity; The idea that housing should not be in the hands of the free market, but that instead, the city should mass build qualitative apartments and rent them out for extremely low prices; These ideas were completely revolutionary for this new republic, and are still quite revolutionary to this day.
It is even more interesting to see how the different media outlets at that time reacted to it. How they often reacted along party lines, but also how they criticized the tax from an unexpected perspective, e.g., a conservative newspaper criticizing the tax for not

[32] Die neue Wohnbausteuer, [The new Housing tax], *Hausbesitzer-Zeitung*, 1.2.1922, Nr. 805, p. 1.

being social enough in some aspects, or the tabloid newspapers being as populist in their rhetoric as they are today.

Internationally, Vienna is not the only city to have come up with the idea to build social housing for everyone. What is unique, however, is the way of financing it through a special tax. The tax itself is also quite interesting, showing the new political force in Vienna. Also, social housing in Vienna is still very present and popular in the city: In 2024, around 60% of the Viennese population lived in social housing or in subsidized co-ops.[33]

Overall, my research has shown just how controversial the tax was at its time as perceived by the media, but also through the media of the time we become witnesses of how heated society was in the 1920s, was as the new Austrian republic was starting to form.

[33] The social housing secret: how Vienna became the world's most livable city, The Guardian, 10.1.2024, https://www.theguardian.com/lifeandstyle/2024/jan/10/the-social-housing-secret-how-vienna-became-the-worlds-most-livable-city [Access on November 15, 2025].

Anna Réka VARGA: It Takes Two to Tango – The Legal Status of Illegitimate Children in Hungarian Legal History, with Special Regard to Paternal Obligations

Eötvös Loránd University, Faculty of Law

DOI 10.21862/siaa.9.11

1. Abstract

According to an old Hungarian proverb „It takes to tango" and yet, the Hungarian legal system, permits the biological father to evade parental obligations regarding his illegitimate[1] children. Due to this, the legal handicaps brought on by the illegitimacy burden the child, who is objectively innocent in this situation, directly and while the unwed mother is not explicitly objected to legal consequences, she shares these burdens indirectly. The study aims to explore the changes regarding the legal status of illegitimate children and the regulations of paternal obligations during the civil era leading up to the eventual dissolution of this legal distinction.

2. Statistics regarding births out of wedlock between 1896 and 1939[2]

Between 1896 and 1913, the yearly number of children born out of wedlock averaged sixty thousand, which makes up 10% of all yearly births. Between 1919 and 1939 this number lowers to twenty thousand, although this still makes up 8-9% of all yearly

[1] The Hungarian language generally uses the word "illegitimate" to refer to children born outside the bounds of marriage. The legal terminology also utilizes this term, up until the Private law Bill of 1928, which uses the term "child born out of wedlock", indicating an intention of easing the societal resentment associated with these births. Naturally, the changes made to the bill's wording don't affect the popularity of the previous phrase among the general public.

[2] SZÉL, Tivadar: A törvénytelen születések [On Illegitimate Births]. *Magyar Statisztikai Szemle [Hungarian Statistical Review]*, 1941, No. 2, pp. 71–93.

births. Overall, we can establish that the birth rate of illegitimate children shows a decreasing tendency.

3. The social status of illegitimate children

"*They suffer without having any sin. They are punished the moment they are separated from their mothers' body. Society puts its unjust brand on them, for the state to bless it."*[3]

The life of illegitimate children is predictable even before the day they are born. There is no legal relationship between them, and their father, or the father's relatives for that matter. They choose to not even acknowledge their existence, given the prevailing unfavourable views regarding bastards. Although legitimation is usually possible, it is rather scarce. The child (or in certain cases, their mother) only has the legal means to sue for child support. Society also stigmatizes the mother, whose resentment toward their child can result in unjust inner wounds despite being perfectly innocent in this regard. So, the child growing up in a broken family, is prone to neglect, usually lacking care and nurture, given that their mother is usually the sole breadwinner, is more likely to fall victim to childhood illnesses. The infant mortality rate of illegitimate children in Budapest between 1920 and 1924 is almost twice that of their legitimate counterparts, with almost one in four illegitimate children not surviving to see their fifth birthday. [4] To put it in perspective, that amounts to four thousand seven hundred fifty out of the nineteen thousand children born between 1920 and 1924. [5]It is no surprise that the justification for Act XXIX of 1946, which ultimately resolved this issue, explicitly states

[3] SZAKOLCZAY, Árpád: Törvénytelen gyermekek [Illegitimate Children]. *Jogtudományi Közlöny [Legal Journal]*, 1892, No. 43, p. 341.
[4] LAKY, Dezső: *A törvénytelen gyermekek Budapesten [Illegitimate Births in Budapest]*. (Budapesti Statisztikai Közlemények, 62/4) [Hungarian Statistical Publications Vol. 62/4]. p. 5.
[5] Magyar Statisztikai Évkönyv, 1923, 1924, 1925 (*Új folyam*, 31–33). Budapest, 1927. p. 33.

that such considerations played a crucial role in the legislator's choice to abolish the legal distinction between legitimate and illegitimate children.

4. Relevance in criminal law

The Act V of 1878 (the Hungarian Penal Code on Crimes and Misdemeanors) also known as the Csemegi Code paints a rather disheartening picture of society, as it addresses the murder of illegitimate children in a separate paragraph. This suggests that desperate mothers, driven by the prevailing social conditions, might have been pushed to commit infanticide.

The 284th paragraph of the act sanctions the murder of an illegitimate child with a prison sentence of up to five years, which is a more lenient punishment, compared to the 10–15-year imprisonment prescribed for manslaughter. Similarly, the sanction imposed for the termination of an extramarital pregnancy is reduced to a 2-year sentence, while abortion under other circumstances is punished with a 3-year imprisonment.

These legislative choices can be interpreted in two ways. On the one hand, it is possible that the legislator senses the societal and legal handicaps imposed on illegitimate children and their mothers, so it's willing to turn a blind eye to certain escape routes taken by desperate individuals.

On the other hand, as the law reflects prevailing societal values, it may also suggest that the state regards the murder of an illegitimate child (who may as well be considered a second-class citizen) as a less severe offence.

The lack of a legal relationship between the natural father and his illegitimate child is also reflected in the sanctions of homicide under the Csemegi Code. In cases of aggravated homicide, where the crime was committed against a direct ascendant, a spouse, multiple victims, an illegitimate child by its mother, or if legitimization

occurred, by the biological father, the law prescribed life sentence. However, in every other case of intentional homicide -including where an illegitimate child killed their biological father- the applicable sentence ranges between 10-15 years.[6]

5. The legal relevance of birth outside of marriage

"*The consequence of a monogamous marriage is the establishment of family ties based on marriage, and with that the privileged legal status of children born of marriage over children born out of wedlock.*" [7]

The basis of the legal relationship between the biological father and his child is the legitimacy of birth. If the child was born outside a valid marriage and was not subsequently legitimized, no legal relationship arose between the biological father and them. In the eyes of the law, the child only had family ties with their mother (and her kin), so exercising parental authority was the exclusive right of the mother. The child bore the mother's maiden name, followed her social standing and religion, has no claim to his father's surname nor his inheritance. Naturally, the absence of this legal relationship is reciprocal, the Hungarian Supreme Court (Kúria) establishes that the natural father has no claim to their illegitimate child's inheritance either.[8]

The natural child's claim to their mother's inheritance was also called into question. Until the Kúria's 79th full session decision (1906. 11. 9.) illegitimate children may only inherit after their mother, if she had no legitimate offspring. In 1915 the Kúria's ruling No. 2488/1914 extended the legal succession of illegitimate children to include maternal relatives. This means, that after the death of their mother, the principle of substitution prevails, allowing the child to inherit in place of their parent.

---

[6] Act V of 1878 (1878. évi V. törvény)

[7] SZLADITS, Károly (szerk.): *Magyar magánjog 1. Általános rész, személyi jog. [Hungarian Private Law, Vol.1.]* Budapest, 1938. p36.

[8] Kúria elvi jelentőségű határozatai:28 (1883. évi november 28.)

During my analysis, I considered the aforementioned aspects of the legal status of the natural child as given, and only elaborated on them further, if relevant changes occurred in the legal framework.

In 1902 László Sipőcz made the following statement: "*Just as nature does not distinguish between children conceived within or outside of marriage, for both are equally the blood of their parents, human law should not discriminate between them when granting rights.*"[9]

The regulation of the legal status of illegitimate children ultimately aimed at achieving complete legal equality, which we now consider to be a constitutional principle. The road to equality was a gradual and difficult process, marked by slow but continuous legal expansions.

One of the main obstacles to securing more favourable legal conditions for illegitimate children was the significant direct (and indirect) influence of the Catholic Church during parts of the civil era. The Church viewed such legal expansions as an action resulting in the annihilation of the sanctity of marriage. Although Act XXXIII of 1894 established the civil registry, removing the management of birth records from ecclesiastical authority, deeply ingrained religious convictions within society continued to hinder the full realization of legal equality.

Nevertheless, it is important to note that the morality of Catholicism inherently implies an obligation for biological fathers in terms of supporting their illegitimate children. As a result, the institutionalization of child support did not face strong clerical opposition.

[9] SIPŐCZ, László*: A törvénytelen gyermekek jogállásáról [On the legal standing of illegitimate children]* [201., 1902] in SZLADITS, Károly (szerk.): Magyar Jogászegyleti értekezések [Essays of the Hungarian Lawyers' Association] 24. kötet (201-205. füzet) - Magyar Jogászegyleti értekezések 24. (Budapest, 1902) p. 201.

6. The position of illegitimate children before the civil era

Although the reception of roman law in the Hungarian legal system was limited, the main characteristics of civil-era legal regulations closely mirrored those of roman legal principles. Under roman law, illegitimate children were born legally independent (*sui iuris*), and did not fall under any paternal power. As a result of this, they could not inherit from their father, nor could they have claims for maintenance. The identity of their legal guardian also remained unclear, until the institutionalization of public guardianship. Such children only acquired Roman citizenship if their mother was a roman citizen at the time of their birth. Legitimation was only possible in the cases of concubinage (*concubinatus*), so children born out of casual sexual relations were excluded. The situation of children born out of incest or adultery is particularly devastating, as they had no claims to maintenance on their maternal relatives either.[10]

Werbőczy's *Tripartitum* (which aimed to synthesize Hungarian customary law) only mentions illegitimacy in cases of incestuous marriages. If the parties entered the marriage in good faith, and dissolved the union upon learning of their consanguinity, the child was regarded as legitimate and had legal claim to both their parents' inheritance. However, if the parties were aware of their blood relation and entered the marriage "*despite the objection of their relatives, or others*" (*Tripartitum*, Book I, Title 106) the child was deemed illegitimate whether the marriage was later dissolved. Even papal legitimation did not confer inheritance rights in such cases (*Tripartitum*, Book I, Title 108). Moreover, neither the pope nor the king could legitimate such children to the detriment of a legitimate son or other lawful heirs.

[10] Iustinianus 89. novellája; BALOGH, Judit.: "*Erkölcsellenes és minden tekintetben káros állapot": a természetes gyermekek jogi megítélése és a törvénytelenség orvoslásának egyes esetei a jogtörténetben [An Immoral and in Every Respect Harmful Condition": The Legal Perception of Illegitimate Children and Selected Cases of Legal Redress in Legal History]*. *Collectio iuridica Univ. Debr.* 6, 35-50, 2006 pp. 35-50.

7. The role of the Catholic church until the introduction of the civil registry

Ignác Frank was one of the first jurist of the civil era, who argued for the importance of institutional child support. In his 1845 work, "The law of justice in Hungary he said: " *Yet it is the duty of their parents to support and raise them, for this is a natural obligation which no legislation can overrule*."[11] Frank also referenced the reforms of Emperor Joseph II, an enlightened monarch, who in the Austrian hereditary provinces granted illegitimate children access to public offices and guilds. The monarch held that it was unjust to punish a child for the transgressions of another, and therefore illegitimacy alone should not be a basis for legal disadvantage.

In Hungary, during the civil era, the determination of legitimate birth remained under the jurisdiction of the Catholic church until the enactment of Act LIV of 1868[12]. Under canon law, a child was considered legitimate, if they were both conceived and born within a canonically valid (or presumed) marriage. It is important that both of those conditions were met, otherwise legitimacy was not granted upon birth. Canon law recognized certain exceptions to this rule, such as if the child was conceived and born from a valid marriage, but the parents subsequently made vows which would have prohibited marital relations at the time of their conception, in which case the child was deemed illegitimate.

Barring such exceptions, a child shall be considered legitimate, if they were born no earlier than six months after the marriage, and no later than ten months following its dissolution. In spirit of protecting the child's rights, the church deemed children conceived before, but born in a valid marriage legitimate, provided that the father did not contest paternity.

The determination of paternity rested on the roman legal presumption "*pater est quem iustae nuptiae demonstrant*" (*the father is he whom a lawful marriage indicates*). Based

[11] FRANK, Ignác: *A közigazság törvénye Magyarhonban [The Law of Public Justice in Hungary].* Budapest, 1845, p. 159.
[12] BÁNK, József: *Kánoni jog II [Canon Law Vol. II].* Budapest, 1963, pp. 249-251.

on this, the husband of the child's mother at the time of birth was presumed to be the legal father.

Canon law distinguished several different types of illegitimacy, which were of particular importance in the event of legitimation. *Filii naturales,* also known as natural children, are born out of relations, where entering a valid marriage had no canonical obstacles, so no marriage impediments occurred from the time of conception, until birth. The legitimation of these children was possible through subsequent valid marriage, or by papal dispensation. This was not the case with children born out of wedlock, as the parents' union was considered to be obstructed by a "*divine legal tie*". This theological barrier rendered any form of subsequent legitimation canonically impermissible.

The dualist era, and the development of civil society brought with it a growing demand for the separation of ecclesiastical and state jurisdictions, which led to a significant shift in the status of illegitimate children. Act LIV of 1868 restricted the procedural competence of ecclesiastical courts, limiting it solely to the adjudication of marriages. As a result, the determination of legitimacy and the imposition of child support were placed under the jurisdiction of district and county civil courts.

In Hungary, Act XXXI of 1894 established the institution of civil marriage, whereby the legal basis of legitimacy laid upon the existence of a valid civil marriage, rather than an ecclesiastical one. Finally, the introduction of the civil registry system by Act XXXIII of 1894 meant that all institutions relevant to the legal standing of illegitimate children were now placed under state authority.

8. The Austrian Civil Code and Act XX of 1877

The Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch- ABGB) came into effect in Hungary on May 1, 1858, attempting to remedy the legal disarray following the Hungarian Revolution of 1848. The ABGB replaced the previously dominant feudal

legal framework, and as a result the concept of child support of illegitimate children was first introduced into the Hungarian legal system.

Section 167. explicitly states that the support of children (legitimate and illegitimate alike) primarily falls on the father. An exception can be made if the father was financially incapable of fulfilling this duty, in which case the obligation shifted to the mother. Establishment of child support rested with the courts, and if it was imposed, the obligation extended to the heirs of the natural father as well. The provisions of the ABGB were actively applied by Hungarian courts, even after the Code was formally repealed in 1861. Act XX of 1877 (on Guardian and Custodianship matters) largely upheld the provisions of the ABGB. It also declared that illegitimate children, as they were not under paternal authority unless legitimized or adopted, were to be placed under guardianship. By default, this guardian was the mother, unless she was not of legal age herself, or opted out of this obligation, in which case the state would appoint a legal guardian.[13]

9. Decree No. VII of the Revolutionary Governing Council

Following World War one, the newly empowered communist leadership concurred the question of illegitimate children on their 5th day in power. "*There are no longer any illegitimate children*" [14] Proclaims the seventh decree of the Revolutionary Governing Council, which placed children born out of wedlock on an equal legal footing with their legitimate counterparts, thereby abolishing the legal distinctions between the two. This meant that, for example, only such copies of birth records may be issued from which it is not detectable whether the father's name was registered subsequently. The other

[13] VARGA, István: Az informális szolidaritástól a formális szolidaritási normáig (Törvénytelen gyermekek tartása a két világháború közötti Magyarországon). 2017, p. 39., https://edit.elte.hu/xmlui/bitstream/handle/10831/37798/Varga%20Istv%C3%A1n%20-%20T%C3%A9zisf%C3%BCzet.pdf [access on March 31, 2025].
[14] Népszava, 1919, No. 72, p. 1.

significant change was in regard to establishing paternity, which henceforth could be determined by court at the request of both the mother and the child.

According to the 1920 census[15], Hungary had a population of eight million people, of which 2.775 million were under the age of 16. Almost every 10th child under 16, approximately 277,5 thousand people, were born out of wedlock. Considering these statistics, it comes as no surprise that the communist government was quick to regulate the legal standing of these individuals.

The decree was merely the first, foundational step in a series of child protection measures issued by the Hungarian Soviet Republic, with the clear objective of promoting social unity and equality demanded by the governing ideology.

Due to the short-lived nature of the regime, no substantive information is available regarding the implementation of the regulation.

10. The private law bill of 1928

Although the private law bill of 1928 never entered into force, partly due to the upheaval caused by the Great Depression, it was nonetheless incorporated into the Hungarian legal system through judicial practice.

The draft no longer employs the previously customary term "*illegitimate child",* which carried heavy moral stigmatization. Instead, the legislator adopts the terminology "*child born out of wedlock"*, a linguistic change which can represent the subsiding of societal judgment towards these individuals. The change however is a bit ambivalent, as the law continues to refer to children born within wedlock as legitimate, which still implies that those not included in this category are illegitimate.

Chapters II and III address the matter of legitimate descent. There were no changes made in the definition of legitimacy, as one is to be deemed legitimate, if "*178§ is born*

[15] BURUCS, Kornélia: Társadalom, nevelés, mozgalom[Society, Education, Movements], 1919–1945. *Adattár, 1919–1945. História [History]*, 1997, No. 5–6, pp. 44–47.

to the wife during the subsistence of the marriage, or within 302 days of its dissolution" also if "*179§ born during the subsistence of a void marriage, or within 302 days of it being dissolved, or declared void, except if the marriage was void due to direct-line consanguinity, sibling relationship or prior existing marriage, given that both parties were aware of these circumstances at the time of the elopement."*

The legitimacy of the child may be contested by the husband, the mother, or the child. If a child's legitimacy is contested, the court may rule to declare the child illegitimate. Legitimation remains possible through subsequent marriage or royal dispensation, with the exception of children born of incest.

An illegitimate child recognized by a notarized deed may only inherit legally from their natural father in very specific cases. This includes if the deceased's legitimate children, spouse, ascendants, and collateral relatives are all excluded from the inheritance for reasons beyond renunciation, as their declarations would be deemed void if such declaration would result in the natural child becoming the heir.

11. Alimony

Chapter VI of the Act deals with the maintenance obligations regarding children born outside of marriage. It establishes that a natural child shall have the same rights as a legitimate child with regard to their mother and their maternal lineage. Although maternal relatives are secondary to the child's father in terms of maintenance obligations, they are required to support the child until paternity is established, and supplement the maintenance after, if the support provided is "*less than what the child would be entitled to from the mother, given her financial and earning capacity*"[16]

In accordance with the regulation, the support of illegitimate children under the age of 16 falls on the natural father. There are no age restrictions in place if the child is unable to support themselves due to a physical or mental disability. An exception can be made,

[16] 1928. évi magánjogi törvényjavaslat [The Private Law Bill of 1928] § 249.

if the natural child was subsequently adopted, in which case maintenance obligations fall on the adoptive parent first. Any future waiver of the right to maintenance without compensation is void.

The father shall only be exempt from maintenance obligations, if he would not be obligated to support the child, even if they were born legitimate. Such cases include if the child is capable of supporting themselves from their own property and earnings, or if fulfilling such obligation would endanger the father's own maintenance- provided that the child has another relative who can be compelled to provide support.

The extent of maintenance shall be determined in accordance with the social standing of the mother. The inequitable nature of this rule stems from the fact that there is usually a considerable economic disparity between the parents, especially given the mothers generally lower social class, and work opportunities as a single mother of an illegitimate minor. It would usually not cause the father considerable financial strain to pay higher alimony (as he would be legally compelled to do if the child was legitimate), and yet the legislator does not impose such an obligation on him. The father's maintenance obligations may be further reduced to a life-sustaining amount, given that the child conducts such a demeanor, which would justify paternal disownal.[17] Such conduct includes an attempt on the father's life, persistent dishonorable lifestyle, or committing an act of treason. [18]

The provision of maintenance in kind is permissible only with the consent of the mother (or legal representative) otherwise, the obligation must be fulfilled through monthly payments in cash.

The illegitimate child remains entitled to maintenance following the death of the father, provided they would otherwise be eligible, as this obligation is transferred to his heirs. The child may demand maintenance on the heirs, but only to the extent that "*The father would be obligated to pay considering the entitlements of his legitimate children, spouse,*

[17] 1928. évi magánjogi törvényjavaslat [The Private Law Bill of 1928] § 251.
[18] 1928. évi magánjogi törvényjavaslat [The Private Law Bill of 1928] § 2010.

and former spouse, based on the value of the estate" [19] The heir may fulfill this obligation by a lump-sum payment equivalent to the compulsory share of the inheritance of a legitimate child.

12. Determination and contestation of paternity

In accordance with the 247th paragraph of the act, the father of the illegitimate child shall be considered "*Who conducted sexual relations with the mother at the time of conception (which is the period from the 302nd and 181st day counted backwards from the birth of the child)"*

Conditional and provisional establishment of paternity may be initiated through judicial proceedings even prior to the birth of the child. If granted, the presumed father may be obligated to deposit 3 months' worth of maintenance, which shall be refunded in the event of the child's death. In urgent cases, the application may extend to the costs of 2 weeks' maintenance, paid directly to the mother.

Two scenarios are possible following the birth of the natural child. In the simpler case, the father acknowledges paternity, which declaration is to be recorded in a notarized deed by the guardianship authority. If the presumed father refuses such acknowledgement, however, paternity shall be established through judicial proceedings.

The aforementioned presumption of paternity contains the following exceptions: "*Except where, under the given circumstances, it is impossible for the child to be the descendent of the father, or if the mother, at the time of conception, led such immoral life that sexual relations with multiple men were either conducted for gain or in a manner offensive to female modesty."*[20]

[19] 1928. évi magánjogi törvényjavaslat [The Private Law Bill of 1928] § 257.
[20] 1928. évi Magánjogi törvényjavaslat [The Private Law Bill of 1928].

Originally the objection of immoral conduct referred specifically to habitual sexual intercourse in exchange for compensation. The Royal Court of Appeal states that "*A woman who led an immoral life and engaged in sexual intercourse habitually, for payment may not claim child support. The determination of such conduct is a legal question and cannot be established merely form the fact that she had intercourse with more than one man."*[21] Furthermore: *"The objection of multiple sexual partners is only valid against a woman of immoral life, the mere circumstance that a woman had intercourse with several men outside marriage is not sufficient to establish immoral conduct."*[22]

Although such reasoning contradicts the basic principles of logic, there are instances in the Hungarian judicial practice where this objection was permitted even when the putative father denied the event of the intercourse all together. (Curia: I. G. 357/1897.)[23] This contradiction was later remedied by the decision of the Budapest Court of Appeal (Bp. Tábla P. III. 2505/1927) which prohibited the objection of immoral conduct to be raised when the event of the intercourse was denied. Moreover, such an objection could not be invoked by a person who had acknowledged the child in a notarized deed.

13. The solution – Act 29 of 1946 about the legal status of children born out of wedlock

Recalling previous regulations, a natural child followed the maiden's name and nationality of the mother, no legal relationship was established between them and their

[21] Bp,-i királyi ítélőtábla elvi jelentőségű határozatai [Precedential decision of the Royal Court of Justice Bp.] 1897 szeptember 23. 1897. G. 58. sz. a.i.

[22] Bp,-i királyi ítélőtábla elvi jelentőségű határozatai [Precedential decision of the Royal Court of Justice Bp.] (1895 október 19. 1895. G. 27. sz. a.).

[23] BOGA, Bálint: Jogfejlődés a természetes (házasságon kívül született) gyermek jogi helyzetében.[Legal Development in the Status of Natural (Illegitimate) Children.] *Magyar Jogi Szemle [Hungarian Legal Review]*, 1928, 9. évf., No. 4, p. 111.

natural father (or paternal kin), so natural children's inheritance rights (with rare exceptions) extended solely to the mother's side. No legal relationship was established even if the father's obligation to provide maintenance was determined.

The aforementioned reasons uphold the significant legal importance of Section 19, which permanently abolishes the legal distinction of legitimate and illegitimate children, rendering all legislative provisions contradicting this principal void.

The act establishes that a child born out of wedlock is related to both their father (and paternal kin) and mother (and maternal kin) alike, supplementing the absence of a legal relationship between the father and his natural child.

Consequently, a child born out of wedlock has the right to bare his father's surname. The placement of the child shall be determined by the mutual agreement of the parents, or in the absence thereof, by the guardianship authority.

The amount of maintenance shall be determined in accordance with the social standing of the father, now identical to the maintenance of a legitimate child.

The reasoning[24] behind the Act acknowledges that although it is not entirely possible to remedy the social disadvantages burdening illegitimate children through legislative measures, given that transforming the prevailing social views is not possible through legislation, but vows to improve the situation of these individuals to the extent of the available legal instruments' capacity.

The legislator refutes arguments, claiming that granting equal rights to illegitimate children will subsequently cause the ancient institution of marriage to become obsolete. It argues that the regulations don't remedy the unfavorable social standing of the mother, so it is still within her interest to bear children within the bounds of marriage. The natural father (provided that he is willing to assume responsibility for the child) is also indifferent to these changes, as he already had the legal capacity of

[24] 1946. évi XXIX. törvénycikk indoklása a házasságon kívül született gyermekek jogállásáról [Reasoning of Act 29 of 1946].

voluntary placing his child in a legal position akin to that now mandated by the new legislation.

The new regulation brings positive changes in the life of illegitimate children whose fathers could only be compelled to fulfill their legal (and moral) obligations by the State.

14. Conclusion

During Hungarian legal history, but especially during the civil era, the status of illegitimate children underwent an organic process of development, ultimately resulting in the complete abolition of this legal distinction in1946. Through this process, the legislator was compelled to strike a balance between fluctuating social demands and state interests. The unfolding of final legal equality is an accurate representation of the shifting societal values throughout history, which is why I deemed the subject worthy of scholarly exploration.

Jakov Vojta Žujo: Trial of war criminal Andrija Artuković in 1984

University of Zagreb, Faculty of Law

DOI 10.21862/siaa.9.12

1. Introduction

Andrija Artuković was a high official of the Ustaše party, a minister in the government of the Independent State of Croatia (hereinafter: NDH), a close associate of Ante Pavelić, and a war criminal convicted for mass killings and persecution of minority groups and opponents to the ideology of the NDH. The developments after World War II and before his later conviction garnered special attention.

As especially remarkable stand out the attempts to extradite him from the USA to Yugoslavia, his subsequent extradition and his highly controversial trial in Yugoslavia. This is due to the ideologically charged nature and specific peculiarities of the trial, as well as strong political undertones following the whole process. This paper will outline and scrutinize these features of the trial. Artuković's previous life and involvements up until the trial will also be covered, to provide important context for understanding the actual trial process. In the end, a conclusion will be given regarding the fairness and validity of the trial.

2. Early life, joining the Ustaše movement

Andrija Artuković was born on 19th November 1899 in Klobuk near Ljubuški in Herzegovina[1]. He had thirteen siblings. Early in his life he was by occupation a lawyer, and by calling an Ustaše ideologue. He studied law and obtained a doctorate from the University of Zagreb, Faculty of Law in 1924.[2] During his studies he associated his political activity with the "*Frankovci*", Croatian nationalist and staunch opponents of the Kingdom of Serbs, Croats and Slovenes.[3] Artuković was also active in the clero-nationalist organization "*Domagoj*".[4] The successors of the "*Frankovci*" from emigration were the "*Pravaši*" of Ante Pavelić.[5] Stemming from the Pravaši, on 7th January 1929, the Ustaše organization was founded.[6] Artuković met Ante Pavelić during his studies in Zagreb. Artuković joined the Ustaše, a then strongly nationalist as well as a terrorist organization, after a year of it being active, when he was 29 years old.[7] He was an important member from the very beginning. Artuković was a confidante of Pavelić in Lika, Croatia, during the Ustaše exile in Italy.[8] One of the early activities he was involved in was the Velebit uprising in Brušani, an attack on a Yugoslav army station[9] on July 6th, 1932[10]. Artuković left the country three days before the attack.[11] He went to Italy, where he was named camp commander of the Ustaše emigration camp in Bovegno, Brescia. He was later (in 1936) tried for participation in the uprising, but the court in Belgrade

---

[1] OLUJIĆ, Željko: *Kako nisam obranio Andriju Artukovića [How I Failed to Defend Artuković]*. Zagreb, 1991, Start, p. 41.
[2] RAVLIĆ, Slaven: "Andrija Artuković", in: DIZDAR, Zdenko; GRČIĆ, Marko; RAVLIĆ, Slaven; STUPARIĆ, Darko (eds.), *Tko je tko u NDH [Who was Who in the NDH]*. Zagreb, 1997, Minerva, p. 11.
[3] *Ibid.*
[4] LIČINA, Đorđe: *Dossier Artuković [The Artuković Dossier]*. Zagreb, 1986, Centar za informacije i publicitet (CIP), p. 13.
[5] OLUJIĆ, *op. cit.,* p. 44.
[6] SCHÄUBLE, Michaela: *Narrating Victimhood: Gender, Religion and the Making of Place in Post-War Croatia*. New York, 2014, Berghahn Books, p. 323.
[7] LIČINA, *op. cit.,* p. 13.
[8] *Ibid.*, p. 17.
[9] TOMAŠEVIĆ, Jozo: *War and Revolution in Yugoslavia, 1941–1945: Occupation and Collaboration*. Vol. 2. Stanford, California, 2001, Stanford University Press, p. 33
[10] RAVLIĆ, *op. cit.,* p. 11.
[11] LIČINA, *op. cit.,* p. 21.

cleared him of his charges for lack of evidence.[12] Some suggest that he was released because he told the officials everything, he knew about the Ustaše. Others, however, claim it was because the at-the-time prime minister of Yugoslavia, Petar Stojadinović, wanted to ingratiate himself with the Italian leadership.[13] At this time, interestingly, Artuković adopted the pseudonym "*Hadžija*", a Muslim word meaning "*Pilgrim*".[14]

After that, he travelled across Europe (Budapest, Vienna where he got arrested, London), during which he was tasked with building connections and preparation for the assassination of the king of Yugoslavia, Alexander I. He was arrested in London as well, after the Ustaše assassination of king Alexander I in Marseille. He spent some months in the Parisian prison "*La Sante*", after being extradited to a prison in Belgrade. After the court process by the Belgrade Court for protection of the State, he was acquitted for lack of evidence for both the Velebit uprising and the assassination, due to the government in Belgrade turning more to the Axis powers.[15]

After this he spent some time spreading the Ustaše influence and propaganda in Berlin, which resulted in him being interrogated by the Gestapo. During the interrogation he claimed he was not part of the Ustaše movement, and that he had never been part of it.[16] Afterwards he spent some more time travelling across Europe before World War II, presumably working to further the Ustaše cause internationally. Artuković was, according to German reports, pro-German oriented. It seems that exactly his readiness to collaborate with the Nazis, as well as a separation from the vilest Ustaše circles, as he was known as somewhat of an intellectual among the Ustaše, resulted in his high formal position in the hierarchy of the Independent State of Croatia.[17]

---

[12] *Ibid.,* pp. 24.-25.
[13] OLUJIĆ, *op. cit*., p. 48.
[14] RAVLIĆ, *op.cit.*, pp. 11–12.
[15] LIČINA, *op. cit.*, pp. 27-29.
[16] *Ibid.,* p. 31.
[17] OLUJIĆ, *op. cit.,* pp. 51-52.

3. The Independent State of Croatia

In early 1941, Yugoslavia joined the Axis. But this was short-lasting, as a pro-Allied coup d'etat overthrew the government. Adolf Hitler decided to invade Yugoslavia in response. The country was severely underprepared and unmotivated, and capitulated in under two weeks. This was partly due to the non-Serbian population's refusal to fight, seeing a way to be freed from oppressors. The Germans created a puppet state – The Independent State of Croatia (further in text: NDH) and placed Pavelić and the Ustaše in charge. The NDH was proclaimed on 10th April 1941.[18] The so-called Independent State of Croatia was in reality neither genuinely independent nor a fully functioning state. Its identity as Croatian was largely nominal and applied primarily to a limited segment of the population. It was a fascist and antisemitic puppet state modelled after Italy and Nazi Germany, with policies targeting Jews, Serbs, Rome and even anti-government Croats. A summary death penalty against anti state activities was introduced, and concentration camps were established, most notorious of which was Jasenovac.[19] Some reports state that even the Germans were horrified at the level of cruelty the Ustaše exhibited in their camps.

3.1. The role and activities of Andrija Artuković in the NDH

As a member of Pavelić's inner circle and as one of his most trusted, Artuković became the Minister of the Interior in the newly formed state government.[20] The German higher-ups were satisfied by his important role in the government, as he was by that point working for the Gestapo.[21] He gave his oath on the 16th of April 1941, a day after

[18] ČEPULO, Dalibor: *Hrvatska pravna povijest u europskom kontekstu. Od srednjeg vijeka do suvremenog doba [Croatian legal history in the European context. From the Middle Ages to modern era]*. Zagreb, 2023, Pravni fakultet Sveučilišta u Zagrebu, pp. 279-280.
[19] *Ibid.* pp. 284-285.
[20] OLUJIĆ, *op. cit.,* p. 57.
[21] LIČINA, *op. cit.,* p. 35.

Pavelić publicized the composition of the first Ustaše government.[22] Artuković had a key role in this puppet state throughout its existence, and was one of the most powerful people in it.[23] After his role as Minister of the Interior he took up other key roles such as the Minister of Justice and Religion and the Secretary of State. He was also intimately involved in issuing and implementing racial and terror laws[24] forming the basis for systemic extermination of Serbs, Jews, Roma and Croat dissidents.[25] He announced on 22nd April 1941, so 12 days after the formation of the NDH, that the government would solve the "*Jewish question*". All the laws and policies were worded vaguely, taking from the playbook of Nazi Germany and other authoritarian states, making them a mere instrument of terror and arbitrary persecution for the authority.[26] The institution which was enforcing these laws was the Directorate of Public Order and Security, a subordinate to Artuković's Ministry of the Interior.[27]

It seems that as minister of Interior, Artuković had supreme power over, among others, the Ustaše police, secret service and secret police.[28] However, Olujić, Artuković's defence attorney during the process in Yugoslavia, claims that even though his formal role was major, he had no official authority nor informal power to give commands to the Ustaše military, and that the real commander-in-chief was Eugen Dido Kvaternik[29], so the actual power over the forces that committed most of the Ustaše atrocities is disputed. As Minister of Interior, Artuković had the primary role in choosing the administrative cadre of the state. He signed the Order about establishing racial

[22] OLUJIĆ, *op. cit*., p. 57.
[23] *Ibid.*, p. 63.
[24] LIČINA, *op. cit.,* p. 45.
[25] *Ibid.,* p. 40.
[26] JELIĆ-BUTIĆ, Fikreta: *Ustaše i Nezavisna Država Hrvatska 1941–1945 [The Ustaše and the Independent State of Croatia 1941–1945]*. Zagreb, 1977, Liber – Školska knjiga, p. 159; KRIZMAN, Bogdan: *Pavelić između Hitlera i Mussolinija [Pavelić between Hitler and Mussolini]*. Zagreb, 1980, Globus, p. 117; VUKOVIĆ, Igor: An Order of Crime: The Criminal Law of the Independent State of Croatia (NDH) 1941–1945. *Balcanica*, Vol. 48, 2017, p. 291.
[27] TOMAŠEVIĆ, *op. cit.,* pp. 383-384.
[28] LIČINA, *op. cit.,* p. 35., 36.
[29] OLUJIĆ, *op. cit*., p. 63.

affiliation of state and self-governing officials and free academics, to assure all these officials were of as pure Aryan heritage as possible.[30]

Particularly astounding among his activities in the NDH was his speech at the opening of the Croatian Parliament in February of 1942, where he outlined his intention for the NDH to take even more radical actions against the Jews than Nazi Germany. He referred to the Jews as *"insatiable and poisonous parasites"* who would be destroyed, and stated that Croats had been forced to serve the Jews in pursuit of their "*filthy*" profits and "*materialistic and grasping*" ambitions.[31] After this speech, the aforementioned concentration camps in the NDH and extermination camps of Nazi Germany were filled up by, among others, Croatian Jews, in campaigns of mass deportations.[32] Ljubo Miloš, one of the commanders in Jasenovac, gave this quote at an UDBA (secret police in the second Yugoslavia) hearing in 1948: *"The order to form concentration camps, modelled on German camps, was given by Andrija Artuković. He appointed Dido Kvaternik to implement this"*. [33]

Artuković also took up an active role alongside Pavelić in foreign relations. He participated in the Croatian-Italian negotiations, yielding the Treaties of Rome and resulting in large parts of the Dalmatian coast and islands being ceded to Italy.[34] Artuković also accompanied Pavelić during a visit to Adolf Hitler in Salzburg.[35]

4. Post-World War II

Just before the liberation of Zagreb by the Partisan forces, with the rest of the Government, he left the NDH on May 6th 1945. He was first hiding in Innsbruck, Austria,

[30] LIČINA, *op. cit.,* p. 40.
[31] YEOMANS, Rory: *Visions of Annihilation: The Ustasha Regime and the Cultural Politics of Fascism, 1941–1945*. Pittsburgh, 2013, University of Pittsburgh Press, p. 194.
[32] *Ibid.*, pp. 25-26.
[33] LIČINA, *op. cit.,* p. 44.
[34] ČEPULO, *op. cit.,* 281.
[35] OLUJIĆ, *op. cit.,* p. 58.

then quickly left for Switzerland.[36] From 1945 to 1947, he settled in Switzerland under a fake name Alois Anich, but after his identity got found out, the Swiss authorities offered him to keep the Nansen passport (an internationally recognised refugee document granting certain rights) if he and his family would leave Switzerland.[37] He left for Ireland, where he acquired a visa, required to enter the United States of America.[38]

4.1. Life in the USA

On 16 July 1948, Artuković landed with his wife Ana and two children - Zorica and Radoslav in New York on a flight from Ireland.[39] Artuković managed to escape to the United States of America and settle in California. He lived in one of the tourist houses in Surfside, owned by his brother Ivan (John) Artuković.[40] He also worked at a company owned by his brother. As an alleged war criminal, Romani Holocaust perpetrator and Ustaše official, he did not qualify for legal status in the United States. He remained in the country after overstaying his visa.[41]

5. First extradition attempt

Artuković was arrested by the police in June of 1951, as his secret identity was found out.[42] The extradition efforts began already in 1951, when on the 29th of August, the

[36] LIČINA, *op. cit.,* p. 63.
[37] SCHOCH, Jürgen: Der Deal mit dem kroatischen Faschisten – wie die Bundesanwaltschaft 1947 dem «Schlächter vom Balkan» half. *NZZ – Neue Zürcher Zeitung*, https://www.nzz.ch/schweiz/2-weltkrieg-schweiz-als-ziel-und-durchgangsland-fuer-faschisten-ld.1533476 [Access on November 9, 2025].
[38] LIČINA, *op. cit*., p. 64.
[39] *Ibid*., p. 11.
[40] *Ibid.,* p. 66.
[41] JUREŠKO-KERO, Jadranka: Radoslav Artuković, sin ministra u NDH: Želim pokopati oca! [Radoslav Artuković, the son of the Minister of the NDH: I want to bury my father!]. *Večernji list*, 28 June 2010, https://www.vecernji.hr/vijesti/radoslav-artukovic-sin-ministra-ndh-zelim-pokopati-oca-clanak-160269 [Access on November 9, 2025].
[42] LIČINA*, op. cit.,* p. 67.

Government of Federal People's Republic of Yugoslavia requested his extradition. Artuković in return turned to the influential Croatian emigrant community and appealed to the Roman Catholic Archdiocese of Los Angeles, as they presumably shared his anti-communist and anti-socialist sentiment. This resulted in a bureaucratic delay of seven years. He was also assisted financially by pro-fascist and extremist organizations in the US, as well as the "*Columbus Knights*", a large Catholic society.[43] The cohort of his sympathisers also spread propaganda about the extradition request being political and minimised the crimes committed during the NDH, such as that in Jasenovac everything was "fine"[44] and that Artuković didn't know about any of the atrocities.[45]

The first request for extradition was ultimately rejected on 15th January 1959. The argumentation of the federal United States Immigration and Naturalization Service and the US Commissioner Theodore Hocke was that the crimes for which the extradition was requested were deemed "political" by the court, and that this means Artuković would be subject to physical persecution if extradited. Hocke also claimed that it cannot be proven the crimes being attributed to Artuković were committed personally by him, and that they were not committed by his command. This was despite no witnesses managing to conclusively confirm this, and the overwhelming amount of evidence pointing to his personally giving out written and oral orders to arrest, send to concentration camps and kill Serbs. The Yugoslav state issued a memorandum in 1960 to the American government, proclaiming that this decision was legally unsustainable and that it still considers Artuković a war criminal.[46]

The political context is very interesting to mention here: Artuković was shielded in the United States for such a long time mainly because of the "Red Scare" and strong anti-communist sentiment in the United States at this time. U.S. lawmakers repeatedly

[43] *Ibid*., p. 72.
[44] This was said by reverend Stjepan Lacković, a former secretary of Alojzije Stepinac and one of the loudest defenders of Artuković at the time.
[45] LIČINA, *op. cit*., p. 73.
[46] *Ibid.,* pp. 77-78.

introduced private bills to keep him in the country, viewing him as an ideological ally against communism rather than a war criminal.

6. Second extradition attempt

Some 20 years later, the federal United States Immigration and Naturalization Service changed their stance on the legality of the stay of associates and collaborationists with Nazi Germany, presumably because of the warmup of relations with the Soviet Union in the 80s. Consequently, the Yugoslav authorities renewed their request for extradition. Artuković was arrested in November of 1984 and was subjected to a court process in New York. He was prosecuted by the Office of Special Investigations of the U.S. Department of Justice as the "Butcher of the Balkans".[47] This resulted in the order for extradition to Yugoslavia on 11 November 1986.[48]

The culmination of nearly four decades of diplomatic and legal manoeuvring between Yugoslavia and the United States, the extradition of Artuković marked a rare instance of post-war accountability being pursued so long after the crimes. The case became a symbolic test of the limits of international criminal justice across ideological divides of the Cold War, reflecting tensions between anti-communist fervour and the categorical imperative to prosecute war crimes.

7. Trial in Yugoslavia

After the extradition, Artuković was tried before the Zagreb District court. His trial was based on the March 1986 Indictment by the County Public Prosecutor in Zagreb. It was

---

[47] FEIGIN, Judy: *The Office of Special Investigations: Striving for Accountability in the Aftermath of the Holocaust*. Washington D.C., December 2006, U.S. Department of Justice, Criminal Division, pp. 239–249.; PYLE, Christopher: *Extradition, Politics, and Human Rights*. Philadelphia, 2001, Temple University Press, p. 137.

[48] RAVLIĆ, *op. cit.,* p. 12.

a large and noteworthy trial, but the verdict was reached relatively quickly, in May 1986. The prosecution was represented by County Public prosecutor Ivanka Pintar-Gajer and her deputy, lawyer Anto Nobilo, and the defence was represented by a team of lawyers: Željko Olujić, Silvije Degen, Srđe Popović and Stevan Vidić. The presiding judge was Milko Gajski, the other member of the judicial council was judge Božidar Rumenjak. Besides them, four more members of the jury participated in the trial. [49]

The Indictment was grounded in the Yugoslav Penal Code's Articles 142 and 144 regarding and concerning crimes against humanity and war crimes, aligning in part with principles from the Nuremberg Charter. The prosecution framed its case within international law, arguing that Artuković's role met the standards of individual criminal responsibility for systematic persecution and mass murder. Artuković was physically in ruin at this point he was in extremely poor health, being legally blind and needing to use a stretcher. Because of this, the court had to affirm his competency each day. He often dozed off during sessions, yet doctors insisted he could follow proceedings. Under scrutiny was the decision not to take into account Artuković's mental state, despite Expert witnesses suggesting he is not fit to understand and participate in the trial. In addition to being physically in ruin, he was under scrutiny for being basically senile, and the lawyers cited failing health, including degenerative brain disease, heart problems and near-blindness in their extraordinary appeal against the death sentence.[50]

7.1. Arguments of the prosecution

In the 1986 Indictment, the prosecution argued that Andrija Artuković's conduct constituted crimes against humanity and violations of international law, including war

[49] Presuda Andriji Artukoviću, Poslovni broj: K-91/84-61, 14. svibnja 1986. [Verdict in the case of Andrija Artuković, Case Number: K-91/84-61, 14 May 1986], in: Olujić, *op. cit.*, p. 195.
[50] Yugoslav Court Upholds Artukovic Death Sentence. *Los Angeles Times*, 4 November 1986, https://www.latimes.com/archives/la-xpm-1986-11-04-mn-16220 [Access on November 2, 2025].

crimes against the civilian population and prisoners of war. Their case relied heavily on the findings of the 1986 extradition proceedings, in which it was determined that there was sufficient evidence to justify extradition. The prosecution characterised Artuković as a war criminal and a devoted servant of the Nazi-fascist occupiers and the Ustaše regime.[51]

The prosecution further maintained that the legislation of the Independent State of Croatia did not represent the will of the Croatian people but rather the will of the Ustaše leadership. These laws, devoid of any democratic legitimacy, were created to efficiently implement the criminal policies of the Ustaše regime. They contended that Artuković, together with Ante Pavelić, was one of the principal architects of this "normativism", a legalistic façade that upheld a system of institutionalised lawlessness. As Minister of the Interior, Artuković was held responsible for implementing a number of legislative acts, including the Act on Racial Affiliation, the Act on Compulsory Registration of Property of Jews and Jewish Companies, and the Act on the Protection of National Aryan Culture, among others. These measures formed the normative foundation for the persecution and extermination of Jews, Roma, and Serbs, as well as for the suppression of political and religious dissent.[52]

The prosecution called fifty-three witnesses to testify before the court and requested that the statements of an additional sixty-one be read into the record.[53] The testimonies largely recounted the atrocities committed under the Ustaše regime. The crown witness, Bajro Avdić, was central to the prosecution's case, as his testimony sought to establish a direct link between Artuković and specific crimes, including deportations, mass killings, and the implementation of racial laws. The prosecution concluded that *"it has been unequivocally established from the documentary evidence that a series of legal provisions, which created a perverse policy in the NDH against Jews,*

[51] Optužnica protiv Andrije Artukovića, Okružno javno tužilaštvo, 14. ožujka 1986. [Indictment against Andrija Artuković, District Public Prosecutor's Office, 14 March 1986], in: Olujić, *op. cit.*, pp. 195, 189, 203.
[52] *Ibid.*, pp. 206-208.
[53] *Ibid*., p. 196.

Roma, and subsequently religious intolerance towards Serbs, was precisely devised and implemented by the accused, Andrija Artuković." Regarding the testimony of Avdić, they asserted they were equally as strict in their assessment of the testimony of the accused, and they found he had no reason to lie, and furthermore, that in all the important points he was telling the truth.[54]

7.2. Arguments of the defence

Against this portrayal of Artuković as the chief architect of genocidal policy, the defence mounted a case seeking to separate formal responsibility from effective control. The defence argued that the majority of witnesses merely recounted the general horrors of the Ustaše regime, without establishing a concrete connection between those crimes and Artuković himself. They did not deny the crimes committed within the NDH but disputed the attribution of responsibility, claiming that only Eugen Dido Kvaternik could directly give orders to the Ustaše military. According to the defence, most witnesses neither knew Artuković personally nor could recall any direct involvement on his part. The defence thus maintained that Artuković could not be found guilty *"just because he was a member of the Ustaše, and that because of that very fact he must have committed some mass murder"*.[55]

To further challenge the credibility of the prosecution's witnesses, the defence highlighted numerous inconsistencies and contradictions. For instance, witness Franjo Vuksan testified that there were no motorcyclists in Pavelić's escort during his 1941 visit to Kordun, whereas the crown witness, Bajro Avdić, claimed he had personally served in that very motorcycle escort.[56] Avdić's own statements were also internally inconsistent: he claimed to have been born in 1924, which, according to the defence,

[54] *Ibid.,* pp. 147-148.
[55] *Ibid.*, pp. 64, 87, 91.
[56] *Ibid.*, p. 103.

made it implausible for him to have served in a motorised escort unit in 1941 at the age of seventeen.[57] Furthermore, the defence pointed to discrepancies between Avdić's 1952 testimony in Zenica, which had formed part of the basis for Artuković's extradition, and his statements during the 1986 trial. Even the public prosecutor, Dr Milivoj Rukavina, conceded that *"the testimony of Avdić Bajro is pretty inaccurate, and under the circumstances it is difficult to assess this sort of testimony."* [58]

The defence further questioned the logic and plausibility of certain claims. They asked how a *"fragile twenty-year-old sensitive young man"* like Avdić could have refused orders to commit mass killings, suggesting that the prosecution's portrayal of his agency was inconsistent. This seems to be quite a flimsy argument, because of the large discrepancy and power gap between Avdić and Artuković. They also asserted that Avdić himself bore responsibility for his own actions and alleged that the state was using him merely as a means to reach the *"bigger fish"* — Artuković. Citing historiographical sources, the defence also claimed that ministers in the NDH government were not accompanied by personal escorts other than a single secret agent, thereby undermining Avdić's claims of being Artuković's constant escort.[59]

In response to the charges concerning specific atrocities, the defence offered several factual rebuttals grounded in historical evidence. They contended that: a) in early 1942, Artuković had not left Zagreb and therefore could not have ordered the retaliatory killings of civilians near Vrginmost; b) no written records existed confirming the existence of a camp in Kerestinec or Nazi documentation of Jewish deportations allegedly linked to Artuković; and c) there was no direct witness evidence that in May 1941, Artuković ordered Ferdo Knez, the chief of police in Sremska Mitrovica, to send Ješa Vidić to a camp. The defence also deemed Avdić's testimony regarding events near the Samobor castle in 1943 to be entirely imprecise and contradictory.[60] Such a

[57] *Ibid.*, p. 112.
[58] *Ibid.* p. 116.
[59] *Ibid.,* pp. 119-120, 132.
[60] *Ibid.,* p. 137.

defence strategy, focusing on individualised guilt and evidentiary imprecision mirrors similar approaches used in the trials of lower-ranking Nazi officials in the 1960s–80s.[61]

7.3. Judgement

In its judgement, the court found that Artuković committed crimes against humanity and international law, applying legislation that *"represented an imitation of the laws of the Third Reich against non-Aryans, Jews and Roma"* and treating Serbs in the territory of the NDH with *"inhuman and bestial behaviour"* resulting in mass death in concentration, labour and other camps. The court described these sites as *"torture houses of innocent people, death factories and places of brutal, unprecedented atrocities in the history of civilized peoples"* and accordingly imposed the death penalty.[62]

The court held that his ideology led to the systematic persecution and mass murder of Serbs, Jews, Roma, and dissenting Croats. Prosecutors detailed he oversaw the murder of over 200,000 civilians, including Serbs, Jews, Roma, and Croats; he managed at least 22 concentration camps, a figure used to stress the systemic nature of his crimes. It described him as one of the *"ruthless murderers"* responsible for horrific atrocities carried out in the name of Nazi-Fascist ideals, including torture and killings of civilians, including women and children. Specifically, he was found guilty of ordering the execution of Dr. Ješa Vidić in 1941; the machine-gunning of 450 civilians due to overcrowding in a concentration camp; the extermination of the entire population of Vrginmost and surrounding villages in 1942; and the mass execution of several hundred prisoners near Samobor in 1943, who were shot and then crushed by tanks. He was sentenced to death. Interestingly, at age 86–87, Artuković was likely the oldest high-

[61] DOUGLAS, Lawrence: *The Memory of Judgment: Making Law and History in the Trials of the Holocaust*. New Haven, Connecticut, 2001, Yale University Press.

[62] Presuda Artukoviću: 'U Staroj Gradiški djecu ubili cijanidom dok oni živi puzu po mrtvima' [Verdict in the Artuković case: 'In Stara Gradiška, children were killed with cyanide while the living crawled over the dead']. *Express*, 12 January 2025, https://express.24sata.hr/life/su-enje-artukovicu-dramaticna-presuda-na-smrt-18698?page=2 [Access on November 1, 2025].

ranking Nazi official sentenced to death, surpassing peers like Klaus Barbie by age at the time of sentencing.

Even though he was of bad mental and physical state, the presiding judge remarked that Artuković could recall mundane life events in detail yet claimed amnesia about heinous crimes, highlighting a moment underscoring his evasion and the tactics he and his defenders used in court.

The court concluded that the activities of the accused up until 1941 was directed into the organizing the Ustaše movement and the German and Italian occupators. In that sense, his activity formed a sequence of sensible and consequent actions, that were preparation for the crimes committed during wartime, and as such it would be senseless to deem it as positive. The criminal characteristics of Andrija Artuković were permanent characteristics of his personality, and they were specifically expressed *tempore criminis*. It continued with the assertion that for these capital crimes was given a primary importance to the principle of general prevention, as a warning and a *memento*, having especially in mind the social-ethical function of law, that is, achieving concrete individual and social justice. This is why, taking into account the scale of the crimes, is why the Court held that the death penalty was appropriate in this case.[63] Multiple requests by the defence to alleviate the sentence were ultimately rejected.

8. Aftermath

Artuković did not live to see out his sentence, as he died of natural causes in the prison hospital in Zagreb on 16th January 1988. It is unclear what happened to his remains, since in Yugoslavia at that time there was a law in place that said the remains of those convicted and sentenced to death but who escaped execution, were to be disposed of

[63] Presuda Andriji Artukoviću, Poslovni broj: K-91/84-61, 14. svibnja 1986. [Verdict in the case of Andrija Artuković, Case Number: K-91/84-61, 14 May 1986], in: OLUJIĆ, *op. cit*., pp. 249.-250.

in the same way as those that were executed. At the request of Artuković's son the president of the Croatian Helsinki Committee called for investigation into what happened with the remains.[64] His son Radoslav also denounced the trial in Yugoslavia as *"a kangaroo court"* and *"a fraud"*, claiming that evidence was communist-fabricated and that Artuković, due to age and mental state, couldn't mount a proper defence.[65] Despite his controversial trials, Artuković is widely remembered in the US and Europe as one of the most cruel and extreme Nazi collaborationists and war criminals.

There was also harsh criticism of the court process and the judgement, mainly from Croatian right-wing circles. One major line of criticism argued that the trial against Andrija Artuković lacked procedural fairness and impartiality, claiming that the courts were influenced by "politically motivated" demands for condemnation rather than strict legal standards. These critics contended that the verdict represented a form of collective guilt imposed on the Ustaše regime's officials rather than a measured assessment of individual criminal responsibility, and they alleged that crucial exculpatory evidence was either ignored or inadequately examined. Some commentators further suggested that the retrospective application of laws and the use of wartime administrative decrees as grounds for criminal conviction set a dangerous precedent for legal stability and justice.[66]

In addition, there were criticisms that the trial was sensationalist, and that Artuković was displayed as *"the most dangerous Nazi that ever stepped foot on US soil"* despite the fact he was never in hiding after coming to the US. Such criticism reflects enduring divisions in Croatian political memory. For nationalist commentators, the trial symbolised communist retribution against Croatian statehood; for others, it stood as

---

[64] JUREŠKO-KERO, loc. cit.

[65] Ex-Nazi's War Crimes 'Undoubtedly Proved' : Artukovic's Death Sentence Is Upheld. *Los Angeles Times*, 3 September 1986, https://www.latimes.com/archives/la-xpm-1986-09-03-mn-13183-story.html [Access on November 1, 2025].

[66] JONJIĆ, Tomislav: *Andrija Artuković je protuzakonito izručen i osuđen! [Andrija Artuković was unlawfully extradited and convicted!]*. https://www.tomislavjonjic.iz.hr/V_10_artukovic.html [Access on November 1, 2025].

belated justice for victims of fascist terror. The polarised reception of the verdict thus illustrates the difficulty of reconciling collective memory with legal accountability in post-Yugoslav historiography.

9. Conclusion

When evaluating events such as the legality of a trial and "correctness" of the court decision through an objective historiographical lens, the primary factors in assessing this should be the very crimes committed, evaluation of evidence and the scope and documentation of the events that form the basis of a conviction. In this case, it is undoubtedly justified to question the impartiality of the Yugoslav judiciary, as Artuković was one of their sworn adversaries and a symbol of the fascist regime. Also, it is reasonable to doubt whether Artuković genuinely had effective control and governance over all the bodies of government and individuals that committed the crimes he was on trial for. However, all the available evidence and sources point indisputably to Artuković's intimate involvement with a collaborationist regime that imposed racist laws, ran death camps and had many other similarities with the genocidal Nazi Germany. Additionally, while it is true that many or even most of the witnesses did not know Artuković personally and were not describing any of the crimes listed in the indictment, they painted a picture of the nature of the regime Artuković was loyal to the very end, which he admits himself, and to which he contributed greatly, from some of the highest and most esteemed functions.

Every person deserves the right to due process, and while it is probable Artuković did not have the full right to enjoy this during his trial process, many circumstances, including the findings during the second extradition process in the United States, point to the conclusion that even in a judicial system garnering less bias against his person, and where the full scope of the rights that are encompassed by a due process were granted, his trial would have ended the same way, with him being convicted in one way

or another. His death sentence can also be brought to question, however during that time it was not an uncommon punishment for the most heinous of crimes.

Zoe L. Žilović: Peaceful reintegration of the Croatian Danube region: a successful example of post-conflict peacebuilding

University of Zagreb, Faculty of Law

DOI 10.21862/siaa.9.13

1. Introduction

The peaceful reintegration of the Croatian Danube region (1996–1998) stands as one of the rare examples of a post-conflict transition completed without renewed violence. Implemented under the auspices of the United Nations Transitional Administration (UNTAES), the process enabled the restoration of Croatian sovereignty over Eastern Slavonia, Baranja, and Western Sirmium through negotiations, confidence-building measures, and phased demilitarization. It is widely regarded as a model of effective peacebuilding, demonstrating that even deeply divided post-war societies can achieve durable stability when political will, international support, and inclusive local engagement align.

The phrase "Croatian Danube regions" describes a widespread territory that had been occupied from 1991 till 1997 then finally handed over to Croatia in 1998. It consisted of Eastern Slavonia, Baranja and Western Sirium and to be more specific it was located near the northeastern Hungarian border following alongside the river Drava.[1] To this day these regions are still undergoing the process of modernization.

[1] HOLJEVAC TUKOVIĆ, Ana: *Srpska politika prema istočnom Podunavlju od vojno redarstvene operacije Oluja do mirne reintegracije [Serbian politics towards the eastern Danube region since the military operation Storm up to the peaceful reintegration]*. Doctoral Dissertation, University of Zagreb, Faculty of Croatian Studies, 2012, pp. 5-6.

2. The Croatian War of Independence

The Croatian War of Independence, which began in August 1990 with the Log Revolution, marked the start of Croatia's struggle to secure its sovereignty and territorial integrity during the disintegration of Yugoslavia. The Independence war was caused by the Serbs uprising due to their disappointment towards the newly formed Croatian government. Serbian president at the time - Slobodan Milošević was influencing The Greater Serbian propaganda to form a unified country where Serbs would be the dominant ethnic group. He was quite efficient at it as well, as right after becoming the head of the League of Communists (May 1986 – May 1989) he organized two protests, one in Vojvodina and Montenegro. These moves caused those governments to resign, therefore allowing Milošević to nominate his own men in order to abolish provincial autonomy and strengthen centralism.

The political leaders in Croatia however, did not want any kind of uniting with the ex-Yugoslavia states since they were busy building the steps for their own independence. Meanwhile the Serbs did not let Croatia get really far with that since they decided to rebel in order to destroy what little they had already built. The Serbian rebellion started by stealing weapons from the police departments alongside a smaller rebellion in Knin while simultaneously blocking traffic since they were aided by the Yugoslav's People Army. In the end they managed to forcefully get their own autonomous region with Knin as its capital.[2]

3. The aggression and occupation

Alongside the chaos happening in Knin and due to the geographical positioning of Slavonia, Baranja and Sirmium being the closest to Serbia these areas were quickly

[2] BARIĆ, Nikica: Je li 1995. godine Hrvatska počinila "etničko čišćenje" Srba? [Did Croatia commit "ethnic cleansing" of Serbs in 1995]. *Časopis za suvremenu povijest [Journal of Contemporary History]*, No. 2, 2004, pp. 441-442.

homogenized in 1991 and self-proclaimed as part what was called the "Serb Autonomous region/krajina" as they wanted all Serbs in one country. This newly formed quasi-country was not recognized internationally and as such president Milošević had to make it seem like it all had a legal foundation. Which is why a referendum was held in order to unite this newly formed region with The Republic of Serbia. However, that referendum was also deemed illegal, as the territory remained under Croatian jurisdiction, and the legislative body had not been duly informed of it, which constituted a violation of the Croatian Constitution.[3]

In order to hold more control over those areas The Initiative Committee for the Establishment of the Serbian National Alliance held a meeting and adopted the *Draft Declaration on Serbian National Unity*. The draft wanted to give off the impression that a necessary change was needed for the current state and political system of Yugoslavia, since the existing institutional mechanisms for expressing ethnic and civic subjectivity were unsatisfactory to them. The politicians behind the draft made their intentions clear when they declared how the nations themselves should have the right to self-determinate instead of the republic.[4] Much unlike the way it was originally written in the Croatian constitution, which gave the legislative body the power to decide about secession in order to protect the sovereignty and the country's interest.[5]

On the day that Croatia declared its' independence (25 June 1991) followed by a three-month moratorium, The Great National Assembly from Slavonia, Baranja and western Sirmium gave its' decision on the position of Serbs, other nationalities and minorities that live in those aforementioned areas by saying that they're all a part of a common state of the Serbian people and the other Yugoslav peoples.

---

[3] *Ibid.*

[4] HOLJEVAC TUKOVIĆ, *op. cit.*, pp. 17-19.

[5] JERABEK, Josipa: *Pravo naroda na samoodređenje u Jugoslaviji i neovisnost Republike Hrvatske [The Right of Peoples to Self-determination in Yugoslavia and the Independence of the Republic of Croatia]*. Master's thesis, University of Zagreb, Faculty of Law, 2024, pp. 30-31.

With 8 October marking the end of the moratorium the occupations got even more aggressive, as throughout 1991 Beli Manastir and Vukovar with parts of Osijek and Vinkovci got captured. During that time a referendum was being held on the separation of eleven villages with the Serbs making up the majority in population. The goal was to annex these villages to the municipality of Vukovar so that the Serbian population could be unified. They carefully planned the invasion of Vukovar as they started by capturing the villages surrounding it first, the city was labeled as a strategic zone because it poised as the entrance to the other Slavonic areas.[6] The organized attacks on Vukovar were being supported by the Yugoslav's People Army, as the following three months turned out to be one of the bloodiest that included cultural genocide, urbicide, and ecocide towards any non-Serbian ethnic group. Approximately 5,000 Vukovar inhabitants were captured and placed in Serbian concentration camps where they were physically and mentally tortured daily. Approximately 30,000 residents of Vukovar were driven into exile. The Serbian armed aggression (including the Battle of Vukovar) took place before the eyes of international and especially European organizations that are the institutional bearers of international law and security (from the United Nations to the Conference on Security and Cooperation in Europe, the Council of Europe, and the European Community), as well as before the eyes of numerous humanitarian organizations (from the International Committee of the Red Cross to various other European humanitarian organizations).[7]

4. Ceasefire

By the end of 1991, towards the beginning of 1992 Croatia gained diplomatic recognition and with-it newfound hope that the United Nations (further in text: UN)

[6] HOLJEVAC TUKOVIĆ, *op. cit.*, pp. 20-23.

[7] JURČEVIĆ, Josip: Vukovar '91. – Međunarodno pravo i europska sigurnost [Vukovar '91 – International Law and European Security]. In: JURČEVIĆ, Josip; ŽIVIĆ, Dražen; ESIH, Bruna (eds.), *VUKOVAR '91: međunarodni odjeci i značaj [VUKOVAR '91: International Repercussions and Significance]*. Zagreb, 2004, Institut društvenih znanosti Ivo Pilar (Biblioteka Zbornici; knj. 24), pp. 25-26.

peacekeeping operations would help cease the aggression. The Security Council in their Resolution 713 thought they were helping by imposing an embargo on the import of weapons thinking it would end the war.[8] On the contrary it went in favor of the aggressor making it harder for the Croats to defend themselves.

The only way to stop what was happening was through a ceasefire that Croatia had to accept even though its' citizens were being killed as they were signing. The idea that led to enforcing such a plan was suggested by Cyprus Vance, an American Secretary. The goal incorporated in the plan was to make way for demilitarization, peace and security as it was meant for The United Nations Protection Forces (further in text: UNPROFOR). Not too long after The Security Council adopted on 21st February 1992 a resolution numbered 743 on the launching of a peacekeeping operation and the deployment of international protection forces to the Republic of Croatia for a period of twelve months. Sadly however, this and other resolutions that the Security Council passed were never fully clear on the fact that would have allowed for peaceful Croatian sovereignty over the occupied areas.[9]

This truce was accepted by the Serbian government but the rebellious spirit of the Croatian Serbs did not hinder, therefore Milošević forced them to accept since he was well aware that Serbia would still control the occupied areas. Till the end of 1992 no action was taken, there was no fighting but there was no headway on regaining Croatia's territories either. This annoyed Croatia and made them take matters into their own hands by launching an organized attack on some villages that lie north from Šibenik, in which they succeeded. These actions were condemned by the Security Council even though they admitted that the Serbs were responsible for not enforcing the plan.

[8] Resolution 713 (1991) / adopted by the Security Council at its 3009th meeting, on 25 September 1991, https://digitallibrary.un.org/record/126827?v=pdf [Access on October 22, 2024].
[9] HOLJEVAC TUKOVIĆ, *op. cit.*, p. 35.

The mandate that granted the protection of UNPROFOR was prolonged until the 31st of March 1993 by the newest Resolution 807. The Serbs' insisted on the statehood of their autonomous region therefore leading to the rejection of the suggestion given by the Russian ambassador in which they could have been granted an autonomous position within Croatia. Another Resolution was passed on 30th March 1993. This time numbered 815, that prolonged the mandate till the 30th of June 1993 and unlike the other resolutions till now this one specifically stated that the areas protected by the UN are in fact part of Croatia. As a result of this the Serbs declined any reasonable negotiation even if it went in their favor to the point where any negotiation was considered treason against their autonomous region. The whole year of 1993 was tense, as it was not completely peaceful but it was not a full warzone either, furthermore there were many unsuccessful attempts of reconciliation.[10]

The first half of 1994 brought a breakthrough in the form of an agreement on *The Establishment of the Office of the Republic of Croatia in Belgrade and the Bureau of the Federal Republic of Yugoslavia in Zagreb*. In March 1994, the Zagreb Agreement was signed, providing for a ceasefire and the commencement of talks on economic and political matters. Finally, with the help of USA, within the same month, a ceasefire was concluded in Washington, accompanied by the signing of the *Agreement on the Federation of Croats and Muslims/Bosnians in Bosnia and Herzegovina*. Furthermore, Presidents Franjo Tuđman and Alija Izetbegović signed a preliminary agreement on the establishment of a confederation between the Republic of Croatia and the Federation of Bosnia and Herzegovina. This brought to an end the two-year conflict between Croats and Muslims/Bosniaks in Bosnia and Herzegovina, which was in fact a consequence of Serbian aggression against the country.[11]

---

[10] *Ibid.*, pp. 36-40.

[11] Bosnia and Herzegovina-Croatia: preliminary agreement concerning the establishment of a confederation. *International Legal Materials*, Vol. 33, No. 3., May 1994, pp. 605-618; BARIĆ, Nikica: *Srpska pobuna u Hrvatskoj 1990.–1995. [Serb Rebellion in Croatia, 1990–1995]*. Zagreb, 2005, Golden marketing-Tehnička knjiga, p. 207.

5. The Z-4 Plan

For the most part the year of 1994 was marked by signing agreements and figuring out the economic aspects of said agreements. Although these settlements were a big breakthrough for both Croats and Serbs there was still the issue of the ineffective UNPROFOR and the newly extended mandate which was to conclude on March 31st 1995. This caused a temporary blockage due to the continuous preservation of the *status quo*, meaning no improvement in regards to reintegration nor did the economical agreements get carried out as planned.

At the beginning of 1995 Croatian president Tuđman invited the ambassadors of USA, Russia, the European Community and UN in order to draft the Z-4 plan. The plan would have consisted of three parts; the first envisaged the establishment of an autonomous region of Krajina, in which all the laws and the Constitution of the Republic of Croatia would be in force, provided that they were approved and implemented by the local authorities there. The Republic of Croatia would, in turn, be obliged to respect the laws adopted by Krajina. Krajina would have its own flag and coat of arms. The Serbian language and the Cyrillic script would be used, and Croatia would not be allowed to collect taxes in that area. Krajina would have its own currency, equal in value to the kuna and it would also have its own legislative body, government, and president. In the Croatian Parliament, it would have ten representatives in the Chamber of Deputies and nine in the County Chamber, while Serbs would be represented in government bodies in proportion to their share of the population. Krajina would not be permitted to have an army, but it would have its own police forces, whereas the Croatian Army would not be allowed to enter Krajina's territory.

The areas of Slavonia, Baranja, and western Sirmium would be under the administration of the Government of the Republic of Croatia, but the UN forces would be deployed in those regions. An integral part of the Z–4 Plan also included a provision stating that

the Republic of Croatia and Krajina would not prosecute anyone for acts committed during the war, except for war crimes, genocide, and crimes against humanity.

After hearing these solutions that the countries came up with, president Tuđman was dissatisfied but nevertheless he accepted them in hopes of finally forming peace with the Krajina Serbs. On the other hand, the Krajina Serbs were not as swayable, in fact they did not even want to hear the Z-4 plan out, which showcased just how willing they were to cooperate when it came to reintegration.[12]

6. Operations Flash and Storm (Croatian: Bljesak and Oluja)

After a four-year long frozen war, the stubbornness of the political leadership of the self-proclaimed Republic Serbian Krajina led to two military operations – Flash and Storm.

The military operation Flash began on 1 May 1995, when Croatian armed forces struck to take back control over the western occupied parts of Slavonia and in less than two days, they freed Jasenovac, Okučani and Stara Gradiška. The whole operation lasted for about four days in which the Serbs' losses accounted to over three hundred dead, with around one thousand injured and about a thousand and five-hundred taken as prisoners.

The retaliation from the Serbs was very bad however, they knew that the Croats would suffer if they killed their civilians, so in order to distract Croatian's armed forces they did just that in the nearby Croatian towns. Despite this action, the Croats still put effort into giving the Serbs a humane procedure, this was so that the international community would see them as an organized country that respects all nationalities. Croatia regained its' power over these territories rather quickly and without any unnecessary fights, they

[12] HOLJEVAC TUKOVIĆ, *op. cit.*, pp. 44-47.

left the passage Okučani-Stara Gradiška unguarded that led towards Bosnia if any of the Serbian forces wanted to retreat or escape.

This type of action was deemed appropriate by the international community as they too were fed up with the unresolved crisis, the worsening state in Bosnia and Herzegovina and the refusal between the Bosnians, Croats and Serbs towards finding a political solution. Due to the aforementioned reasons, they would have eagerly agreed to anything if it meant ending the war including the operations Croatia was leading at the time.[13]

In July 1995 the Krajina issue slightly stabilized and the new focus of military operations was relocated to Bosnia, whose Serbian residents were against any peaceful measure the international community suggested. This crisis piqued the interest of the USA in order to help find a final solution to it. To make matters worse The Army of the Serbian Republic captured the Muslim enclaves of Srebrenica and Žepa in eastern Bosnia which were formally under the protection of the UN. This along with the massacre in Srebrenica proved to the international community that the only way to get through the Bosnian Serbs is by force.

America helped as they united the Croats and Muslims against the Serbs by signing the Split declaration in which the government of Sarajevo asked Croatia to help Bosnia defend themselves against Serbia. Due to the fact that Croatia wasn't allowed to take any action when it came to freeing its' occupied areas, the Serbian forces were not expecting any movement from the Croatian army in Croatia's land. It was imperative that the operation itself should last no longer than a week as the military aspect of the plan lasted for only forty-eight hours.

[13] BRIGOVIĆ, Ivan: Osvrt na operaciju "Bljesak" u dokumentima Republike Srpske Krajine [A Look at Operation Bljesak (Lightning) in the Documents of the Serb Republic of Krajina]. *Časopis za suvremenu povijest [Journal of Contemporary History]*, No. 1, 2009, pp. 39-70.

The main objectives of the military-police operation Storm were to liberate Knin, Gračac, Korenica, Slunj, Glina, Petrinja, Croatian Kostajnica and Dubica with the start date being August 5th. The battlefield started at Jasenovac and went as far as to Grahovo, a town in Bosnia, with the Croatian air forces first strategically attacking the enemies' communication centers and command posts. President Tuđman asked the Krajina Serbs once more that if they were to surrender, he would have offered them amnesty for all their crimes. On the other hand, everybody who wasn't directly involved in the battle was asked to stay at home and await Croatian authorities. Heavy artillery was fired at the Krajina region with one hundred thirty thousand soldiers and police officers participating.[14]

Despite the Croatian president's attempts at trying to sway the Serbian civilians to stay in Croatia with a guarantee of their civil rights, a numerous amount of them evacuated by car or tractor. To this day it is unclear of how many Serbian civilians escaped exactly, as every source differentiates.[15] Additionally, Storm is the most famous and grandiose operation led by the Croatian forces and as such is recognized as a symbol of the Independence war. Even though it did not free the entire country, it is treated as the end of the war in Croatia and therefore as a new step towards reintegrating the Danube regions. In light of such an event every year the 5th of August is celebrated as a national holiday.

7. The path towards the Erdut agreement

After these military operations American president Bill Clinton suggested a new peaceful approach to help Bosnia and Herzegovina all the while trying to map a long-lasting plan that would secure the Eastern Slavonian region under Croatia's sovereignty

[14] BARIĆ, Je li 1995. godine Hrvatska počinila "etničko čišćenje" Srba?, *op. cit.,* pp. 453-461; PLEŠA, Josipa: Oluja-Bitka svih bitaka ["Oluja"– Battle of all battles]. *Essehist: časopis studenata povijesti i drugih društveno-humanističkih znanosti [Essehist: journal of students of history from the Faculty of Humanities and Social Sciences in Osijek]*, No. 7, 2015, pp. 135-143.
[15] BARIĆ, Je li 1995. godine Hrvatska počinila "etničko čišćenje" Srba?, *op. cit.,* pp. 456-461.

and the Z-4 principles. In order to enforce such ideas, the American ambassador Galbraith tried negotiating with the Danube Serbs. This however, made for good material that the Serbian press could exaggerate, which they did. Thankfully, it did not last long as the time of the Dayton agreement neared, the papers became tamer. At the beginning of October 1995, the Croatian and Serbian side had their first meeting in Erdut in which they agreed upon eleven articles that involved the regulation of Eastern Slavonia.[16]

On the same day, 1 November 1995, when negotiations on Bosnia and Herzegovina began at the U.S. Air Force base in Dayton, Ohio, Presidents Tuđman and Milošević also raised the issue of the Croatian Danube region. The initial talks resulted only in a general agreement to pursue a peaceful settlement. At the request of the Croatian delegation, on 2nd November, the issue of the Croatian Danube region was officially included in the Dayton negotiations. The negotiations were tense; a Croatian journalist approached the Croatian president to ask what would happen if the Serbs refused all peaceful solutions. To that the president replied by saying should the Serbs not accept they would be forced to take the territories back by military means. That did not happen as on November 11 Tuđman and the Serbian president Milošević managed to come to an agreement. The length of the transitional period before the Croats regained control again over those territories, that were under the UN's protection was one year. In addition to that the length of that period could be extended should any party declare it.

Right after the Dayton agreement on 12 November 1995 next to the peace mediators were the names of two men, each representing their countries government. We had

[16] BING, Albert: Put do Erduta. Položaj Hrvatske u međunarodnoj zajednici 1994.-1995. i reintegracija hrvatskog Podunavlja [The Position of Croatia in the International Community 1994/1995 and the Reintegration of the Croatian Danube Region]. *Scrinia Slavonica [Scrinia Slavonica: Annual of the Department for the History of Slavonia, Srijem and Baranja of the Croatian Institute of History]*, Vol. 7, 2007, pp. 396-398.

Hrvoje Šarinić representing Croatia while Milan Milanović represented Serbia. The structure of the agreement was laid out as simple as possible. As part of the agreement the transitional period was mentioned, its' length and the possibility of prolonging it, the UN's idea of creating multinational police, the process of demilitarization and organization of local elections. On the 30 January 1996 the American ambassador Galbraith personally visited the aforementioned areas and spoke to the remaining local Serbian civilians that were still there about the Erdut agreement, marking the beginning of the process of a peaceful reintegration.[17]

8. Post-Erdut and beginning of peaceful reintegration

With the Erdut agreement already in force as of 15 January 1996 thanks to the support of UN's Resolution 1037, a Transitional Administration was founded to assist in the establishment of Croatian authority. It was headed by U.S. General and diplomat J. Paul Klein, along with the determination of the mandate of the new forces United Nations Transitional Administration in Eastern Slavonija, Baranja and Western Sirmium (further in text: UNTAES) that should last for a year with the possibility of prolonging it for the same amount. The Resolution also offered a possibility to terminate the mandate if any party should breach the agreement; meaning they would not tolerate any non-cooperation from the Serbs, should such a thing happen Croatia would be allowed to integrate the areas as it sees fit.[18]

First and foremost, demilitarization entailed the disbandment and demobilization of all military and police forces, units, and personnel, along with their respective command and control structures. Those residing in such areas were forbidden from carrying any

[17] *Ibid.,* pp. 402-403; Croatia-Local Serbian Community: Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium, including Security Council Resolutions 1023 (1995) And 1037 (1996) Welcoming and Implementing the Basic Agreement. *International Legal Materials*, Vol. 35, No. 1, January 1996, pp. 184-192.
[18] HOLJEVAC TUKOVIĆ, *op. cit.*, pp. 75-76.

kind of weapons, firearms etc. without the authorization of the transitional administrator, who was the head of The Office of the Transitional Administration for the Establishment of Croatian Authority in the Area of Eastern Slavonia, Baranja, and Western Sirmium (further in text: The Office) serving as a way to ensure the completion of UNTAES' objectives. In the span of one month over ninety percent of Serbian military and paramilitary units were disbanded, heavy weaponry was handed over, and UNTAES took over the barracks in Vukovar and Beli Manastir. This was followed by an active demining of the area with the assistance of UNHCR and certain civilian companies trained for the task.[19]

In May 1996 with the Office's assistance a highway next to Lipovac opened guaranteeing free passage through the areas of Eastern Slavonia, Baranja and Western Sirmium which were all bordering Serbia. The opening went smoothly. Not long after those same areas were included in the countries' postal services and telecommunication lines.[20]

The Serbs had a few conditions of their own which they were particularly tenacious about, one of them being their demand for autonomy of the "Serb Region of Eastern Slavonia, Baranja, and Western Sirmium". They were also keen on keeping Đeletovci as it was an area rich in oil, sabotaging agricultural agreements and trade of goods. When it came to the legal basis, they used to justify their claims for autonomy, they stated how Croatia promised to give the areas where the Serbs made the majority population wise, their own special status. They even went as far as to protest which they ended up sending to the UN. However, the Erdut Agreement did not provide for any Serbian autonomy in the transitional areas, nor were those areas predominantly populated by Serbs before the war. In regard to that the Serbian demands were completely unfounded. [21]

---

[19] *Ibid.*, pp. 79-82.
[20] *Ibid.*, p. 94-95.
[21] BARIĆ, Nikica: Srpska oblast istočna Slavonija, Baranja i zapadni Srijem – od „Oluje" do dovršetka mirne reintegracije hrvatskog Podunavlja [The Serb District of Eastern Slavonia, Baranja And Western Syrmia -

Throughout the following months Croatia gained more rule over its' own land and as they were already halfway through the year, meaning the mandate would soon be over the Serbs were not partial to that reality. In the Erdut agreement it was stated that the mandate should initially end on 15 January 1997, however, if any party should initiate it, they could prolong it for another year. This is what the Serbians decided to do and it was approved by the Security Council with the new end date being 15 January 1998. Their goal was to delay for as long as possible as to regain any conditions for their Krajina to become an autonomous state. This was met with a lot of disapproval from the Croatian side, as such their government signed an agreement in August to co-finance the next six months of UNTAES' work hoping that the mandate would end mid-April instead.

One of the biggest political advancements happened in August 1996 when *The Agreement on the Full Normalization and Establishment of Diplomatic Relations between the Republic of Croatia and the Federal Republic of Yugoslavia* was signed in Beograd, in which the two states mutually recognized each other within their internationally recognized borders. There was a marketplace (so-called Klein's Market) that the UNTAES opened on the road between Osijek and Vukovar as a place where Croats and Serbs could trade but also so that the families that were split apart could convene once more. That market held a significant role in building trust between ethnic groups.[22] By the end of 1996 the Croatian customs service was established at the Bajakovo–Batrovci border crossing and at other crossings, with one official of Serbian nationality and one UNTAES representative present at each. Not long afterwards the president went to visit Vukovar, he gave a speech and in it also declared the rights the Serbian civilians would have. Nevertheless, one of the Serbian representatives asked if he could grant the autonomy to the Krajina as to which the Croatian president was not

from the Croatian Operation "Storm" to the Completion of the Peaceful Reintegration of the Croatian Danube Region (Part One], *Scrinia Slavonica [Scrinia Slavonica: Annual of the Department for the History of Slavonia, Srijem and Baranja of the Croatian Institute of History]*, Vol. 11, 2011, pp. 424-429.

[22] HOLJEVAC TUKOVIĆ, *op. cit.*, pp. 97-98, 118-122, 156-158.

pleased upon hearing stating how Croatia has internationally recognized borders, and that Baranja, Eastern Slavonia, and western Sirmium would remain an indivisible part of the country.[23]

The year 1997 did not bring on the end of the UNTAES mandate, though despite that the Croatian Government sent a *Letter of Intent on the Completion of the Peaceful Reintegration of the Area under Transitional Administration* to the Office. This was to showcase to the international community just how ready they were to finally allow for the normal flow of life in the Danube areas along with the decision of holding local multi-party elections. The letter gave the Serbs the conditions on how they would be included, as the Office sent it to the Security Council which was a breakthrough for the Croats. Now the UNTAES primarily observed of the process.[24]

Because of this the Serbs requested that the mandate should be extended further till the 15 January 1998 with the excuse being the undecided fate of the Danube Serbs. The Security Council allowed for it seeing as this operation would now be going on for two years as was decided to be the maximum in the agreement. What was also of note was that the Serbian representatives requested that, even after the expiration of the UNTAES mandate, the international community maintain its presence in the area. Whether through a UN or Independent Democratic Serb Party (SDSS) observer mission, in order to prevent possible human rights violations. Therefore, in mid-September 1997, the Joint Council of Municipalities and the SDSS sent a letter to UN Secretary-General and Transitional Administrator, stating that the Erdut Agreement and Croatia's Letter of Intent had not been fully implemented, and that it was therefore necessary for the international community to remain present after the conclusion of the Transitional Administration's mandate.

As the Erdut agreement allowed for the formation of a supervisory commission even after the mandate's end to ensure its' execution, one was established 15 July 1997 and

[23] *Ibid.,* pp. 94, 107-108.
[24] *Ibid.,* pp. 109-111.

at its' head was Peter Galbraith. Their mission was to cooperate with the Organization for Security and Co-operation in Europe to supervise the protection of human and civil rights.[25]

The last six months leading to the end of the mandate passed in creating the right legislation and acts to ensure full peaceful reintegration and authority, equality between the people of the Danube region and their abilities to exercise their rights and obligations. Croatia had its' hands full of administrative, peacebuilding, social constructing and demilitarization.[26]

Since the demilitarization process was already mentioned in the text above the focus in this paragraph will be on the administrative and social aspects of peacebuilding. The aspect of administrative reintegration included issues of personal rights related to status and citizenship, public transport and services, regional and local governments. But in order to grant any of these services to the civilians, the first step was for them to issue Croatian documents from the government. This also applied to the Serbian population and in doing so they would have the right to vote, by the end of the mandate a vast amount of them issued and gained a Croatian citizenship. Furthermore, the educational system adapted to ensure protection of cultural identity and ethnic background as the Serbs were considered a minority, they gained all rights that followed that role. Each municipality had the decision in which module would they apply in schools.

Regarding health, the Croatian minister of health signed the *Agreement on the Reintegration of the Regional Health Sector* on 3 December 1997. It covered equal treatment, rights of employment for regional health workers, and full financing of the

[25] *Ibid*., pp. 156-162.

[26] BANDOV, Goran; HAJDUKOVIĆ, Domagoj, Peaceful Reintegration of Croatian Danube Basin – Role of UNTAES in Peace Restoration. Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2018*, Hamburg, 2019, Nomos Verlag, p. 7.

health care sector, access to health care and a deadline in which all Croatian citizens should apply for a health insurance card.

On the other hand, many non-governmental organizations (further in text: NGO) from both Croatia and Serbia offered ways to reconnect divided families in Mohács in Hungary close to the border. Using the aforementioned marketplace, which bore the name of Klein's market that the UNTAES opened before as a place of trade and coexistence.

Free elections were being held according to the highest international democratic standards and according to the Letter of Intent Serbian voters were granted the right to vote if they held residency in the region at the time of 1991. This also applied to those who had relocated to the UNTAES administered region at a later date on the condition that they had previously registered residence in some other part of Croatia. On behalf of passing the Law on General amnesty it made it possible for officials from the time of the Republic of Serbian Krajina to continue their political activity.[27] The whole of the operation finally ended on January 15th 1998, with the end of the UNTAES mandate.

9. Conclusion

My topic for this year ended up being quite a sore one for the Croatian populace in general. To this day it is still talked about and the anti-Serb sentiment is still felt in the air on occasion. Because of the stir this topic is known to produce I had never tried to fully grasp the intensity of the situation till now. It is by far unbelievable to me how such a praised peacekeeping organization such as the UN failed in many ways than one to protect this small country, I can now understand why the hatred exists and why the holidays regarding Flash and Storm are always so blown out of proportions. There

[27] *Ibid.,* pp. 13-16.

is an importance of such history to be taught in schools, as we are only human and the best we can do is learn from our predecessors' mistakes and hope not to repeat them.

ISBN: 978-3-200-11251-3