Réka SLEISZ: The development of civil liberties in the era of dualism

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The civil liberties first appeared in official form in Europe in 1789 in the legal norm Declaration of the Rights of Man and of the Citizen, created as the result of the French Revolution. This declaration opened a new chapter in the history of human rights, as it was the first powerful document that recognized human rights as universal, i.e. according to which they belong to all[492]: "*Men are born and remain free and equal in rights.*"[493]

Freedoms could be defined in several ways. On the one hand, they are fundamental rights that ensure the undisturbed life of the individual and the free exercise of his activities.[494] In addition, they are also claims that enable individuals to assert themselves and freely express their abilities.[495] Nor should we forget its definition that these are rights and freedoms that ensure the protection of the individual against unwanted interference by the state and guarantee that people can participate in the public affairs of the country free from any negative discrimination or oppression.[496]

1. History: Civil liberties in the April Laws of 1848

In Hungary, the issue of individual and political freedoms became a pivotal part of the liberal creed from the last third of the 18th century.[497] During the reform debates of the diets of the 1830s and 40s, politicians already addressed the issue of civil liberties, and while there were significant differences in radicalism and legal formulas, the fundamental values such as equality before law, the right to human dignity or the inviolability of the home, freedom of the press, religion, assembly, association and expression were united.[498] The turning point in achieving these was brought about by the

[492] https://helsinki.hu/emberi-es-polgari-jogok-nyilatkozata/ [Access on November 20, 2024]
[493] Declaration of the Rights of Man and Citizen, 26th August 1789
[494] https://lexikon.uni-nke.hu/szocikk/szabadsagjog/ [Access on November 20, 2024]
[495] *Uj Idők Lexikona [Lexicon of New Times]*. Budapest, 1941, No. 21–22, Singer és Wolfner Irodalmi Intézet Rt., p. 5557.
[496] https://www.coe.int/hu/web/compass/glossary [Access on November 20, 2024]
[497] CIEGER, András: Liberalizmus és hatalmi érdek. A szabadságjogokra vonatkozó politikusi dilemmák a dualizmus kori Magyarországon [Liberalism and interest of power. Politicians' dilemmas regarding civil liberties in dualist Hungary]. *Magyar Kisebbség [Hungarian Minority]*, 2009, No. 1–2, p. 81.
[498] *Ibid.*

European revolutionary wave of 1848,[499] more specifically by the Hungarian Revolution and War of Independence of 1848–1849, as well as by the April Laws enacted in the meantime. The last feudal diet created the necessary legal framework for the bourgeois transformation, which was the purpose of the aforementioned laws.[500]

The laws sanctioned by Ferdinand V on 11th April 1848, which are also considered "the first constitution of the nation"[501], included the most important civil liberties. These did not provide a catalogue of human rights, but the fundamental rights considered crucial at the time were regulated by law.[502]

2. Legal equality

The April laws introduced significant reforms in the field of equal rights. Due to Act VIII of 1848, the noble tax exemption was abolished, as it implemented universal taxation into the legal system.[503] However, the most prominent from the point of view of equalization was Act IX of 1848. It freed serfs from the burden of compulsory services such as the robot or the ninth, and gave the serf plot to the serfs, thanks to which a very significant part of society — about ninety percent — acquired private property.[504] In addition, the same law provided for the apportionment of land in common use (such as forests, arable lands and ponds), and it stated that the state was responsible for compensating landlords financially for the loss of property caused by the law.[505] In addition to the above, for example Act XI of 1848 was enacted in the interest of equality of rights, which abolished the manorial court, whose task was taken over by the adjudicating bodies of the counties, as well as legislation providing for the abolition of the tithe and law of entailment (Act XIII of 1848 and Act XV of 1848).[506]

It is important to point out that the equality of rights set out in the April Laws of 1848 was not achieved in estate society,[507] since despite the official declaration of the redemption of serfs and the abolition of feudal relations, it could not be implemented due to the ongoing war. The above-

[499] *Ibid.*, p. 82.
[500] MEZEY, Barna – GOSZTONYI, Gergely (eds.): *Magyar alkotmánytörténet [Hungarian constitutional history]*. Budapest, 2020, Osiris Kiadó, p. 285.
[501] HOMOKI-NAGY, Mária: A szabadságjogok megjelenése a magyar történeti alkotmányban [The appearance of civil liberties in the Hungarian historical constitution]. In: BALOGH, Elemér (ed.): *Számadás az Alaptörvényről [Accounting for the Fundamental Law]*, Budapest, 2016, Magyar Közlöny Lap- és Könyvkiadó, p. 574.
[502] HOMOKI-NAGY, *op. cit.*, p. 578.
[503] MEZEY – GOSZTONYI, *op. cit.*, p. 285.
[504] *Ibid.*
[505] *Ibid.*
[506] *Ibid.*
[507] HOMOKI-NAGY, *op. cit.*, p. 574.

mentioned changes were able to take effect after the final completion of serf redemption in 1853[508], when a political and social situation emerged in which equality before law in both public and private law could be achieved.[509]

3. Rights of ethnic minorities

Hungary was a multiethnic country, which means that in addition to ethnic Hungarians, different peoples and ethnic groups lived on the territory of the country, which had different levels of development and education.[510] Hungarian leaders wanted to create a more unified state with the political nation program. The essence of this idea was that a nation is not defined by a common language or traditions, but is built on the attachment to the state.[511] However, this attempt did not impress the politicians of the nationalities, hence they all first stood up for their right to use their own languages, as they considered this to be the most important element of their identity.[512] This created tension between the two sides, which was increased by the fact that no plans were made to eliminate the disadvantaged situation of the ethnic groups.[513] The first steps were only taken in the summer of 1849, but it was too late, it was only of theoretical importance.[514]

4. Religious freedom

Religion was regulated by Act XX of 1848, which rather applied to established religions, whose followers were granted freedom of religion.[515] This group included the Catholic, the Greek Orthodox, the Calvinist, the Lutheran, and the Unitarian Churches.[516] The Israelite religion has still not been included among the established religions, but the Catholic religion undoubtedly lost its centuries long status as the most dominant religion.[517] Another significant change was that religion was no longer influenced by the state.[518]

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[508] *Ibid.*
[509] HOMOKI-NAGY, *op. cit.*, p. 574.
[510] GOSZTONYI, Gergely: Freedoms in the Hungarian April Laws of 1848. *Journal on European History of Law*, 2024, No. 1, pp. 138–142.
[511] SZENTGÁLI-TÓTH, Boldizsár – GERA, Anna: Az 1868-as nemzetiségi törvény és a politikai nemzet koncepciójának utólagos értékelése [Retrospective evaluation of the Nationality Act of 1868 and the concept of political nation]. *Erdélyi Jogélet [Transylvanian legal life]*, 2020, No. 2, p. 87. https://doi.org/10.47745/ERJOG.2020.02.04
[512] MEZEY – GOSZTONYI, *op. cit.*, p. 285.
[513] *Ibid.*, p. 286.
[514] *Ibid.*
[515] *Ibid.*
[516] *Ibid.*
[517] *Ibid.*
[518] *Ibid.*

5. Freedom of the press

The most decisive change in the field of freedom of the press was brought about by the abolition of censorship, which was decreed by Act XVIII of 1848.[519] In addition to the freedom of the press, this also ensured freedom of speech and expression.[520] Censorship was replaced by subsequent prosecution for libel, which was accompanied by the principle of gradual liability, which meant that first the author, then the editor, then the publisher, and at last the printing house were held accountable if, for some reason, the person ahead of them was not known.[521]

6. Academic freedom

Academic freedom was regulated in a very laconic manner in 1848, rather referring only to higher and university education.[522] The *Ratio Educationis* was finally replaced by Act XIX of 1848, which gave students the freedom to choose between subjects and teachers, and besides teachers other "eminent individuals" could teach.[523]

7. Summary

In conclusion, it can be stated that the April Laws and the revolutionary legislation completely transformed society, broke up with the feudal and estate relations that had been present for centuries, and for the first time in Hungary freedoms actually prevailed. However, it should also be mentioned that many issues remained unclear or poorly regulated, one striking example of which is the right of assembly.[524] This is due to the fact that in the era it was impossible to conduct calm legislative work, as well as legislators kept in mind the temporality of their work.[525] The political elite wanted to leave the drafting of many important laws to the National Assembly — which was already organized on the basis of popular representation — such as the preparation of a penal code guaranteeing freedoms comprehensively.[526]

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[519] *Ibid.*
[520] HOMOKI-NAGY, *op. cit.*, p. 579.
[521] *Ibid.*
[522] *Ibid.*, p. 580.
[523] BIANCHI, Leonard: A polgári szabadságjogok Magyarországon a dualizmus időszakában [Civil liberties in Hungary in the era of dualism]. In: CSIZMADIA, Andor – PECZE, Ferenc (eds.): *Jogtörténeti tanulmányok II. [Studies in Legal History II]*, Budapest, 1968, Közgazdasági és Jogi Könyvkiadó, p. 158.
[524] MEZEY – GOSZTONYI, *op. cit.*, p. 288.
[525] CIEGER *op. cit.*, p. 82.
[526] *Ibid.*, p. 83.