

Violetta VAJDA: Private law provisions in the April Laws

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1. The April Laws

It is important to highlight the significance of the April Laws, since their articles represented an important milestone in the modernisation¹ of Hungarian private law. These laws were adopted at the last feudal Diet, in full compliance with the rules of the historical constitution. All 31 Acts were ratified by Ferdinand V on 11 April 1848, and their provisions followed the objectives that were laid out in the proposal of Lajos Kossuth on March 3, 1848.² Their enactment was an important step, because the April Laws transformed Hungary into a constitutional monarchy. It is important to note that in Hungary, unlike in the countries of Western Europe, the civil transformation was led by the nobility instead of the politically and economically weightless bourgeoisie.³ Therefore, it is no coincidence that the April laws chose the path to extend the noblemen's privileges to the whole nation instead of disenfranchising them. At the same time, they were willing to give up some of their privileges, such as tax exemption,⁴ to ensure the country's development. However, it is clear from the wording of the articles of law that to avoid conflicts, the legislators avoided detailed regulation.⁵ Instead, they enacted temporary, declarative rules. Many provisions of the April Laws

¹ LÁBADY, Tamás: *A magánjog általános tana [General Theorem of Private Law]*. Budapest, 2017, p. 68.

² DEÁK, István: *A törvényes forradalom: Kossuth Lajos és a magyarok 1848-49-ben [The Lawful Revolution – Louis Kossuth and the Hungarians 1848-1849]*. Budapest, 1994, p. 15.

³ *Ibid.*, p. 27.

⁴ FÓNAGY, Zoltán: Deák Ferenc és a jobbágyfelszabadítás [Ferenc Deák and the serf liberation] In *A Batthyány-kormány igazságügyminisztere – Zalai gyűjtemény [The Minister of Justice of the Batthyány Government – Collection of Zala]*. Zalaegerszeg, 1998, p. 23.

⁵ KÉPESSY, Imre: 1848 alkotmányos forradalma - előzmények és kontextus [Constitutional Revolution of 1848 – Antecedents and Context]. *Jogi Tanulmányok [Legal Papers]*, Budapest, 2016, pp. 251–252.

tasked the newly established Government (Ministry) to prepare and present the details in the near future.

The main problem with this approach was that despite the changes adopted in the Spring of 1848, the tension between the Hungarians and the Viennese court and other nationalities remained very high, and by the autumn of 1848, the War of Independence had broken out. After its suppression, Emperor Franz Joseph suspended the Hungarian constitution. Furthermore, the government led by Felix zu Schwarzenberg aimed to centralise the Austrian Empire. This went hand in hand with a dramatic restructuring of the state organisation.

Moreover, since the April laws defined the relationship between the various branches of government and protected the rights of the citizens,⁶ there is an argument to be made refer to these legal norms as the Constitution of 1848, even though no written fundamental law was enacted at the time. In short: these Acts laid down the legal framework of the Hungarian Government (Ministerium) and they extended the suffrage. From there on, the Parliament had to assemble every year. Moreover, the serfs were emancipated and the "*aviticitas*" was abolished. In this study I will explain the changes made in private law in 1848.

2. Changes in private law

Looking at the Hungarian private law institutions before 1848 and comparing them with the country's contemporary legal system, we can notice fundamental differences - especially in the rules concerning real estate. There were three barriers to free property before 1848: the donation system, the *aviticitas* and the manorial system.⁷ The continued existence of these outdated systems in the 19th century can be explained by the fight against the Austrian centralization, i.e. the guarantee of autonomy through

⁶ GOSZTONYI, Gergely: A polgári szabadságjogok [Civil liberties]. In: MEZEY, Barna – GOSZTONYI, Gergely (eds.): *Magyar alkotmánytörténet [Hungarian constitutional history]*. Budapest, 2020, Osiris Kiadó, p. 285.

⁷ SZLADITS, Károly: *Magyar magánjog 1. Általános rész, személyi jog [Hungarian private law 1. General part, personal law]*. Budapest, 1938, p. 77.

the ancient right to property. Furthermore, the *aviticitas*. In other words, the Hungarian statesmen tried to strengthen the country's independence through the ancient right to property. Furthermore, the old law of *aviticitas* was intended to prevent the fragmentation of the family's landed property, while the donation system ensured that estate donated by the king would remain in the family. Moreover, the manorial system regulated the relationship between noblemen and serfs. In contrast, the civil codes enacted in the 19th century were already based on equality of rights, free property, and free movement. Therefore, the Hungarian private law institutions could not serve the demands of the capitalist economy.

For the sake of civil transformation, the April Laws started with a clean slate in the field of private law (*tabula rasa*).⁸ The old property law was completely abolished with the abolition of the *aviticitas*⁹ by Act 15. Similarly, Act 9 abolished the manorial system using the so-called compulsory emancipation of serfs, which gave property to the disenfranchised serfs, who made up around 90 percent of the society. A common feature of the two articles was that the Government had been entrusted to draft detailed regulations in the form of future bills. Still, it was clear from the very beginning that the aim of these changes was to replace the outdated institutions with a legal system based on legal equality and free property. In the paper, I will focus on the two most important regulations of the April Laws from the point of private law: the abolition of the *aviticitas* and the emancipation of serfs.

3. Aviticitas

Traditionally, *aviticitas* was considered part of the Hungarian legal system since the law of King Louis the Great in 1351,¹⁰ but the social demand behind the creation of this

⁸ SZLADITS, *op. cit.*, p. 78.

⁹ LÁBADY, *op. cit.*, p. 68.

¹⁰ TÓTH, Lőrincz: *Az ősiségi s egyéb birtokviszonyokat rendező 1852. nov. 29-ki legfelsőbb nyiltparancs ismertetése es magyarázata [Description and Explanation of the Supreme Open Decree of 29 November 1852 Regulating the Aviticitas and Other Estates]*. Pest, 1854, p. 68.

legal institution had been present since the conquest. As established by Martyn Rady: the “*nobleman held his land conjointly with his relatives, and indeed with all those kinsmen who were descended from the original beneficiary of the royal grace.*”¹¹ Furthermore: “*the Hungarian nobleman did not really own his land at all. He held it of the ruler, to whom it might eventually revert, and at the same time as a trust on behalf of his sons, heirs, and kinsmen.*”¹² This was ensured from two sides. Firstly, the ancestral or hereditary property was inherited automatically by the descendants.¹³ The right to make a last will was restricted only in the case of the so-called acquired property, which the noble acquired during his lifetime, but in the absence of testament, the main rule under the system of legal succession was the parental system.¹⁴ Accordingly, the ascendants inherited after the descendants, and after them the lateral heirs,¹⁵ and only in the absence of all these relatives did the succession to the crown take place, unlike in the case of the donated property, where in the absence of the descendants the succession to the crown took place immediately.

In addition, regarding ancestral property, an important legal institution was the daughter quarter, which was an example of gender inequality, as it meant that girls inherited a quarter of the hereditary property in total, while boys shared three quarters. Although, the daughters inherited unencumbered.

The *aviticitas* also imposed a huge limitation on the right to property, since it restricted the right of free disposal and the freedom of alienation fundamentally. This was emphasised by Count István Széchenyi in his book *Credit*,¹⁶ which was first published in 1830. In his opinion, the impossibility of land mortgage was the main culprit of the underdeveloped Hungarian economy. In his work, he explained that many

¹¹ RADY, Martyn: *Customary Law in Hungary*. Oxford, 2015, Oxford University Press, p. 85.

¹² *Ibid.*, p. 85.

¹³ TÓTH, *op. cit.*, p. 116.

¹⁴ SUHAYDA, János: *A magyar polgári anyagi magánjog rendszere az országbírói értekezlet által megállapított szabályokhoz és azóta a legújabb időig hozott törvényekhez alkalmazva [The Hungarian system of private substantive civil law as applied to the rules laid down by the Conference of the Judges of the Republic and to the laws enacted since then until recent times]*. Budapest, 1874, p. 484.

¹⁵ TÓTH, *op. cit.*, p. 121.

¹⁶ SZLADITS, *op. cit.*, p. 78.

agricultural workers could not accumulate enough money needed for the modernisation. Therefore, they would have had to take a loan.¹⁷ However, they were unable to establish a lien on their estate in favour of the banks, and therefore, they were unable to obtain the capital they needed to develop agricultural techniques.

Even if we may assume that the abolition of *aviticitas* implied the abolition of the donation system as well, the April Laws contained no provisions on this matter. Yet, I would like to give you an overview of this legal institution briefly. The royal donation¹⁸ was one of the ways of acquiring real estate in feudal Hungary, along with private donation and purchase, which was defined in the first part of the *Tripartitum*¹⁹ by István Werbőczy. As I already mentioned, the donation system ensured that the property stayed in the family since it could be inherited only by the male descendants of the beneficiary. While in the early days, ennoblement always involved the donation of estate, the royal donation did not involve ennoblement initially. However, from the end of the 14th century, it did, since the noblemen were generally expected to serve in the military²⁰ on account of his donated estates. Werbőczy's *Tripartitum*, which influenced the development of many legal institutions until 1848, stated that if the king had granted any living person a donation of real estate, the donation ennobled him²¹ without any other conditions. In the absence of the specified heirs, the donated property reverted back to the crown. With the abolition of the donation system, the king could no longer donate noble titles and estates, which can also be linked to the issue of equality of rights, given that the acquisition of a donation was considered a privilege.

¹⁷ SZÉCHENYI, István: *Hitel [Credit]*. Pest, 1830, p. 25.

¹⁸ BÉLI, Gábor: *Magyar jogtörténet. A tradicionális jog [Hungarian legal history. The Traditional Law]*. Budapest, 2014, p. 7.

¹⁹ WERBŐCZY, István: *Tripartitum*. 1514, I. 4.

²⁰ BÉLI, *op. cit.*, p. 11.

²¹ WERBŐCZY, *op. cit.*

4. The abolition of aviticitas

Based on what has been said so far, the existence of this legal institution and the donation system could not serve the basis of a modern private law based on free property, which is why Act 15 of 1848 abolished it. Still, there was not enough time to work out the detailed rules, thus, in the 1. § the government was tasked with drafting a proposal for a new civil code, while the 2. § stated that until the adoption of the new code, all judicial proceedings concerning *aviticitas* were to be suspended *ex lege*.²² Although the April Laws aimed to abolish the distinction between ancestral and acquired property, they did not contain any rules neither on the donation system nor on differences between sons and daughters (regarding the inheritance).²³ After the suppression of the War of Independence, the old Hungarian property law was abolished by the *Avitizitätspatent* of 29 November 1852 and by the enactment of the Austrian Civil Code (ABGB)²⁴ in Hungary from the 1st May 1853. Consequently, a completely new property law²⁵ was established.

The royal decree extended the provisions already enunciated in the April Laws. Moreover, it abolished the royal and the palatine donation system,²⁶ the right of succession of the Holy Crown, the distinction between ancestral, acquired, donated and other estates, the distinction between the succession of sons and daughters. Moreover, it unified²⁷ the different types of estates. It has become a general rule that succession is to be determined by the law in force at the time of the testator's death. It is important to point out that the royal decree left the fideicommissum untouched, the significance of which was that the testator could create from his acquired property an inalienable estate subject to the succession order he had determined, which thus became like the ancestral property. In addition, the patent allowed the alienation of former noble

²² BÉLI, *op. cit.*, p. 192.

²³ SUHAYDA, *op. cit.*, p. 449.

²⁴ LÁBADY, *op. cit.*, p. 68.

²⁵ GROSSCHMID, Béni: *Magánjogi előadások. Jogszabálytan [Lectures on private law. Jurisprudence]*. Budapest, 1905, p. 43.

²⁶ BÉLI, *op. cit.*, p. 193.

²⁷ SUHAYDA, *op. cit.*, p. 450.

estates only before the land registry authorities. Moreover, on 15 December 1855 the Austrian Land Registry Ordinance²⁸ came into force in Hungary. Therefore, a public register of real estate was started.

To summarize, the April Laws and the *Avitizitätspatent* ensured freedom of wills and free property, which allowed people to take loans and alienate their estates, thus helped the Hungarian economy's development. However, besides the abolition of the *aviticitas*, we must not forget about the emancipation of serfs, which also played a major role in the civil transformation of private law.

5. Feudal inequality

The situation of the serfs in feudal Hungary was characterised by disenfranchisement. Up until 1848, approximately 90 percent of the population lived in serfdom, and their interests were not represented in the Parliament by any of the estates. They had no privileges, their landlord judged them in the manor court, and after 1514 they were not allowed to leave their serfplots.²⁹ Not as they had much opportunity to do so, as they carried a lot of burdens on their backs; they paid the crop tax, the ninth, the church tax, the tithe, and owed their landlord socage (52 yoke days or 104 days of work on foot per year for a whole serfplot) and gifts, among other formalities. In contrast, nobles enjoyed privileges, such as the habeas corpus, and they did not pay any taxes³⁰.

The great statesmen of the reform era, the nationalist and liberal³¹ Miklós Wesselényi, Lajos Kossuth and István Széchenyi recognised the inefficiency³² of serfdom, therefore the need for wage labour and the indispensability of free labour to promote modernisation. Many supported the abolition of the nobles' tax exemption.³³

²⁸ BÉLI, *op, cit.*, p. 194.

²⁹ *Ibid.*, p. 9.

³⁰ DEÁK, *op, cit.*, p. 24.

³¹ *Ibid.*, p. 26.

³² SZÉCHENYI, *op, cit.*, p. 100.

³³ FÓNAGY, *op, cit.*, p. 23.

They thought that it was more beneficial for the economy if the nobles also paid taxes, and they wanted to remedy the differences caused by the inequality of rights.³⁴

In the 1840s, the nobles living on serfplots were taxed, and to the non-nobles was given the right to hold estates. Moreover, their ability to represent themselves before the courts was extended, and the reformers even abolished the limitation of holding offices.³⁵

6. The emancipation of serfs

The issue of the emancipation of serfs was also a matter of deliberations among the Hungarian statesmen during the reform era. Two forms were proposed, the voluntary and compulsory emancipation of serfs. The difference between the two methods was the following. In the case of voluntary redemption, the serfs were only to be freed, if they had enough money. They, in agreement with their landlords, could buy their plots of land and their freedom in exchange for money. However, the compulsory emancipation of serfs in Hungary meant that all serfs acquired ownership of their serfplots and the compensation for landlords became the future task for the state.

During the Diet of 1840, voluntary redemption of serfdom was enacted into law³⁶, but the law did not really achieve its goal: only 1% of serfs had the amount of money to redeem their property and freedom. Moreover, it should be emphasised that the landlord was not compelled to emancipate the serfs.

In Spring of 1848, it became clear to the legislators that serf emancipation could only be achieved effectively through the compulsory redemption of serfdom and the complete abolition of the manorial system. Therefore, Act 9 of the April Laws stated that serfplots should be abolished and given to into property, together with the abolition of the landlord's property by state compensation and provided for the

³⁴ DEÁK, *op, cit.*, p. 12.

³⁵ SUHAYDA, *op, cit.*, p. 20.

³⁶ FÓNAGY, *op, cit.*, p. 21.

complete abolition of the manorial system. The abolition of serfdom included the abolition of serf duties, such as the socage, the ninth, the vineyard tax, the pecuniary payments, and even the church tax, the tithe, was abolished by Act 13.

Article 10 of the April Laws of 1848 declared the separation of the serfdom,³⁷ which meant the settlement of the former common use areas such as forest, pasture, reeds, vineyards, etc³⁸ proportionally to the size of the serfplots. The abolition of the serfdom was accompanied by the abolition of manor courts, together with *ius gladii*, as proclaimed by Act 11. Moreover, Act 13 made provisions on the conversion of the abolished properties into debts.

7. The Urbarial Patent

Like the abolition of *aviticitas*, the details of the abolition of serfdom were worked out by the Austrian government during the era of the so-called neo-absolutism. The legal and property relations that remained from the abolished manorial relationship were regulated by the Urbarial Patent from 2nd March 1853.

It stated that full ownership was given to the former serfs regarding the plots they held previously, which were registered in the manorial tables as former serfplots. It also determined the acquisition of serfs' property from the common use lands by implementing the manorial separation. It resolved the forfeiture of rights and emoluments resulting from the manorial relationships and the landlord's jurisdiction by means of state compensation, the amount of which was determined for each county.³⁹ The law also established state compensation for the land redeemed between 1840 and 1848.

³⁷ SUHAYDA, *op, cit.*, p. 21.

³⁸ BÉLI, *op, cit.*, p. 192.

³⁹ SUHAYDA, *op, cit.*, p. 224.

In the manorial courts established by the patent, proceedings lasted for decades sometimes,⁴⁰ due to conflict of interest between the noblemen and their former serfs. It was to the detriment of the serfs that the patent decreed that only manorial lands would be compensated by the state, while all other estates had to be redeemed by themselves. Residual lands were not considered manorial lands and thus noblemen could even charge interest on their redemption.

At the same time, the situation of former landlords didn't improve as state compensation became a task of the uncertain future, while the loss of income and the need for investment in livestock, equipment and buildings were pressing factors at the time.⁴¹ Although he criticised the new rules several times, Ferenc Deák also expressed his pleasure at the emancipation of serfs in his speech as the Minister of Justice⁴² back in 1848, since he had seen the problem not in the provision itself but in the lack of transience.

8. Conclusion

The April Laws were important milestones of the civil transformation, which led to the abolition of feudal institutions⁴³ and the establishment of a civil legal system. The time for implementing the changes to private law envisioned in 1848 was delayed, and they were not enacted in accordance with the original will of the legislators. The suppression of the 1848/1849 War of Independence was followed by a decade of neo-absolutism in Hungary. The Hungarian Constitution was suspended by the monarch, who did not convoke the Hungarian Parliament until 1861. The imperial royal state courts operated⁴⁴ throughout his empire, and a foreign code of private law,⁴⁵ shaped by the results of Austro-German-Roman jurisprudence, came into force in Hungary.

⁴⁰ FÓNAGY, *op. cit.*, p. 23.

⁴¹ FÓNAGY, *op. cit.*, p. 24.

⁴² *Ibid.*, p. 25.

⁴³ *Ibid.*, p. 68.

⁴⁴ SZLADITS *op. cit.*, p. 80.

⁴⁵ LÁBADY, *op. cit.*, p. 68.

It cannot be denied, however, that some aims of these laws of 1848 were embraced by the Austrian Government, to the declarative statements was given substance, and their implementation was ensured by the patents issued in the 1850s.⁴⁶ Consequently, a modern private law system was established which, while meeting the needs of a capitalist economy, was in some respects quite different from the domestic traditions. This was particularly evident in the provisions of the ABGB on the law of succession.

With the implementation of serf emancipation and the abolition of the *aviticitas*, an economy based on free movement of people, free flow of money and property was created, which facilitated the development of a market economy, the modernisation of agriculture⁴⁷ and the development of industry. The society of Hungary moved much closer to the equality of rights, as its citizens enjoyed various private freedoms such as the right to free disposal and inheritance, freedom of property, the right to private property, freedom of movement and the right to sue. Among public rights, the right to vote was extended and the limit on holding office was abolished.

All in all, the April laws were the first in Hungary to proclaim the provisions and freedoms that were essential for the establishment of a modern legal system. The transformation of our private law institutions took decades and as the 1850's show, the line of development was not without its detours. The role of 1848 regarding the development of Hungarian private law is perhaps best captured by the fact that the articles of law adopted at that time clearly set the direction of the future, from which there could be no deviation.

⁴⁶ KÉPESSY, Imre: The Consolidation of Hungarian Legal Practice with the Austrian Norms in 1861. *Studia Iuridica*, No. 80, 2019, p. 162.

⁴⁷ DEÁK, *op. cit.*, p. 26.