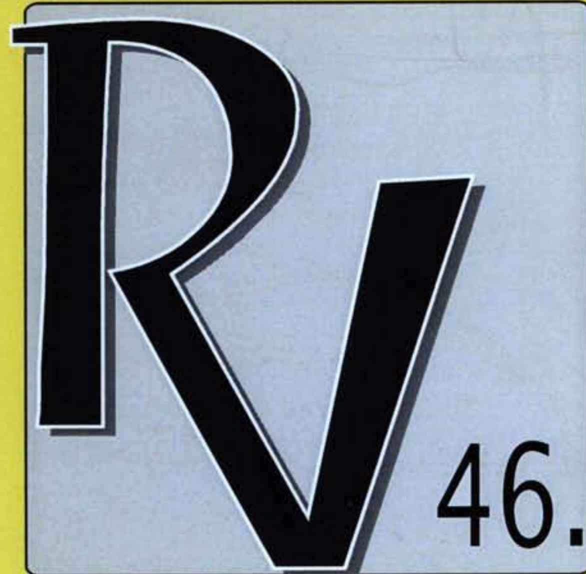

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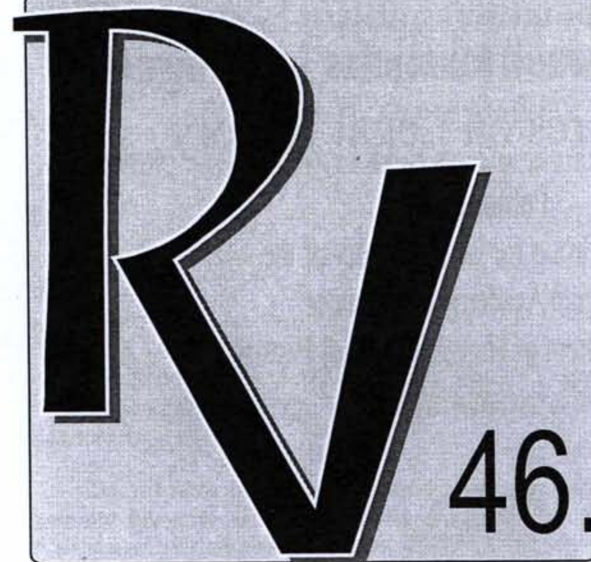

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Publication
Research Group for Legal History of the
Hungarian Academy of Sciences
at the Department of Hungarian Legal History
Eötvös Loránd University

Edited by

Prof. Dr. Barna Mezey

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Technical editor:
Ágnes Horváth

ISSN 1218-4942

Moments of making fundamental law in the Hungarian Parliament in the dualistic era

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Instituted in the second half of the 19th century, in 1867, the Austro-Hungarian Monarchy was a political nation in which two opposing public-law conceptions prevailed.

The carriers of the Austrian (*Gesamtmonarchie*) and the sovereignty of nations in symbiosis with the Hungarian state were the parliaments. The head of state/ruler unified two legal qualities in his person: the Austrian emperor on the one hand, and the king of Hungary on the other,

It was the so-called law on the Compromise that created the common affairs – foreign affairs, defence and the related financials affairs – of two constitutional states. The government responsible to the parliaments of the individual states exemplified the parliamentary monarchy: executive power subjected to legislative power, and the judicial power quite separated from the former.

The law on the judicial power as a fundamental law of the Hungarian constitutional state is of a decisive significance. The circumstances of their coming into being may be also worthy of attention in investigations concerning the history of parliamentary system.

At the time of the Monarchy the moments of law making were clear and built upon each other.

The parliamentary cycle (with a term of four years) would be opened with a speech from the throne. This contained the legislative tasks of the forthcoming parliamentary term. The drafts to be worker out was prepared by the department of codification of the Ministry of Justice, or, upon request by the minister, by private persone (mainly professors or outstanding practical experts).

The drafts so prepared were – as first step – submitted by the prime minister to the council of minister. After they were approved – already named bill or proposal – were forwarded to the House of Representatives of the two-chamber parliament. Here the bill was handed over to a delegate of the committee,

competent according te the subject matter, as rapporteur of the central committee, who took care of the norm text throughout the general and particular debates of the House of Representatives.

After the House debate, the bill would be dealt with by the House of Magnates again within the frame of general and particular debates. It is a curiosity that the opinions of the House of Magnates only existed as parallel sentences, in reality they had no effect on the stands the House of Representatives. had already taken.

Subsequently, the prime minister would submit the bill, accompanied with the summary of debates, for sanctioning by the king (more particularly through his majesty's mister a latere).The king would then confirm the norm with his seal and signature and sent to the prime minister to promulgate in both Houses,

The law read in each House separately would be furthered for publication in the National Law Records, while the copy that remained in the Parliament was transmitted through the House Speaker, to the Hungarian National Archives. In case of doubts the copy of the Archives has been regarded as authentic up to now.

In what follows an overview will be presented on the basis of schemes outlines above of the moments of making of one of the most significant fundamental laws, Act IV of 1869.

Speech from the throne – Approval by the Council of Minsters

The council of ministers dealt in detail with setting the task of the national assembly convoked for April 1869. The opening address from the throne and the affairs to be discussed first had been put on the agenda of the session of 21 February. 'It was agreed by the whole Ministerial Council that in the future every annual session of the national assembly be opened and closed by separate speeches from the throne".[1] It was particularly emphasised that the speech from the throne should be worded "possibly objectively", and should briefly indicate of innovations that seem necessary in the field of internal reform as well as the legislative tasks designed for debate in 1869. The summary preparation of all this was entrusted to the competent minister. Here the attention was called to it that the topic of foreign politics and the results of the former (1866-68) national assembly be omitted in order that no opportunity might be given for a more extensive discussion of the related reply address to the king".

[1] OL (National Archives) Filmtár (Film Archives) 3747. Records of the Ministerial Council (hereinafter: Mtj) 1869–1870. No. 10.MT

Subsequently three more ministerial council meetings dealt with in merit the thorough preparation of the speech from the throne: the 19 March meeting that repeatedly called the attention of ministers "to the compilation of the list of bills to be presented during the national assembly session and their reading up at their forthcoming sitting'[2] furthermore the 3 April and 20 April meeting.[3] Deserving special attention is the 3 April discussion of the ministerial council concerned with the necessity of the reorganisation of local governments (municipalities), and it is worthwhile of noting the related passage of the records of the mentioned ministerial meeting as it touches upon its inclusion in the throne speech[4]

First we call the attention to the part of the throne speech which is concerned with the reform of administration of justice. "A good, quick and impartial administration of justice belongs to among the first requisites of a well-ordered state theory" – the author establishes. As to the exercise of the judicial power, concerning the realisation of the principles and guaranties of independence, he states: "On this account it is necessary that those who are entrusted with the exercise of the so momentous judicial power should be supplied with all the guaranties against both the individuals and the public power, on the one hand, and everybody should be protected from the over-extension of of that power, on the other"[5] "My government will, then, submit you proposal on the exercise of judicial power and on judicial responsibility. Connected with this is the bill on the organisation of courts of first instance which proves that courts of first instance be bound to permanent seats and that these seats be marked out with

[2] Ibid. No. 27. MT

[3] „After the subject had been discussed from every aspect, they agreed that the throne speech be dealt with only in general term so that in that part of the speech where the local authorities would be discussed should reflect his Majesty's conviction that the representative and the magnates seek to make changes (reform) in this respect which seems necessary owing to the transformation of publicc-law and governmental relations and whiich aimto bring the intentions of self-government (minicipalities) into harmony with the principles of the parliamentary govenment'. – Ibid. No- 20. MT.

[4] Cf. Justice Minister Boldizsár Horváth's statement . In *Képviselőházi Napló* (Proceedings of the House of Representatives) II, 1869, p. 69.

[5] At the 2 May 1869 Ministerial Council meeting, the justice minister outlined the draft bill on the organisation of courts of first instance and of royal public prosecutors' offices. This was approved with some modificattions, Of the latter, the introduction of the institution of the justice of the peace in a localized form is noteworthy. 1. under paragraph 1 among the courts of first instance, *justices of the peace* should be listed in a separate point that the *system of justices of peace might be acceped in principle on the first occasion*, and *its continuation should be included in a new paragraph* , namely that the settting up and scope of authority of justices of the peace would be provided by a separate law." Relative to the public prosecution: 3. Under paragaphs 13 and 14 of the draft bill, it is proposed that the supreme royal prosecutor to be enployed in the royal high court of justicae be simply called (crown procurator'.. – Ibid. No. 29. MT.
On the justice of the peace, see also: Bálint Ökröss: *A törvénykezés reformja* (Reform of the administration of justice) In Értekezések a törvénytudomány köréből, Pest, 1969; Dániel Dózsa: *A békebiróságokról* (On the courts of justice of the peace) In: Jogtudományi Szemle, 1870, and In:. Bizottmányi jelentés a budapesti ügyvédegylet IV szakosztályához a békebiróság intézményének honosítésa iránt (Committe report to section IV of the Budapest lawyers' association concerning the introductionof the institution of courts of justice of the peace)

due regard to the demand of the population and general traffic so that everyone that needs judicial assistance might have a certain and quick access to it.[6]

***

At the 13 April 1869 full session of the Ministerial Council, presided by prime minister Gyula Andrássy, settled most rapidly the question of the bill, which was the 9th on the sixteen-point agenda; the bill was adopted with one amendment to point f) of paragraph 7. This point laid down that a judge during his office should not be either the propriety or publisher or editor of a political periodical, otherwise the bill was fully adopted without any special reflection.[7]

The bill was debated by the national assembly, convoked on 20 April 1869. The House of Representatives devoted twenty, the House of Magnates only two sessions to its debate. In the debate over the bill on exercising the judicial power, a total of 116 representative, over one-fourth of the House, was participating, making 278 contributions. The activity of the counties was also very remarkable. This resulted in the following facts: in the course of the general debate of the bill, the number of petition submitted to the national assembly was 55. In the course of the particular debate was 24, and after the approval of the bill (10 July) 8, so until the sanctioning a total of 87 petitions were submitted.

Debate in the House of Representatives

The general debate over the Bill started at the 34th Session of the House (23 June) with the report of Döme Boldizsár, rapporteur of the central committee. The main issues of the series of debate, which are outstanding as regards both their volume and content, will be analysed in the first place, presenting the standpoints of the parties concerning the reform of the administration of justice.

Consisting of 26 paragraphs, the bill is concerned with such issues as the separation of the administration of justice from public administration, appointment of judges, definition of the judicial qualification, conditions of the judicial power and problems of incompatibility.[8]

The government party, the opposing left centre led by Kálmán Tisza and Kálmán Ghiczy as well as the József Madarász-led extreme left all held widely different views about the judgement of the bill. The cause of these differences in

[6] Képviselőházi Irományok (Writings of the House of Representatives). I, 1869.
[7] OL. K 25, ME 726. I. b. 113; OL Film Archives 3747. Mtj, 18691870. No. 24 . MT
[8] For a more detailed analysis of the bill, see the discussion of the particular debate.

views can be traced back ultimately to the different and conflicting judgement of the public-law situation, which had come about after the Compromise. The Deák party's conviction that the "work" of the Compromise should be further developed by reform did not meet with positive response on the part of the Opposition. Although the statement of the justice minister, reflecting the standpoint of the government, made the gist of the reform clear: "The government, and thus also the party whose views the government had the honour to hold, conceived their mission as the development of a parliamentary government system through internal reforms. So our programme is a radical transformation in the sense that we should bring all our institutions into a strict harmony with the parliamentary system of government and with the requirements of the 19th century culture. The government is and will be led by this viewpoint in the preparation of the bill."[9]

The Opposition did not embrace this compromise-motivated government programme either. They found the initial efforts for the transformation of the old institutions too many. Their attack on the bill began with the announcement of the "junctim" (the coupling of issues that are conditional upon each other) and continued with opposing the appointment of judges. They were offended mostly by the way of executing the separation of the administration of justice from public administration, in that the government refused to put the bill containing important reforms jointly with other bills related with the regulation of local governments. This is why the unconditionally requested to bring the two issues into (junctim). They maintained: "the debate over radical transformation of the administration of justice as planned by the central committee can by no means separated from the debates over the regulation of local governments".[10]

The Oppositon launches an attack

The Opposition left no stone unturned to thwart the debate of the bill. To achieve this, they sought to win the counties over to themselves, forced out "sturm-petitions" from certain regions, by means which are not difficult to downgrade to their proper value, against the bill, which was imbued by the spirit of reform and real liberalism" – as the editor of the Journal of Jurisprudence censured the Opposition for their behaviour.[11]

It is right to raise the question of why the Opposition put up such a resistance to the bill and why they accused the government of the destruction of

[9] *Képviselőházi Napló* (Proceedings of the House of Representatives) II, 1869, p. 67.
[10] Ibid. p. 56.
[11] Jogtudományi Közlöny (Journal of Jurisprudence), 1869, No. 21, p. 195.

the autonomy of counties, To answer this question does not seem to be problematic. They did so simply because they continued to emphasise the supremacy of counties, regarded as the "bastions of constitution", demanded wider powers for the organs of local government, would not hear of the termination of the judicial duties of the officers of municipalities and of the forfeiture of their right to elect judges, which was regarded as a cardinal issue.[12] It is on this account that they established: "the bill is neither progress, nor reform, but the policy of the majority that involves the nation in danger, aims to bring the system of damned Bach-era back, the government plays the sublime right of judge election into its own hand, makes the rights of the peoples sovereignty illusory. With deploying all possible slogans, coining such phrases as "sovereignty of the people", "ancient rights, "genius of the nation", 'bastions of the constitution', "part of centralisation" and with a flood of speeches full of commonplaces, the Opposition launched an attack on the bill. Confusion was the most characteristic feature uf their argumentation. They sounded the magnificence and defectiveness of French, English, Belgian,and Dutch institutions in the same breath.[13] Even such a standpoint was sounded that as the bill was contary to both the country's decrees and the coronation oath, so it could not enter into force. According to the arguments of Pál Nyári, an outstanding political figure of the 1848 events, the bill was contrary to the 1848 principle since the 1848 law declared that the rights of counties would remain inviolate. The nobility had renounced their rights in favour of the people, thus the people's rights should remain inviolate. Otherwise, he saw more guaraties in the counties than in the responsible parliamentary ministry.

Hence it follows that the Opposition's behaviour gave rise to well-founded criticism: ",,, the county-centred narrow-minded liberalism of the Opposition has never appeared in such a petty-minded form as in the discussion of this issue. The Opposition, that like to call themself a par excellence public-law oppositions, made the biggest mistake when made a party issue of the regulation of the administration of justice.[14]

The untenableness, unfoundedness and retrogade nature of the Opposition's objections were disclosed by representatives of the Deák-party. The government-party Eötvös also made his position clear: "The unity of the judicial power is a necessary corollary of that of the legislative power, because the

[12] Cf., Ferenc Sík: *A vármegyei önkormányzat szerepe a dualizmus idején* (The role of county self government in the era of Dualism) In Jogtörténeti tanulmányok (Studies in legal history) II, Budapest, 1968, pp. 139–153.

[13] See *Képsiselőházi Napló* (Proceedings of the House of Representatives) II, 1869, p. 92, p. 122.; Az igazságügyi javaslatok és a megyein ellenzék (The judicial proposals and the county opposition) In: Jogtudományi Szemle, Pest. 1869, pp. 146-1561.; *A magyar nemzet története X. A modern Magyarország* (1848–1896) (History of the Hungarian Nation X. The modern Hungary) (Ed. Sándor Márki–Gusztáv Baksics). Budapest, 1898, pp. 676-677; Mihály Gyulai: Büntetőbíráskodásunk újkori szervezete (The modern-age organization of our criminal judicature). Library of the Chair of Hungarisn Political and Legal History of the Loráns Eötvös University. Mannuscript. 48. pp.

[14] See the above footnote

judicial power is nothing else as a necessary guaranty of the execution of laws,". And this principle cannot be evaded by the county either, because the county is nothing but a local governmental structure which is strong, safe only as long as it clearly puts the principle of self-government into practice." The same thought was even more explicitly expressed by Deák, giving sort of a final argument to the exponents of the judicial reform: " ... the counties do not form co-ordinated bodies towards the state power, but bodies that form constituent part of the whole government system , to which the state grantd autonomy for the practical purposes of governing; furthermore, are not some federative parts of the whole state and should not have rights that are separated from or just contrary to the state ... as long as the administration of justice has not been separated from the political public administration, a good public administration in Hungary is impossible."[15]

Statement of the justice minister

Before the voting on submitting the bill to particular debate, justice minister Boldizsár Horváth, refuting the Opposition's accuses, repeated gave of summary outline of the reform and the role of the bill as a first step towards the former. He evaluated the Opposition's behaviourin the most neuralgic point, in their relationship to 1848. He pointed out that the 1848 Party at that time really supported the government, not so as the present Opposition did, which call themselves the true followers of 1848, do under the present circumstances, the political conception of which consisted in shifting "the weight of power" to the counties as against the parliamentary government. That is why the Opposition attacked the government, on account of the carrying out the principles included in the bill, announced the "junctim", with the consideration that this way could apparently achieve still more progress. In reality with all these he delayed the progress of reform efforts.

The bill did not deal with the highly ramified questions of the organisation of counties, especially after the decision of the 11 May session of the ministerial council, presided by the ruler, when there was no longer opportunity for parliamentary compromises. But the bill was not aimed at this, instead at laying down fundamental principle for the administration of justice, and the er-organisation of counties could only be carried out under a separate bill. The judicial government – the justice minister explained – cannot carry out all the tasks of the reform at the same time. As for lack of time it could not prepare all

[15] Képviselőházi Napló (Proceedings of the House of Representatives II, 1869, p. 249; cf. *Ferenc Sík*: A törvényhatósági önkormányzat politikai problematikája a Horthy korszakban 1819-1929 (Political problems of the autonomy of muncipalies in the Horthy era 1919-1929). *Állam és Igazgatás* 11, 1967. p. 1016.

the reform proposals in detail to place on the table of the House. However, he announced a programme and laid down principles for such issues as the organisation of counties, the setting up of courts of first instance, adopting the principles of oral procedure, directness and publicity in the field of criminal prodedure, the extension of the institution of jury, and the establishment of the institution on of court of the peace. But before engaging in the detailed work – the minister added – he first had to fix the fundamental principles,

The summary statement of the minister did not accept the Opposition's position in the question of the election of judges, either, As the administration of justice may not be a county attribute so may not be the election of judges either, Thus the election-system cannot create judges being above all party interests and standing on the contemporary level of the jurisprudence".

In reply to those charges of the Opposition that the bill only deficiently adopt the foreign, especially English solutions to solve domestic problems, the minister expounded that the bill took over principles not only from the French and German but also from the English legal system, and contains their combination, but only to an extent that comply with the specific domestic relations and interests. The fact is that the bill does not really stand in the way of the further adoption of foreign liberal bourgeoise legal principles and legal institutios,

Voting took place after all this at the 44th session (6 July) of the House of Representatives, and was passed by a majority of 47 votes (with 203 for and 156 nay) to be submiied to the particular debate.[16]

The particular debate

Right after the voting, at the same session, a proposal was put forth[17] for the particular debate by passages of the bill, The Opposition sought to torpedo with important motions for amendment the central committee's submissions only if regulations effecting the basis f Oppositions were concerned. Apart from this, they passed the individual passages by almost unanimous voting.

The debate over the first passage broke out about the motion for the omission as pleonasm of the second "aliena" (paragraph), according to which

[16] The aggregate figures as they were recorded in the Proceedings are in our view inexact. Relying on the listing by name in the Proceedings and on the figures of the general index to volume I of the Proceeding s of the House of Representative of the Hungarian National Assembly (1861–1887/92), the exact result was: 202 for and 157 nay votes, 41 were absent.

[17] See Országgyűlési Irományok (Writings of the National Assembly) I, Pest, 1869; cf. Magyar Törvénytár (Hungarian Law Book), Budapest, 1869; Act IV of 1869 on the exercise of the judicial power, pp. IV–VIII.

neither the public administration, nor the judicial authorities should not interfere with each other's competence. The left-centre leader Kálmán Tisza, with reference to information from department VIII of the Justice Ministry and to the Hungarian adoption of the English instituin of the judge of the peace,[18] proposed the amendment of the first paragraph to the effect that – as at the "lowest level" of public administration the administration of justice the county competence should be maintained if the future too, this should be taken into account in the bill on the organisation of the count system. Appealing to future legislative tasks, the Opposition's studious arguing obviously aimed to provide an opportunity for "evading" to the counties. Their plan, however, failed as this passage of the bill was passed by the House in its original form.[19]

The second and third passages were, by the nature of their subject matter, put on debate jointly. While the former contained a theoretical statement: "the judicial power is exercised on behalf of the king", te latter was concerned with its practical implementation: "the judges would be appointed by the king, with the countersignature of the justice minister'. Throughout the particular debate over the bill, the Opposition stubbornly defended the election-system and the judicial competence of counties, and sought to to discredit the system of appointment. Their argumentation, however, hardly went beyond the mere repetition of stereotypes coined in the general debate: "with election and with requesting due qualifications and permanence, just as good courts can be organised as by appointment, and thus there would be no need to impair the judicial competence of local authorities"[20] – so the Opposition"s demand sounded in an other wording. Of the several motions for modification. relative to the mentioned two passages, that of Tisza offered the most forcible solution, Namely the omission of these passages to be replaced by the pronouncement that judges in courts of the first instances, as well as the individual judges,

[18] *István Ereky*: Jogtörténelmi és közigazgatási tanulmányok (Studies in legal history and public administration) Eperjes, 1914. p. 141. In connection with the reform of the county public administration, relating to the organisation of the political county, Ereky wanted to carry through the separation of the political and publiw-administration competences to such an extent as it had been carried through by Act IV of 1868 and the 1889 county reform in England. He emphsised his view that complete separation of public administration from the administration of justica had been impossible, and that the fundamental principle in practice had allowed certain deviation and exceotions. Essentially this standpoint had been taken by Tisza at the debate over Act IV of 1869; he referred to the English example and its mechanic take-over in Hungary, failing to think that the English solution might be taken over only with corrections in Hungary. Otherwise for the topos in question see: A helyi igazgatásról szóló tőrvény (Law on the local administration), 1888, ;*Constin, C.J.* and *Steven Watson:* The law and working of the constitutional documents. 1600–1914.

[19] After the adoption of the bill, Csemegi made the followibg comment in the Journal of Jurisprudence: „The separation of the branches of power, therefore, can be carried through in this spirit only, by the independence of judicature from public administration, and only this separation may be in harmony with Act III of 1869." In: *Jogtudományi Szemle* (Journal of Jurisprudence), Pest, 1969, p. 294. The mentioned legal topos regulated the population census. The fifth turn of paragraph 3 made a bold prejudication when it established: „against any resolution made through public administration, or against tha execution thereof, anyone who feels offended by it. may lodge an appeal for legal remedy with the public adminstrative organ that made or executed that resolution, and in an appeal to be submitted in six months to the competent court may demand that be abrogated in regular legal procedure.'

[20] Képviselőházi Napló (Proceedings of the House of Representatives), II, 1869, p. 380.

should be appointed by the competent local authorities in a way as defined by the pertinent laws. In this context, the "junctim" came to the fore again, on the problem of election decision could be made not in the framework of the bill, but only jointly with the regulation of local authorities. The properties of the Oppositions argumentation continued to be not void of unfounded, high-sounded, retrograde arguments. They unscrupulously stated that the judicature of lower courts, which was made in their own name, differing from the custom of several European constitutional countries, was not based on privileges, but followed from the sovereignty of the people "devided for centuries by our constitutional system", Attacking the system of appointment from the platform of Opposition, Mihály Táncsics was perhaps alone to refer to the gist of the problems in the course of the fight for the recognition of either of the two forms, – though even in this case several erroneous ideas can be pointed out –, "I admit and know that the election has many aftermath and drawbacks, but I believe that the fault is not the system of election itself, but you all know and have to know it well where the fault is.[21] Even if Mihály Táncsics did not formulae in concrete form, a retrograde response to the question of election was not slow to appear in the political publicism,. This was already unmistakable: "since, however, the electing elements of today do longer provide secure guaranties in this directed, we have to admit that appointment is a much more attainable objective."[22]

Related with the appointment system, Deák proposed that a new passage be inserted after paragraph 3 on the instituting of a state court. The task of this stated court composed in half of members elected by the national assembly and half of member appointed by the king, were set – among others – in giving opinion of candidates competing for judicial positions to the minister of justice. The House, however, was not carried under the pretext that the institution of a state court should be provided for by a serate ac, The passing of such a law, however, did not take place later either.

The majority of representatives, however, also with regard to the ongoing organisation of courts of first instance –carried Péter Mihályi's motion that in the filling of judicial positions, the appointments should take place with due consideration given to qualifications as defined by paragraph 27 of Act XLIV of 1868 and with due regard to individuals of various nationalities living in the given judicial district. Although the rapporteur of the contral committee rejected

[21] Ibid., p. 408.

[22] *Déniel Dózsa* Eszmék a birói hatalom köréből (Ideas about the judiciakl power).In: Jogtudományi Szemle (Journal of Jurisprudence), 1868, No. 11 and 12; see furthermore: Events taking place at the time of the electoral campaign of the 1869 parliamentary elections came to the knowledge of the governmenz, and the ministerial council having dealt with the issue, made the following decision: „In several regions of the country, during the electoral movements, partly the candidate themselves, partly their canvassers tended to win the poor classes of people over to vote for their party with communistic promises and with such „investments" as envisaged the distribution of landed estates among the poor. Since such seditions leading to the disturbance of good social order and internal peace, if they had really occurred, should be retaliated not only exemplarily but for the sake of prevention of more serious consequences." Records of the Ministerial Council. OL Film Archives, 3747, Mtj. 1869–1870. No.18. MT

the inclusion of this passage, the justice minister, however, took a stand for its inclusion. It is not intended to draw far-reaching conclusions from the facts – as only the execution shows its real significance – but including also the uncertain, often dubious meaning of the word possibly, we can to some extent positively assess this legal passage, which – at least in principle – makes it possible to exercise the judicial function by nationalities. Finally, in the topic of appointment, paragraph 26 provided for the appointment of judicial assintants and auxiliaries by the justice minister.

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The particular debate over the both qualitatively and quantitatively significant bill on the exercise of judicial power was closed with the proposed paragraph 26 left essentiakky unchanged and with a proposed new passage carries, at the 47th session (9 July) of the House. On the following day, at the 48th session (10 July), it was passed by significant majority vote of representatives. With his the House of Magnates debate of the bill commenced.

Denate in the House of Magnates

The House of Magnates devoted only one session (15th session, 13 July) to the debate of the bill, and dispatched it promptly. Compared to the debate in the House of Representatives, the reasons of this circumstance, which at first glance seems to be unintelligible, have to be examined. Taking a rapid glance over the debate, it is conspicuous that in connection with the ministerial statement, only four contributions were made, none of them containing meaningful objections to what was included in the bill,

The ministerial statement

The oral statement of the justice minister, delivered in the House of Magnates, met with warm reception in the scholarly press. "On the rousing speech of Justice Minister Boldizsár Horváth, the Magnates adopted the bill in both general and particular,[23] Therefore, the contents of the statement rightly deserves a brief summary.

[23] Jogtudományi Közlöny, no. 29, 1869, p. 200.

The minister, characterising the bill as being short in size and great in significance,[24] pointed out this is the first step in the way leading to the complete transformation of legal life. He outlined the objective of the reform that requires immense efforts and energy of the government to lay foundations for a new Hungarian law and order which have to meet the requirements of both the contemporary jurisprudence and the particular Hungarian conditions. In was from this aspect that he defended the bill which still cannot give a complete picture of the new legal system to be developed with serous effort of years. But it can express the principles, lay the foundations, without which the government would have been unable to start out. He promised that preparations for bills on the further regulation of that new relation would be continued, the guiding ideas of which would be "to provide for all the guaranties for the property and personal security of each member of society as fundamental objectives of society, and which have been marked out as most successful ones by the principles of jurisprudence and by the practical experiences of other free and educated nations."[25]

It was these principles – the minister emphasised – with which the submitted bill was imbued. Anticipating the expectable objections of the House of Magnates, he touched on two details of the bill: the appointment of judges and the and the problems of the county self-governments. He traced back the establishment of a good and impartial judicature that serves – over and above the adequate material and formal statutes – to two factors: the abilities and independence of judges. The unfolding of abilities is served by the separation of public administration from judicature that relieves the judges of public administration activities and the determination of the qualification of judges, In the definition of judicial independence in the law, he proposed that a two-direction objective be achieved: upward, the judge should be independent of the power, in that his salary may not be lowered and may not be removed from his position unless otherwise stated for certain cases in law. The judge should be independent also downward since the appointment system puts an end to the influence of those, by whom or again whom his protection is sought for. Explaining the introduction of the appointment system, however, he hastened to reassure the Magnates that the government duly consider the questions of personal security in judicature and plans to introduce institutions for criminal procedure, upon which the government would have no influence, thus the interests of individual, civil and political freedom would not be endangered at all.

The diplomatic recommendation "in the favour" of Magnates proved to be a superfluous caution. The contributions without reservations accepted the principles to be lais down in law. Thus, in his contribution, György Majláth

[24] Főrendiházi Napló (Proceddings of the House of Magnates) (1869-1872), p. 56.
[25] Ibid., p. 57.

pointed out that "as a matter of fact, the bill before us contains only theoretical statements, and so it is not their concrete application, but only principles that are at issue.[26] These principles, however, taking the European legal development for basis, were indispensable in the Hungarian legal life, too The Magnates were not in the least sorry for the municipalities, they admit that the parliamentary government offered them wider opportunities than the county did. They openly made statements concerning the status quo: "This government is ours, so to say: ourselves, because it originated from us, …" here, to be found in the credo of the class of large estates owners is the "second Compromise", adjustment of the new conditions, a compromise made with the bourgeoisie, the recognition of the bourgeois legal principles and legal institutions. After all this, it is not surprising that Lord Lieutenant József Tomcsányi almost reprovingly spoke of those who felt sorry for taking the judge election away from the counties and stated: "… since the legislation declares that the administration of justice is exercised in the name of his Majesty, whether it is an appointment or election system, it is the gist of the matter that it is exercised on his behalf, by his functionaries.[27]

Accepting as basis for a general and particular debate. The House of Magnates – after its riew by passages, made remark only on paragraph 25, proposing that to seetle the conflict, the ministry submit a bill at its earliest convenience to the legislature – passed the bill unanimously.

Ministerial summary – sanctioning – promulgation

Finally, it is intended to follow the fate of he discussed bill with attention from the closing of the parliamentary debate until the promulgation of the act. On the day of the debate and adoption of the bill, justice minister Boldizsár Horváth transmitted it, in a wording as accepted by both Houses of the National Assembly, to prime minister Gyula Andrássy, asking him to make arrangements for its possibly early sanctioning by the king.[28] With this request, at the same tie, a brief summary of the bill's House debate was given, to which the accepted modification and government assessments were also attached. Outlining the debate, the justice minister established: "The bill formed the subject of a lively and lasting debate, nonetheless the government's submission was in principle and in essence adopted," He reported on the major amendments and modification by passages, and to make the established and presented text easier to survey, the government's original draft was also attached.

[26] Ibid., p. 66.
[27] Ibid,, p. 66.
[28] OL. K. 26. ME 995, no. 2007/1 ME.

Since the ministerial stands taken in the debate over the individual passages have already been outlined, here we concentrate on two aspects of the bill. The first refers to paragraph 9 and to paragraph 10 of the accepted norm-text. Pursuant to this passage, the judge may be member of the body of representative of the community or municipality, but may not accept any commission or delegation from them." At the House debate, the government's reflection about this modification was by far not so understanding and conciliatory as in these lines. The government unwillingly embraced this amendment of the Opposition, but because the other cases of incompatibility were made accepted with success, in this particular case, the government, inspired by "the almost inextinguishable feeling of piety was willing to reckon with the circumstances,"

The other aspect of the ministerial summary, which we want to underline, is concerned with the variants of paragraph 18 and the accepted paragraph 19. Th problem here consisted in the question of whether the postulate "potentiales quae alioqin in nulliussunt valoris" of Act XII of 1791 would be applied with untenable rigidity or misenterpreted, extended by courts and whether, thereby, the practice of the government and municipalities would not become impossible. Although the government accepted the ensuring of statutory law and the government's intent not to violate any cardinal point of the "constitution", but extended with one addition: "The effect of promulgated law cannot be denied, but on the legality of laws in the individual legal cases it is the judge that decide." The minister evaluated this addition as being in harmony with the Act of 2 December 1869, that is effective in the other part of the Monarchy, a do not contain other than a corollary of what had been implicitely included in the government's submission.

The same day, prime minister Gyula Andrássy presented the mentioned ministerial submission, with the attached bill and the draft of the highest resolution, for sanctioning by the king.[29] The sanctioning took place on 17 July and text of the act on the exercise of the judicial power together with other submitted documents were returned to the prime minister by György Festetics, minister a latere.[30]

[29] OL K. 26. 995. ME. Attachments to the humblest submission no- 995 ME dated 13 July 1869 of the royal Hungarian prime minister: 1. letter of transmittal by the royal minister of justice, 2. bill of the exercise of judicial power,, 3. draft of the highest resolution.our „Your Highest Majesty , The bill of the exercise of the judicial power, which Your Majesty's Hungarian ministry by virtue of the highesst resokution of April 25 current, submitted to the Hungarian National Assembly, has been approved by both Houses with the modifications stated in the letter of submittal, attached undeer 1, of the justice minister,. So I take the liberty to present it in the form of an an act, attachment 2, and submit it on behalf of the ministry for sanctioning and endording with signature by Your Majesty. A draft of the related highest resolution is atttached under 2. Andrássy. 3. I sannction the bill on the exercise of the judicial power, as submittted by the ministry and approved by the Hungarian National Assemly, and trasmint it to the said ministry in the usual form, to be promulgated and for further procedure. Date Vienna, 14 July, 1869. Ferenc József

[30] OL K. 26. ME, no 53, no 65.

At the 15 July session 53 of the House of Representatives Gyula Andrássy presented the sanctioned act together with acts V and VI of 1869 – to the House, where they were also promulgated.[31]

Intervention of counties against the act

The sanctioning and promulgation of the bill, now act, on the exercise of the judicial power did not put an end to controversies about it, petitions, stands, words of recognition and condemnation did not cease. Opposers of the bill continued to be unable to put up with the act, while its supporters took every opportunity to give voice to their consent. Belonging to the latter was a stand of the editorial board of *Jogtudományi Közlöny* (Journal of Jurisprudence) which masde it possible that a "memorandum written by the Lawyers' Association in Arad to the House of Representatives" would be published in the journal. Although this happened with a tendentious objective: "corporate statement may have a historical value if only by their reasoning", yet their intent is worthy of recognition its recommendation may also be instructive for our legal journal, so even now we willingly give space ti this communication[32] Though dated before the sanctioning of the bill, the memorandum of the Lawyers' Association in Arad payed great tribute to the ideas included in it. It defended the reform-making government against the attacks, announcing that "the principles are not the inventions of a government striving for omnipotence, Their adoption result in guaranties, rather than dangers", in fact, it is the governments clear sight and sound judgement that deserves respect, since it embraced, without any prejudice, the perceptions of the progressice science and related practical application of the educated nations. The memorandum took a realistic stand in judging the role of municipalities. What formerly, under the primitive circulation and credit condition and under privileges of the feudal system, proved to be good and sufficient that the privilege-holder of municipalities with over-influence on the legislative and executive powers, might also exercise the judicial power. is no longer tenable under the changed circumstanes, under the condition of the increased demand on law. The memorandum of the Arad Lawyers' Association, however, is worthy of attention not only as a historical document of that age, but also from the aspect that it identified itself with the ideas of Károly Csemegi, who was involved in the work on the bill, and had been practising as lawyer for long years in Arad.

[31] Proceedings of the House of Reprentatives, II, 1869, p. 593; OL. K. 26. 2004/ ME. 1869.

[32] Jogtudományi Közlöny, no. 31, 1969, p. 204.

The steadiest opponents of the sanctioned law continued to come from among the municipalities. They flooded the House of Representative with petitions in firm and peremptory tone, It did not in the least disturb them that the provisions of that law had been in effect for three or four months. They strove to make a uniform stand of counties against the law with various means of organisation. They primarily aimed to win the support of the leding county (Pest-pilis-Solt-Kis-Kun) that had always showed a diplomatic attitude toward towards the bill, and which could not possibly head off the requests, invariably announcing that – though it agrees with the principle laid down in the petitions of the fellow counties[33] – but " ... since the national legislature has in the meanwhile made decision on the issue in question, the county does not, for the time being, apply to the National Assembly with a petition of similar content.[34]

In contrast, almost astonishing standpoints are expressed in the related documents of some other counties. Thus for example the 16 September supporting note of Szabolcs county to the petitions of Zemplén and Komárom counties, in which the bill on the exercise of judicial power (promulgated on 15 July!) is proposed to be put off until the debate on the bill on the regulation of courts and on the extension of election to judges, in spite of the fact that the names bill had been sanctioned, nevertheless imbued with the spirit of free election.... The extension of election to the lower organs of judicature is supported,"

The stubborn county stands against the act need no special comments. At any rate, the above facts also serve as additional material to the knowledge of the complex social and political conditions of the years following the Compromise.

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It was in this political milieu, full of contradictions, that Act IV of 1969 on the exercise of the judicial power was issued together with other laws regulating the new conditions. In its coming about, the act mirrored the effects and

[33] On the basis of the proceedings of the 1869-1870 general assemly of Pest-Pilis-Solt-Kiskun county (1969, 1001–4939. Vol. 6.. 1870 1011 (to vol.1). Cf. Komárom county (3032(, Bihar county (3720), Szabolcs county (3908) Jászkun district (3923) Torontál county (3967), Arad county (4165) , the town of Debrecen (2996, 4285), - except Zólyom county – which sent petition of confidence to the justice minister (3033) – this gesture could no be toleratied even by the diplomatic Pest county,

[34] The stand Pest county had taken in this matter was recorded at its regular quarterly cimmittee meeting. Held on 17 Novermber 1869, in connnection with reflections on Bihar county's petition, that was sent to it in a writtten note: „In the read petition, the reasons expressed relative to the at leasst partial maintenance of the dispensation of justice by the county official, the way of introducting juridicaton by juries, and finally to the way of making law on the judicial responsibility are fully agreed by the county's community." Pest-Pilis-Solt-Kiskun county. Proceedings of general assemblies, 1869 (3720-4939), 3820, 3955. S

consequences of the public-law situation created by the Compromise of 1867, the struggles of interests between the progress-minded bourgeoisie and feudal ruling class insisting on the old institutions. This struggle in its final denouement resulted in a compromise. Composed of county representations, the Opposition, apart from some positive exception, sounded pseudo-progressive conservative phrases, the policy of *non possumus*, however, originated in the safeguarding of their interests, for fear their scope of competence might be stronly impaired and the government power strenghtened. The most energetic "onslaughts" were made precisely by the Opposition leader, Kálmán Tisza, who –with reference to the principle of equality before the law – opposed the bill's provision that the judge should not pursue trade or commercial activity in the word of consortiums. The stableness of the proprietary order and security, the necessity of creating a good, rapid and impartial administration of justice" were not deny, nor did they dispute the principle of the exercise of the judicial power, that realises the former, the separation of public administration from judicature, the questions of the independence, qualifications and immobility of judges, but only the way, degree and depth of the realisation of all this. The take-over of foreign-type bourgeois legal principles and institutions, adjusted to the Hungarian circumstances, were held by all an urgent task.

It was in the spirits of these requirements that Act IV of 1869 was conceived. A first step in the way of the Hungarian reform of the administration of justice, .it declared the bourgeois legal principles, marking out the direction of further legislation. The act was a liberal work, and – though resulted from a compromise, it meant a progress as opposed to the feudal composition, creating possibilities for the further building of the judicial system of the bourgeois state.

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