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BODZÁSI BALÁZS, JAKAB ÉVA, TÓTH J. ZOLTÁN, TRÓCSÁNYI LÁSZLÓ

#### FŐSZERKESZTŐ

JAKAB ÉVA ÉS BODZÁSI BALÁZS

#### OLVASÓ SZERKESZTŐ

GIOVANNINI MÁTÉ

#### SZERKESZTŐBIZOTTSÁG TAGJAI

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Székhely: 1042 Budapest, Viola utca 2-4

Felelős Kiadó: TÓTH J. ZOLTÁN

Olvasó szerkesztő: GIOVANNINI MÁTÉ

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E-mail: [doktori.ajk@kre.hu](mailto:doktori.ajk@kre.hu)

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**ABSZTRAKT** ■ Tudományos tanulmányomban a korábbi magyar végrehajtási jogszabályokat a jelenlegi hatályos magyar végrehajtási jogszabályokkal hasonlítom össze. A korábbi magyar végrehajtási jogszabályok tekintetében a XVIII. és XIX. századi magyar végrehajtási jogra fektetem a hangsúlyt. Véleményem szerint egy jogász sokat tanulhat a történelmi jogesetekből, jogszabályokból, és ezekből sok hasznos és gyakorlati és elméleti következtetést tud levonni a jelenlegi jogi esetekre nézve is. A jogfejlődés, beleértve a végrehajtási jogot is, történelmi alapokon nyugszik, és a múltból származó jogintézményekre épül. Ha megértjük a történelmi jog lényegét és kritikus szemmel vizsgáljuk, valamint a hatályon kívül helyezett jogszabályokba mélyen belepillantunk, akkor jó válaszokat kaphatunk a hatályos jog új kihívásaira éppúgy, mint az aktuális jogi problémákra a végrehajtási jog terén.

**KULCSSZAVAK:** végrehajtási lap, adósvédelem, ellenőrzés, alapelvek

**ABSTRACT** ■ This paper aims to compare the former Hungarian execution law to the current Hungarian execution law by Hungarian Legal Cases. As for the former Hungarian execution law, I focus on the historical Hungarian execution law in the 18th and 19th centuries. I argue that a lawyer can learn a lot from historical legal cases and can adopt useful and practical parts from these legal cases to the current law and current legal cases. The evolution of law, including execution law, is based on history and builds on elements of legal fragments that originated from the past. If we understand the essence of the historical law and examine it with critical eyes, having a deep look at historical legal fragments, we can receive good answers to new challenges in law as well as to current legal problems including problems in the Hungarian execution law.

**KEYWORDS:** enforcement sheet, debtor protection, control, principles

<sup>1</sup> PhD student, Doctoral School of Law and Political Sciences, Károli Gáspár University of the Reformed Church in Hungary.

## 1. THE ENFORCEMENT IN THE 18TH CENTURY

The institution of enforcement has a long history. Broadly interpreted, since the formation of society, and the emergence of property and private property, we can speak of some kind of enforcement of customary law. In Hungary, acts of promissory notes were introduced in the 18<sup>th</sup> century. At that time the following legal institutions, which are still well-known today, were introduced in Hungary for the first time: foreclosure, insurance measures, enforcement of satisfaction, reservation rules, determination of market value, cases of community of property, auction, order of satisfaction and division, failure, execution of foreign decisions. These concepts form are the basics of our enforcement law today. Considering the significance of the switch and its high frequency of use, until the beginning of the Second World War was very large.<sup>2</sup> Promissory note law is an extremely dynamic area of law that requires very flexible judgment and, at the same time, also very flexible enforcement. The development of enforcement law started precisely on the track of this area of law in the 19<sup>th</sup> century. Another prominent point in the development of the Hungarian enforcement law was the adoption of the Article of 1836 on the manner of execution of judicial judgments involving monetary convictions. The subsequent milestone was the entry into force of the Act No. LX of 1881. It was the first comprehensive independent enforcement law. The emergence of an independent and comprehensive regulatory nature clearly shows the importance of enforcement, which is still regulated by an independent law today.<sup>3</sup>

## 2. PERIOD BEFORE THE STATUTORY REGULATION NO. XXI OF 1955

After the Second World War the Hungarian legal system, including enforcement law, underwent a radical ideological change. The Statutory Regulation No. XXI of 1955 until it entered into force, the execution of court decisions was carried out by state administrative bodies. This was, for example, tax collection.<sup>4</sup> More than fifty laws were entered into force that limited or excluded judicial enforcement. Enforcement legal regulations adopted Soviet enforcement law almost entirely. However, the Statutory Regulation No. XXI of 1955 already regulated the enforcement of movable and immovable property, blocking, and

<sup>2</sup> Statutory Regulation No. XXI of 1955 with justification on judicial enforcement.

<sup>3</sup> FERENCZ CSÁSZÁR: *Promissory note examples in litigious and non-litigious cases*. Pest, Gusztáv Heckenast, 1842.

<sup>4</sup> ERZSÉBET KORMOS: *Basic principles in the court enforcement procedure*. Miskolc, 2002.

execution of specific acts, and legal remedies. The criticism of this regulation is that it completely excluded the legal possibility of real estate enforcement.<sup>5</sup>

### 3. THE INNOVATION OF THE STATUTORY REGULATION NO. XXI OF 1955, WHICH IS STILL IN FORCE TODAY, IS THE ENFORCEMENT SHEET

The Statutory Regulation No. XXI of 1955 introduced the institution of the enforcement sheet, which, as a Hungarian peculiarity, has survived even today. An enforceable deed has not been issued with such a name anywhere else in the world, since it became common and known to all concerned during the period of socialism, it has not been born to this day. The first section of the effective Hungarian Enforcement Act records the distinction between “decisions” and “documents” that goes back to Statutory Regulation No. XXI of 1955. According to this regulation, an enforceable document was the “execution form” issued by the court and the document that the notary public had with an “execution clause” made.<sup>6</sup> The execution form was always issued based on the Statutory Regulation No. XXI of 1955, that is, a domestic court decision / an approved settlement, or a decision made by an arbitration court, an arbitration committee, a conciliation committee or a foreign court. However, the current regulation is by no means consistent, since there are documents that can be caused and subsumed under the concept of “decision of another body adjudicating the legal dispute”. An example of this is the notary’s binding decision to compensate for lost profits, damages and costs made in the property dispute.<sup>7</sup>

### 4. ENHANCED DEBTOR PROTECTION, WHICH IS LIMITED IN OUR CURRENT LAW

Statutory Regulation No. XXI of 1955, the balance of debtor and creditor protection was radically shifted in the direction of debtor protection by introducing the enforcement notice, which stated that as a result of a notice. The debtor was expected to demonstrate voluntary law-abiding behaviour without any coercion.

<sup>5</sup> ISTVÁN JÁNOS PATAKI: *Thoughts on the judicial enforcement system*: <http://jesz.ajk.elte.hu/pataki53.pdf>, 9-10, (Download time: 09. 22. 2023.).

<sup>6</sup> Statutory Regulation No. XXI of 1955 with justification on judicial enforcement.

<sup>7</sup> Statutory Regulation No. XXI of 1955 1-2 §.

We consider this regulation unthinkable today. The socialist enforcement law primarily tried to persuade debtors to fulfil their obligations using persuasion.<sup>8</sup>

## 5. THE ANTECEDENT OF OUR EFFECTIVE ENFORCEMENT REMEDY SYSTEM

Statutory Regulation No. XXI of 1955 against the action of a bailiff, if it was illegal, there was room for a complaint to the court where the bailiff operated. This complaint is the predecessor legal institution of the enforcement objection based on the regulations in force today. At that time, the legislator had not specifically separated the legal remedies related to the initiation of enforcement and ordering of enforcement. Statutory Regulation No. XXI of 1955 made it possible to withdraw the writ of enforcement and cancel the clause only if the issuance of the writ of execution and the recording of the writ of execution clause were done in violation of the rules contained in Statutory Regulation No. XXI of 1955. At that time, it was not yet possible to revoke the enforcement sheet due to a violation of another law, as it is in our current law. The legality supervision was performed by the public prosecutor's office regarding the enforcement phase of the enforcement.<sup>9</sup> The prosecutor could exercise protection against unlawful or groundless decisions of a bailiff. On the other hand, supervision of legality is carried out today by the Enforcement Faculty, which consists of bailiffs rather than an independent law enforcement body. According to my standpoint, returning to legality supervision of the prosecutor's office would somewhat improve the existing legal remedy system, as an institutionally independent body would supervise bailiffs.<sup>10</sup>

## 6. THE SIGNIFICANCE OF THE AMENDMENT OF THE STATUTORY REGULATION NO. XVIII OF 1979 IN THE EFFECTIVE HUNGARIAN ENFORCEMENT ACT

The Statutory Regulation No. XVIII of 1979 amended the rules of the Statutory Regulation XXI of 1955 but did not amend its structure, and the socialist approach remained. Perhaps the most significant amendment of the Statutory Regulation

<sup>8</sup> Statutory Regulation No. XXI of 1955 29 §.

<sup>9</sup> ISTVÁN VIDA: *The judicial enforcement*. Budapest, Economic and Legal Book Publisher, 1978.

<sup>10</sup> ESZTER CZAGÁNY: *Theoretical and Practical Issues of Seizure of Movable and Immovable Property Items in Enforcement Procedures*: <http://uni-miskolc.hu/document/18267/11756.pdf> (Download time: 09. 22. 2023.).

No. XVIII of 1979 is that, with its entry into force, general principles that apply comprehensively to the entire judicial enforcement procedure will be formulated and introduced from the perspective of creditor and debtor protection. From the perspective of a creditor protection position, it is an obligation for a bailiff to achieve fast and efficient fulfilment of obligations.<sup>11</sup> From the perspective of debt protection, provisions appearing as general principles of today's significant principles valid for court enforcement procedure appear. On the debt protection side, the general principles also mean that the bailiff can only use financial coercion to the extent necessary.<sup>12</sup> Furthermore, in addition to measuring the debtor's income and the amount of the claim, the extent of enforcement is also determined. The inclusion of the basic provisions in the effective Hungarian Enforcement Act therefore, at the beginning, was an innovation of the Statutory Regulation No. XVIII of 1979. Chapter I of the Statutory Regulation No. XVIII of 1979 entitled "Basic Provisions" contained the purpose of the statutory regulation and the general principles under a separate heading. Chapter I of the Effective Hungarian Enforcement Act, on the other hand, contains three subheadings: "Scope of application of the law", "Application of enforcement compulsion" and "Application of civil procedure".<sup>13</sup>

## 7. THE EFFECTIVE HUNGARIAN ENFORCEMENT ACT

The change of system, the change of attitude, the placing of property relations on a new basis, and the transition to a market economy proved that a radical amendment is also needed in the field of judicial enforcement. The main reason for the creation of the effective Hungarian Enforcement Act was that the number of enforcement cases increased, while the effectiveness of enforcement decreased. Additionally, the procedural rules of court enforcement were outdated, and they did not meet the requirements of the social market economy and the rule of law. The court enforcement organization was professionally unprepared and financially undermotivated. The main objective of the Effective Enforcement Act was the comprehensive modernization of court enforcement.<sup>14</sup> As a result of a change of system, regulation of enforcement was adjusted to the changed social and economic conditions. New regulations were intended to make court enforcement more effective by simplifying and speeding up the procedure. They

<sup>11</sup> Statutory Regulation No. XVIII of 1979 with justification on judicial enforcement.

<sup>12</sup> VIDA 1978.

<sup>13</sup> Great comment Act. No. LIII of 1994 on judicial enforcement of the law.

<sup>14</sup> Great comment Act. No. LIII of 1994 on judicial enforcement of the law.

prevent the evasion of debt collection, eliminate unjustified debt protection, make the seizure and sale of assets subject to enforcement more effective, and at the same time, make the procedure fairer with the new arrangement of immunity from enforcement possible. One of the significant amendments of the law is that it widened the scope of data collection by a bailiff and, at the same time, defined the concept of a bailiff in a way that directly affects and influences the organizational system of bailiffs.<sup>15</sup>

## 8. SUMMARY

My review of legal history showed that the current and effective Hungarian enforcement law is based on a very old institution. It has been present in different periods, since the appearance of property, and its social, economic, and political role is very large. The Hungarian past, development, peculiarities, and analogies of the institution of enforcement became known about the present. I have argued that throughout the history of the institution of enforcement, the issue of enforceability and effectiveness has been enhanced. The state structure, politics, and property relations have a direct impact on the institution and organization of enforcement. The Hungarian comparative study presented elements that can still be considered milestones in judicial enforcement law. The turning points in Hungary's history, as well as the effects of social, property, and ideological changes characterized by turning points on implementation, were described in my presentation. In sum, today's enforcement law is a result of Hungarian history. Even though the period of socialism had a great impact on enforcement law, many effective legal institutions can be traced back to the historical past of Hungary.

## LITERATURE

FERENCZ CSÁSZÁR: *Promissory note examples in litigious and non-litigious cases*. Pest, Gusztáv Heckenast, 1842.

ESZTER CZAGÁNY: *Theoretical and Practical Issues of Seizure of Movable and Immovable Property Items in Enforcement Procedures*: <http://uni-miskolc.hu/document/18267/11756.pdf> (Download time: 09. 22. 2023.).

<sup>15</sup> KORMOS 2002.



ERZSÉBET KORMOS: *Basic principles in the court enforcement procedure*. Miskolc, 2002.

ISTVÁN JÁNOS PATAKI: *Thoughts on the judicial enforcement system*: <http://jesz.ajk.elte.hu/pataki53.pdf>, 9-10. p., (Download time: 09. 22. 2023.).

ISTVÁN VIDA: *The judicial enforcement*. Budapest, Economic and Legal Book Publisher, 1978.