

**Károli Gáspár University of the Reformed Church in Hungary
Faculty of Law Doctoral School**

DOCTORAL DISSERTATION

THESES

dr. János István PATAKI

**The judicial enforcement system and the organization of bailiffs in Hungary
Historic antecedents, presentation and interpretation of the regulation and the basic
problems**

**Supervisor:
Dr. habil. Ádám BOÓC PhD.
Associate professor and head of department**

Budapest, 2020.

1. Topic choosing and research task

The importance of property and the right of ownership, and through that the wealth, as a fundamental base of the organization of the society, is outstanding in all ages, so the examination of questions of barriers that restrict the dominance over property is actual in all ages. Judicial enforcement can be considered as the main route to individual property enforcement, in the form of a direct correlation between property, the ownership and the legal institution of judicial enforcement. Present dissertation basically intends to examine the legal institution of judicial enforcement as the recognized way of enforcing an individual right, from several perspectives and applying a multilateral approach.

The main goal of the dissertation was to explore the Hungarian peculiarities through the analysis of the organizational, institutional and legal operation of judicial enforcement. The dissertation analyzes and presents the legal institution of enforcement and judicial enforcement by era. According to Mór Katona, the use of coercive and enforcing measures applied by the state is one of the outstanding features of individual law, which means the enforcement of the right of the entitled person over the “will” of third parties on the material side, and the individual right essentially defines obligations, thus the notion of right and obligation can be considered synonymous in this sense.¹

Enforcement itself is not a new institution, broadly speaking, since the emergence of the most elementary and minimal social culture, we can talk about some kind of enforcement (even customary) law since the emergence of property, common property and private property. In essence, property is one of the most elementary institutions in contemporary societies, enforcement and property is an inseparable pair of concepts in this context.

The laws of Hammurabi² (1728–1686 BC) already regulate enforcement in respect of certain acts (e.g., witnessing concerning grain or finances, scope of a court judgment, lien, etc.). The effect of Roman law can be still seen until this day, and it can be stated with absolute certainty that the Roman legal tradition is very important in the development of the legal institution of enforcement. Knowledge of Roman law means the fundamentals of modern law. "Modern rights (especially civil law) are based on Roman law in their system and institutional structures, so knowledge of Roman law means the knowledge of law in general."³ Roman law is one of the outstanding foundation of both our historical and current legal systems. “A significant part of

¹ Compare with: Mór Katona: The guideline of the civil law valid today, Bratislava, Károly Stampfel, 1899., 1-5.

² Mihály Kmoskó: Acts of Hammurabi, Cluj-Napoca, Ajtai K. Albert Könyvnyomdája, 1911., 29.

³ Imre Molnár– Éva Jakab: Roman law, Szeged, LEGES, 2012., 17.; compare. János István Pataki: *Additions to the sources of law of judicial enforcement in Roman law*, In: Acta Universitatis Sapientiae Legal Studies, Volume 3, Number 2/2014., Kolozsvár, Erdélyi Magyar Tudományegyetem, 2015., 139-152., passim.

modern legal systems, and even the vast majority of European legal systems, are involuntarily based on Roman law, so Roman law provides a solid dogmatic basis. The legal thinking polished in Roman law definitely has a larger background and horizon.”⁴ Certain elements of the institution of enforcement have appeared in Hungarian legal history since medieval legislation.

Hungarian peculiarities affect the development and processes of judicial enforcement in Hungary, including our present age (e.g. the certificate of enforcement as a Hungarian peculiarity). Directly related to our time, already in 1991, after the change of regime, the entire institutional system of judicial enforcement and the definition of its operational parameters underwent a radical and comprehensive change. It was a serious task for the legislator to enforce the provisions of the relevant court decisions, as illustrated by the content of Resolution 46/1991 (IX. 10.) AB, which appeared on the subject in a short time after the change of regime. It should be emphasized from the above-mentioned AB decision that the AB itself links the legal institution of judicial enforcement itself directly to the principle of the rule of law, and derives further findings from this relation. The Constitutional Court points out that respect of the court decisions and the enforcement of final court decisions is a constitutional interest directly related to the rule of law. In enforcing this constitutional interest, a (legitimate) coercion may be applied in order to avoid the violation of the rule of law, legal certainty, legal awareness and the respect of court decisions. The constitutional personal rights can be restricted, because a kind of violation has already arisen during the proceedings, and the procedural coercion is aimed to remedy this error (decision 46/1991 [IX. 10.] AB). By 1994, an independent law was adopted in Hungary, covering the entire operation of the legal institution of judicial enforcement. It is a kind of obligation of the state, the legislator, and also an aim to enforce the decisions related to legal disputes. An important form of realization of this obligation is the legal institution of judicial enforcement itself, and in terms of the stages of realization, the implementation phase of judicial enforcement.

Already during the consideration and selection of the topic, it became clear that the statistical analysis of the available data sets is unavoidable during the examination of the legal institution under analysis. Without this data analysis, the topic of present dissertation and the problem statement itself would not be fully understandable. It represents an additional dimension of the study, and also shows the actuality of the chosen topic the presentation and analysis of the enforcement data numbers of the years 2010-2011-2012 and 2016-2017-2018-2019 and the

⁴ András Földi– Gábor Hamza: Institutes and history of Roman law, Budapest, Nemzeti Tankönyvkiadó, 2007., 8.

presentation of the results. The implementation phase of the enforcement procedure creates a direct connection between all the parties involved in the procedure, so due to this operational criterion and the high number of affected persons, the natural characteristics of the operation need to be examined. Naturalities appear theoretically in the form of factual, numeric results. A comprehensive picture of the operation of the legal institution can be obtained if we compare the results provided by the analytical analysis with the problems arisen in practical life.

It has become a well-known fact that the number of enforcement cases is increasing each year. As a result, the number of parties involved and the sums of the claims to be enforced, increased exponentially in 2010-2011-2012, significantly exceeding the increase of the number of cases, and this level of growth did not decrease in the years 2016-2017-2018-2019, but stagnates or shows a slight upward trend. It is also clear that from the elementary two-stage breakdown of judicial enforcement in the second element, the so-called implementation block, ie the rationalization block, there is an almost complete set of widely known issues.

It became necessary to comprehensively examine the operation and historical development of the legal institution, to get to know and precisely define the specific operational elements. The examination of some of the key procedural elements of the implementation phase of judicial enforcement has revealed that these procedural elements and the problem areas they generate have the most direct impact on the social judgment of the legal institution. At this stage of the study, the principal abnormalities raised by the principles of efficiency and effectiveness could be identifiable and tangible. The reason for this is that, generally, the bailiff first meets the interested parties in connection with the realization of the procedural elements related to the implementation phase, either in person or in connection with other procedural measures taken by him/her. As a result of the examination along the principles of gradation and proportionality, the emphatic and difficult procedural elements were presented and analyzed.

In case of the legal institution of judicial enforcement, it is basically possible and necessary to speak of an elementary two-stage breakdown. The first stage is about the ordering of the enforcement, and the second is about the implementation of the enforcement. The research basically focuses on the identification of problem areas during the implementation phase of judicial enforcement, revealing malfunctions and individual aspects, thus providing the information gained as a result of legal history analysis.

The effective operational peculiarities of the organizational system of judicial enforcement, the effects of the social, economic and legal operating environment also become absolutely

transparent, understandable and localizable in this set. The public opinion⁵, the actual opinion expression of the members of the society, their judgment about the legal institution of judicial enforcement are influenced primarily by the effect of the procedural elements directly experienced by the parties concerned in practice. In the first stage of judicial enforcement, ie the ordering phase, the bailiff is, as a general rule, is directly not involved in the proceedings, either in person or as official person. To this so-called first stage the original right to be enforced is connected, so before the involvement of the bailiff in the proceedings there are already procedural or other kind of measures and/or acts carried out, causing legal effects. In all cases, the acts originally connected with the original legal relationship are realized before the period prior to the implementation phase. An enforcement order may be issued by the persons entitled to issue as a direct result of the occurrence of a legal claim and non-performance. Based on this document, the bailiff shall initiate the implementation of the procedural acts related to the specific enforcement procedure. Beyond the theoretical significance of the phase breakdown, the connection points of the two sections can also appear as an independent source of problems.

⁵ <http://www.kislexikon.hu/kozvelemeny>, (2nd of October 2019).

„Mass formation of people's opinions on social facts, ie specific events, persons, situations, drafts or their absence, beyond individual judgments. Public opinion is not simply a lot of individual opinions, but an evaluative response evoked by a group of people, i.e. an opinion expressing a certain social tendency.”

2. Research method

The study conducted within the frameworks of present research follows a chronological system, presenting judicial enforcement through legislative changes and developmental stages of each era, analyzing the related literature, focusing on the procedural elements and organizational system of the implementation phase of judicial enforcement and on enforcement actions and measures. The second focus of the dissertation is the examination of the numerical statistical indicators of the last 10 years in two periods, drawing conclusions on the system and operational efficiency of today's implementing legal institution through this analysis.

As the primary method of research, I used an itemized analysis of the historical development of judicial enforcement and judicial enforcement in Hungary, supplemented by the examination of the operational and environmental elements that have a direct impact on the operation of the legal institution. The history of the legal institution of enforcement has been generally accompanied by the issue of efficiency and effectiveness which characterizes this legal institution.

The study conducted within the frameworks of present research follows a chronological system, presenting judicial enforcement through legislative changes and developmental stages of each era, analyzing the related literature, focusing on the procedural elements and organizational system of the implementation phase of judicial enforcement and on enforcement actions and measures. The second focus of the dissertation is the examination of the numerical statistical indicators of the last 10 years in two periods, drawing conclusions on the system and operational efficiency of today's implementing legal institution through this analysis. The natural master data files generated during the recent operation of the judicial enforcement system had to be examined and synthesized. The test results were presented in a systematic way using the amount of data collected during the research.

We can talk about the independent organization of judicial enforcement in Hungary since 1871. The research work made it necessary to examine the organizational system of enforcement, judicial enforcement, and the main parameters of organizational operation. Performance of law enforcement tasks are closely related to the organizational system and its operation.

Due to its special structure, the entire system of operating conditions of the legal institution of enforcement determined by the so-called socialist ideology, as well as the reform steps of the regime change had to be examined separately. The change of regime resulted radical changes both in the society as a whole and also in the legal institution examined in this

dissertation. Within the frameworks of direct legal regulation, the Act LIII of 1994 on the judicial enforcement (Vht.) entered into force. The impact of the privatization of the executive sphere on the operation of the system has proved to be outstanding, as it has fundamentally limited and still determines the operation today.

Current developments are characterized by the introduction of reform measures on judicial enforcement, initiated by the government and the legislature but not yet completed. The ongoing reform process is not yet complete, so its effects cannot be measured. Prior to the introduction of the current reform measures, after the entry into force of Act LIII of 1994, the first major change was the entry into force of Act CXXXVI of 2000, the second was Act XXIX of 2008 and the third was Act CLXXX of 2011. The amendments, as well as the initiation and introduction of government reform itself, were primarily intended to increase the efficiency and effectiveness of judicial enforcement proceedings.

The Act CLXXX of 2011 entered into force gradually in 2012 at different calendar dates for each change. Thus, one of the peak values of the time axis of the present research are the dates of entry into force in 2012 of certain elements of comprehensive, novel-like legislative changes before the start and implementation of the current government reform measures. Within the framework of the analysis and historical research, the dissertation focuses on the elements of the implementation phase within the two-stage breakdown of judicial enforcement and judicial enforcement, and displays the legal elements currently in force as part of the certain chapters. The second peak value of present research is the basis of the partial reform measures introduced in 2019.

The applied methodology was finally supplemented with the analysis of the relevant legal dogmatic relations, so the study provides an opportunity to explore and present the specialties and peculiarities specific to Hungary.

A complex, burdensome and diversified task system of judicial enforcement, the performed activity would justify the application of multiple investigation methods even if the annual number of cases would not increase but decrease. The applied test methods, the analysis of the individual test methodologies, at the intersections created by comparing the obtained results will most likely provide a satisfactory and appropriate answer to the arising questions. The knowledge of the research results will make possible to determine the potential directions of development, as well as to formulate proposals with a specific system or, in other words, a macro-level strategic concept.

3. Summary of the results of the research

The research area is defined in Chapter I of the dissertation. Chapter I also describes the elements of the methodology used in the present research process, reasons the topic choice, and defines the objectives of the work. Chapter II of the dissertation presents the legal system of enforcement and the development of the institution of enforcement of Roman law. Chapter III of the dissertation describes the development of the legal institution of enforcement from the beginning to the change of regime. The chapter presents the emergence of the institution of enforcement in Hungary, the turning points in the age of feudal law, the regulatory history of the age of dualism (The connections between the legal institution of enforcement and the system of exchange acts, as well as the changes caused by the entry into force of Article LX of 1881 are also presented here), and this chapter also presents the events associated with the period of socialism. Chapter IV of the dissertation examines the changes in the legal institution of judicial enforcement from the change of regime, through the changes and novel-like amendments of Act LIII of 1994, to the significant amended legal provisions in force today. This chapter also examines the organizational system of judicial enforcement through the development of the Hungarian Judicial Enforcement Chamber and its transformation into the Hungarian Judicial Enforcement Faculty. The examination of the organizational system is fully justified by the changes related to organizational transformations. Chapter V of the dissertation deals with the elements of remedy and appealing system of judicial enforcement. Chapter VI of the dissertation examines the defining elements, stages and lien aspects of judicial enforcement. The demarcation of the two stages of judicial enforcement, the presentation of the points of connection with the lien, is essential for the examination of the operation of the legal institution. Chapter VII of the dissertation focuses on the key elements in the implementation phase of judicial enforcement, as the elements of the effective operation and efficiency of the legal institution can be directly perceived along these elements. Chapter VIII of the dissertation examines the relevant fundamental right and legal policy contexts in addition to the presentation and analysis of judicial enforcement statistics. Chapters IX and X of the dissertation summarize the proposals and results of the study and research carried out by this dissertation.

The research basically intended to examine the legal institution of judicial enforcement as a means of enforcing (even coercive) a recognized and enforceable individual right, from several perspectives and applying a multilateral approach. The objectives of the research activity were defined along the hypothetical statements set out below.

- The functioning of the institution of judicial enforcement in our time is full of serious problems, so a comprehensive reform of regulation and organization has become inevitable.
- The severity of problems in judicial enforcement can in principle be measured and presented on an objective basis through the analysis of available statistics.
- When examining the historical development of the law of enforcement and the institutional system in Hungary, most of the functional problems (showing by analogy) can be found, which still appear today, and the milestones of the development are the outstanding stages of the institutional development of judicial enforcement.
- It is not possible to take into account the Hungarian peculiarities without an item-by-item examination of the individual groups of procedural elements related to the implementation phase of judicial enforcement.
- The operational frameworks of the organizational system of judicial enforcement fundamentally effect the operation of the legal institution and its efficiency.
- The results, definitions and observations obtained during the examination of the development of enforcement law help to draw *de lege ferenda* conclusions regarding future changes in judicial enforcement.

Through the examination of the development of the legal institution, it was possible to determine the exact social location of the legal institution and the roles it plays, and thus the formation and development of the right of enforcement during the periods became transparent and understandable. The need for a historical review was also justified by the fact that incomplete historical knowledge may be the basis for inadequate social moral instincts as a strong factor negatively influencing the moral judgment of judicial enforcement proceedings and as such may act as a barrier to enforcement and law-abiding behavior.

The functions performed by judicial enforcement have been analyzed, so the legal institution has become transparent through such a system of criteria. With regard to the economy, the role of the regulator has become known in connection with the examination of the legal institution of enforcement (broadly included in all three types of property enforcement), which promotes the requirement of normal management and the principle of continuation (striving for balance). Judicial enforcement is one of the effective tools for management, economic security and legal certainty. This feature is outstanding as social judgment does not view the legal institution of judicial enforcement in such a relation. The functional definitions show what measures and

steps are needed to move the public judgment to a positive direction. The development of the positive nature of public opinion is also directly related to efficiency and the introduction and application of prevention tools. In the examination of the functioning of the organizational system, historical analogies could also be found in accordance with the problems of the present. As a result of the research, it became clear that one of the most serious problems is caused by the privatization that happened after the regime change in the sense that the basic orientation and economic environment of the independent bailiff who is acting as a law enforcer has changed radically. As a result of the impact of privatization, it operates in a profit-oriented approach, with the condition that its business has a given market, there is no market competition, and its demand shows a significantly expanding trend every year. From this aspect, it can be seen that the independent bailiffs in the present system are not primarily driven by the social or public interest, but by the interest of the owners of the company in obtaining the expected profit and the highest possible profit. Profit orientation can be considered reasonable and expected in the case of a company, but this is not necessarily true in the case of judicial enforcement using state coercion.

Closely related to the examined issue the complete transformation of the organizational and supervisory system with the commencement of the operation of MBVK. MBVK and its universal legal successor MBVKAR play an extremely important role as a professional supervisory and professional self-government body regarding the legal institution, institutional system, operation and maintenance of judicial enforcement. The examination of the role and operation of MBVK and MBVKAR is reasonable from several aspects. Ab ovo it has operated and continues operating as a body performing supervisory, control and redress functions, the quality of its activities fundamentally affects the practical operation of the entire legal institution. As a result of the study, it turns out that MBVKAR, as a professional chamber, has special characteristics in several respects compared to other public bodies operating as chambers.

The legislator, from the point of view of the legislation, on the one hand the basic goal is to increase the efficiency of the enforcement procedure, while on the other hand, various debtor and creditor protection programs are introduced. This ambivalence can cause a dissonance in making the boundary points of debtor and creditor protection, and its effect is direct. The legislator declared that the state apparatus operates on the basis of a non-profit-oriented operating parameter system, however, it became apparent that the bailiff, although within the frameworks of the applicable rules, operates in a profit-centric manner beyond its own fault. The solution could be a comprehensive reform of the operational and supervisory system in

parallel with efficiency increasing, and the confirmation could be the strengthening of the public confidence.

Regarding the subject of the study, emphasizing its actuality, it was definitely justified to present the statistics independently. The number of cases annually shows a gradually increasing trend. In 1994, the Vht.'s reasoning spoke about 300,000 cases per year, while in 2018 the number of cases received by independent bailiffs was 734,507. The results of the analysis of the natural data undoubtedly confirmed the topicality of the choice of topic. In order to measure the effectiveness of the enforcement system, it was possible to develop indicators, which provided continuous time-proportional results depending on the provided data.

The relationship between the legal institution of judicial enforcement and legal certainty (through this, the public good and the chances of access to justice) as a fundamental principle of law is a direct correlation in the sense that, if necessary, the institutional system of enforcement, within the frameworks of the procedure, ensures the voluntary law-abiding behavior through the fulfillment of obligations, thus striving to restore the balance in social, legal and economic terms. Legal certainty is embodied in the application of law, in the practice of law-abiding behavior by society.

Knowing the results of the research, the cornerstones of possible macro-level strategic development directions of the judicial enforcement became determinable, which made possible to draw up concrete proposal alternatives. The proposals were developed and presented along the organizational system of judicial enforcement and the system of tasks.

4. Utilization of the results of the dissertation

The results presented by the research carried out within the frameworks of the present dissertation made visible that the social structure, politics, ownership relations have a direct impact on the institution and organization of enforcement, and through these on the performance of enforcement activities. The overall functioning of the legal institution of judicial enforcement and its functional environment reflect unique, country-specific features so only with the consideration of these individual features the legal institution, its organizational system, operation, efficiency, and characteristic problem areas can be effectively examined.

The examination of the legal history and legal antecedents of the legal institution of enforcement and judicial enforcement is essential in order to be able to systematically explore the further procedural elements related to judicial enforcement and used in the implementation phase of the procedure.

At the same time, it is certainly a difficult task for the legislator to create a sufficiently flexible legal environment that adapts to the constant changes in the social and economic environment, as well as to create an appropriate organizational and effective supervisory framework. The establishment of a creditor and debtor protection system has been a priority for the legislator in all periods, all in such a way that the public interest shall not be harmed and the equilibrium position of the economy can be stabilized (regulatory role).

The complex, and diverse nature of the legal institution of judicial enforcement allows the results of research to be used on several levels and in different depths from the examination of the individual problems, the needs of the legal institution, to the conclusions concerning the organizational system to the realization of the general legal policy goals.

The research activity carried out by the present dissertation has proved beyond a shadow of a doubt that enforcement, judicial enforcement, has played and continues to play complex and exceptionally important social, societal and economic roles in all historical eras and social arrangements. In the future, the research is intended to examine the effects and effectiveness of the introduced reform measures along the balance of debtor and creditor protection, and to continuously analyze the incoming data along different sets and groupings, so that new proposals can be drawn up.

5. Publications on the subject of the dissertation

1. János István Pataki: *Judicial enforcement in the mirror of the numbers*; Pécs, Jogászoknak Kft., In: Jogi Fórum - Első Magyar Jogi Portál, 2013.
2. János István Pataki: *The bailiff and the judgment debtor*; Budapest, Ad Librum kiadó, ISBN: 978-615-5110-62-7, 2013.
3. János István Pataki: *Thoughts on the judicial enforcement system*; Budapest, Az Eötvös Lóránd Tudományegyetem Állam- és Jogtudományi Karának Lapja, In: Jogelméleti Szemle, 2013/1., 121-135. p.
4. János István Pataki: *The impact of government reform on local government wealth management*; Budapest, Polgári Szemle Alapítvány, In: Polgári Szemle, Gazdasági és Társadalmi Folyóirat 9. évfolyam 1-3. szám, 140-153. p.
5. János István Pataki: *On the version 2012 of judicial enforcement Act*; Pécs, Jogászoknak Kft., Jogi Fórum - Első Magyar Jogi Portál, 2013.
6. János István Pataki: *Modification and reasoning of the Act of 2012 on the Hungarian legal enforcement and actualities.*; Kolozsvár, Sapientia University, Romania, In: Acta Universitatis Sapientiae Legal Studies, Volume 2, Number 1/2013., 127-141. p.
7. János István Pataki: *Insolvency of local governments*; Szeged, Szegedi Tudományegyetem Állam- és Jogtudományi Kar, In: Acta Universitatis Szegediensis; Publicationes Doctorandum Juridicorum FORVM III. évfolyam, 35-47. p.
8. János István Pataki: *On the Judicial enforcement - recovery as an opposite pair*; Budapest, Az Eötvös Lóránd Tudományegyetem Állam- és Jogtudományi Karának Lapja, In: Jogelméleti Szemle, 2014/2., 216-226. p.
9. János István Pataki: *Acticle LX of 1881 on the enforcement procedure*; Budapest, Az Eötvös Lóránd Tudományegyetem Állam- és Jogtudományi Karának Lapja, In: Jogelméleti Szemle, 2014/4., 88-96. p.
10. János István Pataki: *Additions to the sources of law of judicial enforcement in the age of dualism*; Kolozsvár, Sapientia University, Romania, In: Acta Universitatis Sapientiae Legal Studies, Volume 2, Number 2/2013., 229-241. p.
11. János István Pataki: *Additions to the sources of law of judicial enforcement in Roman law*; Kolozsvár, Sapientia University, Romania, In: Acta Universitatis Sapientiae Legal Studies, Volume 3, Number 2/2014., 139-152. p.

12. János István Pataki: *The judicial enforcement and the compensation*; Budapest, Polgári Szemle Alapítvány, In: Polgári Szemle, Gazdasági és Társadalmi Folyóirat 13. évfolyam 4-6. szám, 318-328. p.
13. János István Pataki: *Enforcement and recovery in the light of police proceedings*; Budapest, Belügyminisztérium, In: Belügyi Szemle 165. évfolyam 2019/12. szám, 105-120. p.