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The Effect of the Socialist Rearrangement on the Hungarian Insolvency Law¹

Abstract

With regard to insolvency cases in Hungary, the Interwar period was dominated by the bankruptcy procedure and the compulsory non-bankruptcy settlement procedure. The Second World War generated big changes in the field of economic law, because the formation of the socialist relations in the economy pushed the economic legal rules into the background. But this was not true for the insolvency law, since the state had an active law-making activity in this field in the interest of the socialist rearrangement. My paper examined this change on the level of the legal rules, in the practice and in the Hungarian jurisprudence, because my aim was to give a complete picture about the insolvency law in Hungary in the years of the socialist rearrangement. My research initially was to focus on looking up the judicial documents concerning the Hungarian insolvency practice between 1948 and 1951, but this attempt was unsuccessful because of the lack of such documents. For this reason, I turned my attention to the official gazettes as the only means of establishing the number of insolvency cases. According to the results of this analysis, it was determined that bankruptcy procedures and compulsory non-bankruptcy procedures disappeared from 1949 onwards from the Hungarian judicial procedure, and they were replaced by the liquidation ruled by Government Decree No. 560/1949. This liquidation was an administrative procedure, since it was the Centre of Financial Institutions that carried out the compulsory liquidation. In this era, the private autonomy was ceased in the insolvency law, and the state dominated these processes, and the insolvency law became as a liquidation process the instrument of nationalisation.

Keywords: legal regulation in the field of bankruptcy law, economic law, practice of the Hungarian courts, jurisprudence after the Second World War, building the socialist legal order in Hungary

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Introduction

The socialist rearrangement of the state organisation was gradually implemented after the World War II. In 1948, the personal guarantees of judicial independence were ceased, and the separation of its execution and the judicative was also dissolved.² Political changes to the people's democracy were realised by the constitution of 1949, Act XX of 1949 in Hungary, which apparently maintained the principle of the separation of powers, but was a big step towards a dictatorship of the proletariat.³

While the socialist political organisation was being built up in Hungary, the transformation of the economy to a plan-based economy was going on in parallel.⁴ The World War II brought about significant changes in the field of economic law, because the formation of the socialist relations in the economy pushed the economic legal rules into the background, and the commercial law was in a state of apparent death. But this was not true for the insolvency law, since the state had an active law-making activity in this field in the interest of the socialist rearrangement. We can see similar gradual development in the insolvency law, such as with nationalisation after the World War II.⁵

My paper focuses on examining this change at the level of legal rules, its practical implications, and its impact on the Hungarian jurisprudence. The aim of my research is to provide a comprehensive overview of the state of insolvency law in Hungary in the years of the socialist rearrangement. The Hungarian law-making was particularly rich in the field of insolvency law during this period. The changes in the jurisprudence were also spectacular, but my attempt at examining the insolvency practice was at first almost unsuccessful. My preliminary research plan was to examine the archive material of the Regional Court of Budapest between 1948 and 1951 concerning the insolvency law, but the bankruptcy and compulsory non-bankruptcy settlement cases were missing from the archive material of the Budapest City Archives. I was able to examine only one case from this period, which was preserved in the archive material of the Regional Court of Appeal of Budapest. For this reason, my paper instead set out to reconstruct the number of insolvency cases based upon the Hungarian official gazette, because in this newspaper the official organs were obliged to publish the new declarations of bankruptcy and new compulsory non-bankruptcy settlements and liquidations.

² Balogh, "A szocializmus," 49–51; Horváth, *A szovjet típusú diktatúra*, 693.

³ Palasik, *A jogállamiság*, 311.

⁴ Feitl, "A kettős fordulat," 371; Harmathy, "Die Geschichte," 877; Kukorelli, "Die Entwicklung," 773–5.

⁵ Veress, "A szovjet típusú diktatúrák," 337–40.

Hungarian insolvency law before the World War II

The Interwar period was dominated by the bankruptcy procedure and the compulsory non-bankruptcy settlement procedure concerning insolvency cases.⁶ The Hungarian bankruptcy law was regulated by Act XVII of 1881, which invariably was in effect until the end of the World War II. It was the second such Hungarian bankruptcy act, because the first had been passed by the National Assembly in 1840. This act was created in the era of dualism, which was a period of economic boom. The Hungarian political elite had desired to help this economic development by new economic legal rules, and therefore the first Hungarian commercial code had been passed in 1875, the new promissory note act in 1876, and the renewed bankruptcy act in 1881. It was a classical insolvency procedure, which could be started in two ways: (1) the bankrupt individual/entity could submit a bankruptcy petition to the court; or (2) creditors could submit a bankruptcy petition to the court against the bankrupt individual/entity. The aim of this process was to divide the bankrupt's estate among creditors based on equal principles.⁷ A very important feature of this insolvency process was that it could be started against a private person or commercial companies, and therefore the act distinguished between ordinary and commercial bankruptcy.⁸

Another type of the Hungarian insolvency procedures was the compulsory non-bankruptcy settlement which was introduced by the Government Decree No. 4.070/1915 M.E. in the Hungarian legal system in 1915. This new insolvency procedure was a reorganisation process mainly for the economic actors, which means that it gave an opportunity to insolvent debtors to make an agreement about their debts with creditors.⁹ The debtor had two possibilities during the negotiation with his or her creditors: (1) he or she required a respite for payment; or (2) he or she required creditors to remit determined parts of their claims. The significance of this process lay in the fact that if a determined part of the creditors accepted the settlement offer of the debtor, then this compromise could oblige creditors who opposed such a settlement to accept it. The first decree about compulsory non-bankruptcy settlement typically regulated a judicial procedure which was led by a single judge in the royal regional courts.

This regulation was changed by the Government Decree No. 1.410/1926 M.E. 10 years later, which established a new insolvency organ, the National Credit Protector Association [Országos Hitelvédő Egylet].¹⁰ It was considered a private organisation with state authorities because debtor and creditors were obliged firstly to endeavour to make a settlement by this association before the judicial proceedings. If this attempt was unsuccessful, the procedure could be continued before the court based on the previous rules regulated by the government decree in 1915. The compulsory non-bankruptcy settlement pushed the bankruptcy procedure into the background in the Interwar period, because it functioned more efficiently. The process was quicker and more flexible. It was more advantageous for the debtor, since he or she could continue his or her economic activity with ordered and

⁶ Pétervári, "Changes in the Hungarian," 232–8.

⁷ Apáthy, *A magyar*, 1–2.

⁸ Horváth, *A magyar magánjog*, 483.

⁹ Meszlény, *A csődön kívüli*, 4.

¹⁰ Tury, "A csődönkívüli," 45.

rescheduled debts after the end of the procedure. And it was more advantageous for the creditors who, after the insolvency of their debtors, could get back a bigger proportion of their claims from the debtor than they could generally retrieve in the bankruptcy procedure.

During the First World War, a third insolvency procedure appeared in Hungary in 1917 whose purpose was to protect the bank sectors from the economic shock of the time. The growing financial problems during the First World War made it increasingly desirable to establish the state supervision of banks, which had already been an issue. Previous liberal economic policies had allowed financial institutions to continue their activities without any revision. For this reason, János Teleszky, Minister of Finance, submitted a bill during the First World War,¹¹ which was later enacted as Act XIV of 1916. The aim of this bill was to establish a self-government organ with control over financial institutions, which could, if necessary, grant loans to troubled institutions or economically rehabilitate a financial institution in difficulty.¹² To achieve this, the Centre of Financial Institutions (Pénzüntézeti Központ) was set up as a cooperative society with members from financial institutions across the country.¹³

The Government Decree No. 920/1917 M.E. established a new form of insolvency procedure for the financial institutions, which was the compulsory liquidation. The aim of this process was the replacement of the bankruptcy procedure, and therefore, if a court had to decide about the declaration of bankruptcy against a financial institution, the court would be obliged to hold a hearing about this question by summoning the Centre of Financial Institutions; and this organ had to express its statement whether it undertook to carry out the compulsory liquidation. The Centre of Financial Institutions performed such a function in this process, like the bankruptcy trustee in the bankruptcy procedure. But it had a wider authority than the bankruptcy trustee, because it was a very reliable organ due to the state control, and it had a high-level of knowledge in the functioning of the bank sector.¹⁴ This procedure based itself on the bankruptcy procedure, and the decree only determined the differences from Act XVII of 1881. The whole proceedings ran under the supervision of the royal regional court.¹⁵

Changes of the insolvency law after the World War II

The narrowing of the scope for initiating bankruptcy proceedings in the context of nationalisation started immediately after the World War II. First, the government led by Zoltán Tildy ordered the coal mines to be taken over by the state in Government Decree No. 12.200/1945 M.E., in which the Minister for Industry took over the management of the mines from the owners.¹⁶ During the term of office of the government of Ferenc Nagy, Act XIII of 1946 declared the nationalisation of the coal mines. This act ordered

¹¹ Nyári, *A Pénzüntézeti*, 32–3.

¹² Teleszky, *A magyar állam*, 357.

¹³ Varga, “100 éve alakult,” 137.

¹⁴ Nyári, “Pénzüntézetek felszámolása,” 113.

¹⁵ Meszlény, *A csődön kívüli*, 325.

¹⁶ Képes, “Részvénytársaságok,” 344.

nationalisation in return for compensation, which the legislator left to future law-making to settle. However, even in 1947, this question was still not solved, and therefore the Government, using its powers under the emergency situation, provisionally regulated the matter by decree.

According to Government Decree No. 15.560/1947 (XII. 31), it was not possible to enforce in court against the former owners of nationalised coal mines any private law claim arising from the management of the mine or from the employment relationship connected with the operation of the mine before 1 January 1946. The court was obliged to dismiss the action on the claim from the previously presented legal relations *ex officio*, and to suspend any proceedings already pending in the same legal relations.

An example of this is the bankruptcy case of Szendrő Coal Mine Ltd. [Szendrői Szénbánya Rt.], a company registered in Budapest,¹⁷ in which the Regional Court of Budapest declared bankruptcy on 20 December 1947 at the request of the creditor.¹⁸ The creditor had successfully proved the debts of the public debtor and that there were several creditors of the debtor, so that the conditions for opening bankruptcy proceedings were met in the opinion of the court. The public debtor lodged an appeal against the court's order declaring bankruptcy, arguing (1) that it could not be declared bankrupt based on Government Decree No. 15.560/1947; and (2) that it did not have several creditors, which was a primary condition for declaring bankruptcy.

In this connection, the Regional Court of Appeal of Budapest explained that Government Decree No. 15.560/1947 entered into force only on 31 December 1947, thus after the opening of the bankruptcy proceedings.¹⁹ For this reason, even if the necessary conditions were met, the procedure could only be suspended. However, the public debtor did not prove in the procedure that the state had taken ownership or control of its coal mine. For this reason, the Court was unable effectively to determine whether the effect of the regulation extended to the presented case. The court therefore dismissed the appeal but ordered the regional court to issue a new decision to clarify the circumstances. It was considered particularly necessary since, according to the documents, the public debtor had several creditors, so that the other reason for the appeal was not determinable. The president of the judicial council also added a dissenting opinion to the sentence of the court that a hearing of the interested parties would be necessary before a decision would be taken, in order to determine whether the case falls within the effect of the government decree.²⁰ However, the majority of the judicial council voted against this standpoint.

On April 17th 1948, the Regional Court heard the interested parties by order of the Court of Appeal.²¹ At that time, the representative of the bankrupt proved that the coal mine had been taken into state administration first by Government Decree No. 12.200/1945 M.E. and then into state ownership by the rules of Act XIII of 1946. On this basis, he requested the suspension of the bankruptcy proceedings in accordance with the provisions of Government Decree No. 15.560/1947. The creditors asked the court to

¹⁷ BFL VII.1.d. 1733/1948. Szendrői Szénbánya csődügye.

¹⁸ BFL VII.1.d. 1733/1948. Budapesti Törvényszék.

¹⁹ BFL VII.1.d. 1733/1948. Budapesti Ítéltábla (Regional Court of Appeal of Budapest) P. VIII. 1733/11/1948. számú végzése (order).

²⁰ *Ibid.*

²¹ BFL VII.1.d. 1733/1948. Budapesti Törvényszék (Regional Court of Budapest) Cs. 41.356/15/947).

continue the proceedings on the grounds that the company had other non-nationalised assets. However, on the basis of the documents obtained, the regional court determined that all the assets of the mining company had been inventoried and taken into state administration. However, the National Privatisation Commissioner [Országos Államosítási Főmegbízott] had indeed not yet decided which assets had become state property, as the bankrupt company had applied for exemption from nationalisation because of its foreign interests. This question remained to be clarified at this time. The nationalisation was therefore not yet considered by the court to have been completed, but according to Government Decree No. 15.560/1947, the suspension of bankruptcy proceedings was already required for the owners of factories which were under state administration, so the applicability of the legal rule in the presented case could not be disputed. The Regional Court of Budapest therefore ordered the suspension of the bankruptcy proceedings.

A clear interpretation of the decree applied in the previously presented case was provided by Government Decree No. 8.530/1948 (VIII.14) which was released on 12 August 1948 which, according to the claims regulated by §1 of Government Decree No. 15.560/1947 which could be enforced against the former owners of the coal mines, could not serve as a basis for opening bankruptcy proceedings or for satisfaction in pending bankruptcy proceedings. The government decree, however, extended the effect of this provision to claims of Hungarian citizens or domestic legal persons arising under private law contracts against companies nationalised by the state under Act XXV of 1948. This legal rule nationalised all industrial, transport, mining and metallurgical enterprises and publicly owned electric power stations employing at any time between 1 August 1946 and May 1948 at least 100 workers.²² For this reason, this ruled out the possibility of bankruptcy proceedings against larger economic factors from August 1948.²³

The rise of compulsory liquidation in insolvency proceedings

A few days after the publication of Government Decree No. 8.530/1948 (VIII.14), which made it impossible to initiate bankruptcy proceedings against large companies, Government Decree No. 8.750/1948 (VIII.20) was published in the *Hungarian Gazette* [*Magyar Közlöny*] with the same date, extending the provisions of compulsory liquidation regulated by Decree No. 920/1917 M.E. to smaller economic factors. The effect of the Decree was extended to registered tradespeople who became insolvent or ceased to pay their debts and whose debts to the state or to a state company exceeded 50% of the capital of their total debts. In the case of these economic factors, it provided the possibility to initiate compulsory liquidation instead of bankruptcy and compulsory non-bankruptcy settlement procedures. This was a very significant change, as compulsory liquidation had applied to financial institutions and their related industrial and commercial companies, and was therefore rarely used for smaller companies. For this reason, this legal rule had to provide which body of the company would replace the board of

²² Pető, Szakács, *A hazai gazdaság*, 98–9.

²³ Halmos, “A csődtörvény csődtörténete,” 224.

directors in the event of certain provisions. In addition, the procedure was simplified by leaving out the creditors' committee and the arbitration committee.

The purpose of this regulation was to replace the judicial procedure based on private autonomy with a procedure managed by the Centre of Financial Institutions, so that the state could exercise closer control over insolvency cases if its interests so required. This type of intention is illustrated by the fact that the decree made it compulsory for the courts to hold hearings in both bankruptcy proceedings and compulsory non-bankruptcy settlement procedures, to which the Centre of Financial Institutions was also required to be summoned. The date of the hearing had to be adjusted to this body, as the court had to set it in such a way as to allow the Centre of Financial Institutions sufficient time to clear up the composition of the debts. The reason for this was to be able to determine clearly whether the state's proportion of the total claims was 50%.

The superiority of the Centre of Financial Institutions over the court was further reflected by the provision that the delegate of the Centre of Financial Institutions could make a statement on the existence of the conditions for compulsory liquidation. The court was not entitled to make anything of that finding, and the regulation stated that the statement by the Centre of Financial Institutions was the authoritative statement as to whether compulsory liquidation could be initiated, which could not be the subject of evidence before the court. Any action by the court in this respect was rendered impossible by the provision that, if it were to emerge during the proceedings that the preconditions for the opening of compulsory liquidation were not met, the compulsory liquidation proceedings that had been opened would not be affected.

The special position of the Centre of Financial Institutions was also reflected in the fact that the debtor was forced to cooperate with the Centre of Financial Institutions in order to disclose their financial situation. The decree criminalised as a petty offense [*kihágás*] by six months' imprisonment the failure to make available to the Centre of Financial Institutions business books or records, the failure to comply with the obligation to provide information or to disclose information, the provision of false data knowingly or otherwise. In addition, in the case of the concealment of assets, regulated by Act IX of 1932, the decree allowed the state and the state company to bring private action to criminal proceedings against the debtor if the debtor's insolvency was caused by his negligence.

The authority of the Centre of Financial Institutions was further extended by Government Decree No. 9.400/1948 (IX.12) issued in September 1948, which assigned to it the task of dissolving state-owned or state-interested companies which, from 1 January 1948, did not regularly and continuously perform the tasks specified in their articles of corporation, articles of partnership or industrial certificates. On the basis of this decree, the authority of the Centre of Financial Institutions did not only extend to the winding-up of insolvent companies.

The transfer of insolvency administration from the courts to the Centre of Financial Institutions

A few months later, on 14 January 1949, Government Decree No. 560/1949 on the matter of the dissolution and liquidation of certain companies was issued, which completely removed the courts from the insolvency proceedings against most companies. The legal rule introduced a new legal concept: the dissolution of a company, the ordering of which was the exclusive authority of the Minister.²⁴ With this concept, the provisions of the previously mentioned Government Decree No. 8.750/1948 (VIII.20) and Government Decree No. 9.400/1948 (IX.12) were unified, since the dissolution of companies with a state interest of at least 20% was possible in the case of companies that were unable to fulfil their purpose or for other important reasons, as well as in the case of companies that became insolvent or ceased to pay their debts, whose debts to the state or the state company exceeded 50% of the capital of their total debts. In the case of these companies, the decree no longer allowed not only the opening of bankruptcy procedures and compulsory non-bankruptcy settlement procedures, but also compulsory liquidation proceedings, and even prohibited the continuation of those that were already in progress.

Similar to Government Decree No. 8.750/1948 (VIII.20), the decree made it an obligation for the court to hold a hearing with the participation of the Centre of Financial Institutions before initiating the compulsory non-bankruptcy settlement procedure or before opening the bankruptcy procedures. The date of the hearing had to be set in such a way as to allow the Financial Centre sufficient time to establish its authority. Only the Financial Centre was qualified to make a statement on this, which was also binding on the court, and the court could not order anything in this question. The Centre of Financial Institutions was thus free to decide which cases to take over. The extent of this right was further increased as the liquidation proceedings could not be affected by the fact that the absence of the precondition was later discovered. If, at the hearing, the Financial Centre found that the decree was applicable, it was obliged to inform the Minister accordingly. The Minister could order the dissolving of the company and appoint the liquidator in the liquidation proceedings which started thanks to the dissolving process.

The decree introduced a new procedural regime, the liquidation procedure, which was, as a main rule, conducted by the Centre of Financial Institutions.²⁵ The liquidator took over the control of the company, and thus the right to manage and dispose of the debtor's assets. The liquidator created an inventory of the debtor company, a statement of assets and a list of its creditors. Creditors were also obliged to give a notice of their claims to the liquidator. The sale of the debtor's assets was also significantly modified in the context of the state-driven economic policy, so that individual assets could now only be sold to an office or company linked to the state.

The government decree also significantly changed the order of the satisfaction of creditors, as it provided for more favourable satisfaction of the company's employees and tax debts than the Act XVII of 1881. In the case of creditors entitled to a separate right of sat-

²⁴ Halmos, "A csőd intézményének," 547.

²⁵ Varga, "A hazai pénzügyi," 79.

isfaction (e.g. mortgage creditors), however, the decree cited to the provisions of Act XVII of 1881, that in this case this act was to be followed as the authoritative legal rules. The Centre of Financial Institutions was also required to draw up a plan for the division of the debtor's assets. The courts were also not competent to settle disputes in this connection, but the Coordinating Committee [Egyeztető Bizottság], organized beside the Secretariat of the Economic Chief Council [Gazdasági Főtanács titkársága] which was the main state organ of the economy management until 1949,²⁶ could be called upon to settle disputes.

The government decree also maintained the provisions of Act XVII of 1881 in effect in a number of other matters, so that the rules of the Act were also guidelines to the exercise of the right of reclaim or the exercise of the right of rescission. However, the courts were not competent to decide on these cases either, but the Coordinating Committee, already mentioned, acted in such cases.

The supervision of the Centre of Financial Institutions was exercised by the competent minister, as the liquidators had to report to the competent minister on the progress of the liquidation every financial year and the final accounts of the liquidation had to be approved by the competent minister at the end of the liquidation. In addition, the government decree also introduced new types of crime aimed at facilitating cooperation with the liquidator in the proceedings.

The significance of this decree was increased by the fact that with minor divergences, Government Decree No. 2.880/1949 (III.29) extended its effect to cooperatives as well. The Centre of Financial Institutions also played a key role in the liquidation of cooperatives. A few months later, the legal regulation was changed again by Decree No. 4.247/1949 (IX.22) of the Council of Ministers on the regulation of the liquidation of certain companies, but this did not substantially amend the previous provisions. The most important change was that the introduction of the plan instructions was necessary to bring the regulation into line. Decree No. 4.244/1949 (IX.18) of the Council of Ministers took a further step towards state plan management, so that the liquidation of companies involved in the realisation of the economic plan could only be ordered by the competent minister in agreement with the President of the National Plan Office if the conditions were met.

The Decree No. 113/1950 (IV. 18) of the Council of Ministers was of decisive importance for the liquidation procedure and the Centre of Financial Institutions, since it extended the effect of the regulation to all individual companies.²⁷ The competent minister could order the liquidation of any company and had to decide to which state-owned company its assets would be transferred. Creditors were then no longer even required to declare their claims, as these could be determined by the Centre of Financial Institutions. This step was the final element of the private autonomy's abridgement. The value of the liquidated assets could also be determined by the Financial Centre and the liquidator could close the liquidation within 14 days of its order without any obstacles. As a result, the assets were placed at the disposal of the Centre of Financial Institutions, which could subsequently decide for itself which state company to transfer them to.

However, a new body had been set up to settle disputes arising from the liquidation proceedings, the Arbitration Committee, organized alongside the Centre of Financial

²⁶ Lentner, "Szemelvény a magyarországi," 456–7.

²⁷ Nyári, *A Pénzüntézet*, 67.

Institutions. The arbitration committee was chaired by a representative of the Minister of Finance and composed of a representative of the minister liable for the subject matter of the company in liquidation and a delegate of the Centre of Financial Institutions, who was also the rapporteur in the case. There was no right of appeal against their decision. However, the legal acts of the Centre of Financial Institutions carried out at the time of the completed liquidation could no longer be disputed if they were in conformity with the provisions of the decree. The Minister for Finance was competent to decide in this question.

The insolvency regulation in the practice in the era of socialist rearrangement

The insolvency law did not change as rapidly in practice as in the legal rules. The court was obliged to publish the opening of insolvency proceedings in the official gazette, so that the number of insolvency proceedings could be monitored. The last cases of compulsory non-bankruptcy settlement were opened in February and March 1948,²⁸ and from then on, no such cases were published in the Hungarian Gazette. The last case of this type that I have found was published on 7 March 1948.²⁹

In view of this, it is not surprising that the government transferred the tasks of the National Credit Protector Association, which played a key role in the handling of compulsory non-bankruptcy settlement, to the increasingly significant Centre of Financial Institutions in January 1949 by Government Decree No. 150/1949. The Minister of the Interior subsequently decided to dissolve the National Credit Protector Association and to liquidate its assets, ordering the Centre of Financial Institutions to take over, which occupied its role.³⁰

In 1948 there were only three newly opened bankruptcy proceedings. On 22 January 1948, the bankruptcy notice of the Szendrő Coal Mine case, presented earlier in the previous chapter in my paper, was published.³¹ On 1 February 1948, the bankruptcy of the Általános Fakitermelő és Fakereskedelmi Kft. [General Logging and Timber Trading Ltd.] was published in the official gazette.³² Finally, bankruptcy proceedings were opened against Mihály Fekete, the tenant of the Korzó Kávéház in Pécs, at the Regional Court of Pécs.³³ After this, however, in 1948, no bankruptcy proceedings were reported

²⁸ Case of György Szücs. Magyar Közlöny no. 26 (1948) (1 February 1948) 7; Case of Nándor Velemi plastic manufacturer and pub owner. Magyar Közlöny no. 29 (1948) (5.02.1948) 5; Case of Gyuláné Pozsgay Klára Légár wholesaler. Magyar Közlöny no. 38 (1948) (15.02.1948) 5; Case of Drogéria Oktogon. Magyar Közlöny no. 38 (1948) (15.02.1948) 5; Case of J. László Fazekas grocer in Jászkisér. Magyar Közlöny no. 40 (1948) (18.02.1948) 11; Case of György Vermes spice trader. Magyar Közlöny no. 40 (1948) (18.02.1948) 12; Case of László Varga's specialized shop for coffee, tea, delicacies. Magyar Közlöny no. 51 (1948) (2.03.1948) 2; Case of Izsó Salgó's Sylvánia Winery. Magyar Közlöny no. 51 (1948) (2.03.1948) 2; Case of István Urbán master carpenter in Budapest. Magyar Közlöny no. 56 (1948) (7.03.1948) 6.

²⁹ Case of István Urbán master carpenter in Budapest. Magyar Közlöny no. 56 (1948) (7.03.1948) 6.

³⁰ Magyar Közlöny no. 28 (1949) (5.02.1949) 2.

³¹ Magyar Közlöny no. 17 (1948) (22.01.1948) 6.

³² Magyar Közlöny no. 26 (1948) (1.02.1948) 7.

³³ Magyar Közlöny no. 46 (1948) (25.02.1948) 4.

in the Official Gazette. It is therefore surprising that a final memento of the bankruptcy proceedings appeared in the official gazette at the very end of 1949. On 15 December 1949, a notice of bankruptcy was published for Ernő Bodnár, a woman's fashion salon owner in Budapest.³⁴

Of the legal rules relating to liquidation, it was Government Decree No. 560/1949 that gained practical significance on the basis of the Hungarian Gazette, since after its publication in January 1949, the liquidation of the textile wholesalers Adolf Weisz and Schwartz in Budapest was already published on 8 February 1949, with the Centre of Financial Institutions appointed by the Minister of Commerce and Cooperatives as the liquidator.³⁵ From then on, reports of the liquidation orders continued until January of 1950.³⁶

Insolvency law in the legal literature in the period of socialist rearrangement

In 1948, Andor Weltner and Tibor Rajna published a shortened version of the known legal rules on the subject of insolvency law, entitled *Compulsory Settlement and Bankruptcy* [Kényszeregyesség és csőd], for practical use.³⁷ As a much more detailed practical manual, Jenő Fehérváry,³⁸ a well-known legal scholar of the time, also published in 1948 the seventh edition of his commentary on Hungarian bankruptcy law, entitled *Outline of Hungarian Bankruptcy Law* [Magyar csődjog vázlata], with almost unchanged contents.³⁹ In it he described, with few changes compared to the previous editions, the bankruptcy proceedings based on the Act XVII of 1881, and the compulsory non-bankruptcy settlement based on Decree No. 1.410/1926 M.E. For a long time thereafter, these were the last academic works that dealt with Hungarian insolvency law in an independent manner. Later, Fehérváry, in his work on changes in the field of credit law, described the provisions of Government Decree No. 8.750/1948 under the heading of compulsory liquidation.⁴⁰ According to the subtitle of his work, he then classified this regulation in the field of commercial law.

However, György Vadas and Andor Weltner had already described insolvency proceedings as part of economic law in their collectively published work, also in 1949.⁴¹ They declared the concept of commercial law to be obsolete and tried to introduce the concept of economic law by focusing on the practical phenomena of society and state life.⁴² Commercial law is “the most characteristic field of law in capitalist society,”⁴³ and

³⁴ Magyar Közlöny no. 260 (1949) (15.12.1949) 4.

³⁵ Magyar Közlöny no. 30 (1949) (8.02.1949) 2.

³⁶ Magyar Közlöny no. 18 (1950) (28.01.1950) 1.

³⁷ Weltner, Rajna, *Kényszeregyesség*.

³⁸ Gulyás, *Magyar írók*, 574–5; “Halálozás,” 6.

³⁹ Fehérváry, *Magyar csődjog vázlata*.

⁴⁰ Fehérváry, *Hiteljogi újdonságok*, 23–4.

⁴¹ Vadas, Weltner, *Gazdasági jog*, 275–88.

⁴² *Ibid.*, 6–7.

⁴³ *Ibid.*, 9.

for this reason the name was refused. In economic law in the people's democracy, "the whole of economic life is forged into a unity on a planned basis."⁴⁴ Legal rules, they explained, were enforced in the field of economic law according to the collective interests of the workers. This terminology included the various organisations of economic activity, the productive activity of the members of society (labour law), the exchange and distribution of the goods produced (traffic and transaction law) and the procedural law connected with them.⁴⁵ Insolvency law is included in this last category.

According to the authors, the fierce competition of capitalist management leads to economic anarchy,⁴⁶ which is the source of economic crises. Insolvency proceedings are necessary to resolve these, but "the more socialism is built, the less the threat of crisis and the role of insolvency law."⁴⁷ Accordingly, they argued that the function of the new provisions on insolvent debtors had changed, as they aimed to transfer assets from the private sector to the functionable state sector. The new regulations thus build socialist state management by eroding the private sector.

The authors had already titled this chapter Liquidation and Insolvency Law, so they first presented in detail the contents of the already mentioned Government Decree No. 560/1949,⁴⁸ and then the provisions of the already mentioned Government Decree No. 2.880/1949 concerning the liquidation of cooperatives.⁴⁹ At the end of the chapter, the rules on bankruptcy proceedings based on Act XVII of 1881 and on compulsory non-bankruptcy settlement based on Decree No 1.410/1926 M.E. were also summarised in a few pages.⁵⁰

A year later, in 1950, Vadas published another summary on the subject, entitled *The Outline of Economic Law* [A gazdasági jog vázlat],⁵¹ which he explained by the fact that a year earlier the Hungarian economic sphere could be described as a mixed type of economy, but in 1950 the socialist character of the national economy was already clearly outlined.⁵² In this work, Vadas marked as a false cultivation of economic law the dissection of the "refinements of the law of promissory notes" or the exhaustive presentation of the details of the capitalist compulsory non-bankruptcy settlement procedure and bankruptcy law.⁵³ Following this statement, he now devoted only one paragraph to bankruptcy law and the law of compulsory non-bankruptcy settlement,⁵⁴ thus significantly shortening this section compared to his co-authored work with Weltner. According to Vadas, the bankruptcy proceedings and the compulsory non-bankruptcy settlement were parts of the past, their function had ceased, so there was no longer a need for presentation of them. The chapter on liquidation and insolvency law was retained in the handbook, the introduction being literally the same as their earlier work with Weltner. The

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, 7.

⁴⁶ *Ibid.*, 275.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*, 275–9.

⁴⁹ *Ibid.*, 279–80.

⁵⁰ *Ibid.*, 280–8.

⁵¹ Vadas, *A gazdasági jog*.

⁵² *Ibid.*, 3.

⁵³ *Ibid.*, 4.

⁵⁴ *Ibid.*, 245.

author gave more space to the liquidation of individual companies only in this chapter, in which, however, in accordance with the change in the legal rules, he now presented the provisions of Decree No. 4.247/1949 (IX.22) of the Council of Ministers and Decree No. 113/1950. of the Council of Ministers.

After the publication of Vadas's handbook, we cannot find trace of insolvency law in scientific works, but this is not so surprising because economic law, of which insolvency law was a part, was cancelled in 1951. This notion of economic law was established by Ödön Kuncz,⁵⁵ the outstanding Hungarian commercial lawyer in the Interwar period.⁵⁶ But this developing branch of law was declared *persona non grata* in the socialist jurisprudence in dispute with the Legal Committee of the Hungarian Academy of Science in 1951.⁵⁷ This change was a result of a long process of which the first step was the meeting of the Union of Hungarian Lawyers in 1949. The soviet professor, Manykovszkij, participated in this meeting, and he was surprised due to the economic law section of this conference.⁵⁸ He called the organizers' and Hungarian lawyer elite's attention to the fact that the economic law was cancelled in the end of the 1930s because the character of this branch of law was Trotskyist and antisocialist. This speech did not bring a result immediately, but in 1950 and 1951 it was a "hot topic" in the Hungarian jurisprudence.⁵⁹ As the result of the dispute in the Hungarian Academy of Science and the book of the significant figure of this period's jurisprudence, Miklós Világhy, the dealing with economic law was ceased.⁶⁰ The scientific career of Vadas, the key figure of the economic law ended thanks to this dispute about economic law.⁶¹

Conclusion

The socialist rearrangement gradually removed insolvency proceedings from the Hungarian legal system. First, the compulsory liquidation procedure, which had existed even before the World War II, was given much greater emphasis than before, resulting in the increased importance of the Centre of Financial Institutions in insolvency proceedings. Government Decree No. 560/1949. essentially removed this "legal survivor" from the socialist legal order but did not repeal the regulation of compulsory liquidation. However, this legal rule maintained certain provisions of the Act XVII of 1881 as the background of the liquidation. This was not changed by the subsequent legal rules which have been analysed in my paper. The two most important insolvency proceedings prior to the World War II, bankruptcy and the compulsory non-bankruptcy settlement procedure, were abolished by paragraph 60 of Decree-law [törvényerejű rendelet] no. 9 (1961) amending the rules on judicial enforcement, so that the rules on bankruptcy and com-

⁵⁵ Varga, "Ödön Kuncz," 133–4.

⁵⁶ Weltner, "Vita a magyarországi (I)," 508.

⁵⁷ *Ibid.* (II), 597–8.

⁵⁸ Kálmán, "A gazdasági," 42.

⁵⁹ Weltner, "Vita a magyarországi (I)," 50–7; Horváth, "A szocialista," 568.

⁶⁰ Világhy, *A gazdasági jog*, 163–4.

⁶¹ Kálmán, "A gazdasági jog," 44.

pulsory non-bankruptcy settlement procedures which were introduced in the Hungarian legal system “before liberation” ceased to apply on 1 June 1961.

Insolvency law changed very often and very quickly after the World War II, and the legal regulations on this branch of law was difficult to follow. From 1949, the administrative procedure was dominant in these cases instead of the judicial procedure, since the Centre of Financial Institutions carried out the liquidation procedures. In this era the private autonomy was ceased in the insolvency law, and the state dominated these processes. The socialist rearrangement totally reversed the function of insolvency law: the aim of insolvency law was to support the respect of private ownership, but it became as a liquidation process the instrument of nationalisation.

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