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Marriage and Divorce in Hungary after 1945[1]

Abstract

The development of Hungarian private law was fundamentally determined by the fact that its codification remained unsuccessful until 1959. The area of marriage law was a partial exception to this. After the spread of the Reformation, several other Christian denominations (eg. Reformed, Evangelical) lived in Hungary in addition to the Roman Catholic denomination, which led to legal uncertainty in the field of marriage law, especially in the 19th century. This primarily unfolded around the prohibition and the permissibility of the dissolution of a validly concluded marriage bond. After long social and professional debates, Act XXXI of 1894 on marriage law was born. With this law, the possibility of the judicial dissolution of marriages became common. However, this was possible only if one of the unconditional grounds for divorce was proven and, based on this, the court ordered one or both of the pronounced spouses guilty. This law was in force until the birth of the Family Law Act. A Prime Minister's decree issued in 1945 broke the fault-based principle, when it allowed marriages to be terminated without the declaration of fault. This decree made the dissolution of the marriage bond easier, but it did not solve many other problems arising from it. On the one hand, the Marriage Act allowed the innocent wife to bear her husband's name even after the dissolution of the marriage bond, but on the other hand, the guilty husband was obliged to maintain his wife. After the entry into force of the decree, after no guilt had been established, the woman who considered herself innocent could claim maintenance in a separate lawsuit. In the course of the research, an answer was sought tothe question of whether the courts judged cases on the basis of evidence similar to or different from that required by the Marriage Act. Did the courts also take into account the social and economic situation that developed during World War II?

Keywords: marital law, divorce, family law, maintenance, dissolution of the marriage bond, separation

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Introduction

> In marriage, man and woman are no longer two bodies but one (Mt 19,6), in an intimate relationship of person and action, they are at each other's mutual service, they experience their unity and feel it more and more firmly their own.
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> Vatican Council II. *The Pastoral Constitution on the Church in the Modern World*

It is a well-known fact that Hungarian private law was codified only after the World War II, with Act IV of 1959, which entered into force in 1960. The question therefore always arises as to how Hungarian courts have been able to decide private disputes while at the same time creating legal unity throughout the country. The legal unification was the competence of the Royal Hungarian Curia, but the Royal Regional Courts of Appeal also had a significant role. Their decisions were binding on the lower courts, but in the absence of a uniform code, Hungarian courts often delivered their judgments in the light of the customary practice established by settled case-law. But what has shaped this established judicial practice? Incredible as it may seem, it is in a sense the common law that has developed over the centuries and been confirmed by judicial practice, the small number of laws in the field of private law and, in the field of family law, canon law. The relationship between the two most important sources of law, customary law and statute law, was still explained by the rule formulated by István Werbőczy in the Tripartite. According to this view, customary law can be a source of law that explains, replaces or undermines the written law. Consequently, Hungarian courts had to apply the source of law that was accepted in everyday practice. This is the source of the law that inspired Hungarian lawyers in the second half of the 19th century to draw up a code of private law.

This was due to the fact that the Austrian authorities enacted the Austrian Civil Code on 1 May 1853. Although it was in force for less than a decade, several aspects encouraged Hungarian lawyers to embark on the bumpy road of codification. In this process, an attempt was made to create a code of law in the structure of the German Pandecate jurisprudence. Five eminent lawyers were asked to make a draft of specific areas of private law. It is ironic that István Teleszky, who was responsible for the codification of the law of succession, was the first to complete the task, while neither the draft of property law nor the draft obligation law, not even the draft family law, was known. This boosted the Hungarian legal literature. This was the background that led Béni Grosschmid to write his famous work *Öröklött s szerzett vagyon* [Inherited and Acquired Wealth].[2] In it, he explained why it was necessary to regulate firstly the property law and secondly, from the point of view of matrimonial property law, the relations in family law and, in particular, matrimonial law. Only then can the succession be settled. While the legal community of the time was debating the need for codification and the preservation and rejection of the traditional rules of the succession law, *Grosschmid* drafted a bill on marriage law, which was put on the agenda and adopted by the Parliament. This was Act XXXI of 1894 on Marriage Law. Why did marriage law need to be regulated separately?

[2] Grosschmid, *Öröklött*.

1. Regulation of the dissolution of the marriage bond

By the end of the 19th century, the situation in Hungary had become legally untenable, where, following the centuries-old tradition – and the Austrian Civil Code did not help the development of Hungarian marriage law in this respect – each denomination had its own canon law norms governing the rules of marriage obligation. This situation caused a multitude of problems after the so-called mixed marriages. In particular, because of the provisions of Catholic canon law, it was unclear when marriages of different denominations were considered valid, and the dissolution of marriage, including the possibility or prohibition of judicial dissolution, caused almost insoluble problems.

Catholic canon law considers marriage to be a sacrament, and consequently marriage could be ended only with the death of one of the parties or by a declaration of nullity by the judgment of the Holy See. However, Protestant denominations were allowed to dissolve the bond by judicial process under certain conditions. This practice of the Protestant denominations was recognised by Joseph II in his decree on the so-called marriage law, and after he had enacted it in Hungary, it became possible for Catholic spouses to file a petition for dissolution of their marriage bond before a secular court. The most common reason was infidelity, justified by the fact that the men had been conscripted into the army and the husband had not returned home for a long time. In this case, it was possible for the Holy See to declare the missing husband a corpse, but if the woman did not have the means or money to go to the Holy See, she could appeal to the competent court (sedria) on the basis of the patience of Joseph II. It should be noted that there is also an example of a Protestant parish magistrate allowing a woman to remarry because her husband had not returned home after a long period of military service.[3]

After the death of Joseph II, the Hungarian Parliament put such a regulation of marriage law on the agenda, but it was not adopted by Parliament. For over a hundred years, the issue of marriage law has not been on the agenda of the Parliament. In his draft, Béni Grosschmid argued that the state and the Church should be separated and that civil marriage should be made compulsory. Therefore the Hungarian Parliament adopted the Act XXXI of 1894 about marriage law. Under the law, a valid marriage could be contracted before the competent registrar, and the marriage could be dissolved by a court in the cases specified in the law. This required that the marriage be regarded as a *de facto* contract between a man and a woman, which, because of its specific content, could be dissolved in the cases listed in the law. The basis for divorce is the breach of contract of the parties, which under the Marriage Act occurs when the parties fail to comply with their obligations under the marriage contract through conduct attributable to their fault, and such conduct makes the maintenance of the marriage, i.e. the legal relationship established by the civil contract, intolerable for the other party.[4]

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[3] The case is interesting because the pastor's record survives that the husband did return home after permission was granted. The magistrate of the field town considered the woman's first marriage valid and obliged her to continue her life with her first husband, who had returned home, while a new wife was sought for the second husband. See: Jukić, *"Öszve eskettettek illyen."*

[4] Pólay, "A házasság" , 375.

Cases of divorce were not unknown, because Protestant denominations allowed for the same cases of dissolution of the marriage bond. These were the next: adultery, unjustified abuse, disloyal abandonment, the commission of a crime punishable by law with death or imprisonment for at least five years. The result was that, in line with the perception of the time, the judge had to declare one or both parties guilty, which had a significant impact on the custody of children born of the marriage, maintenance of the wife and her name. Under the law, if any of the above cases were proved, the court was obliged to dissolve the marriage. This is why the law called them absolute grounds for dissolution. At the same time, the law gave the courts discretion where none of the absolute grounds for dissolution existed but the marital relationship had deteriorated to such an extent that the parties were unable to live together. The parties have invoked hatred of each other or the fact that the breakdown of the cohabitation was caused by the wilful and serious breach of the marriage obligations by one of the spouses as such conditional grounds for dissolution. Such situations were left to the discretion of the judges. The separation from bed and board, well known from canon law, could be ordered by the judge for a maximum of six months. The enforcement of the law, which was born at the end of the 19th century, and the development of the related judicial practice, took place in the 20th century. The number of divorce cases began to rise only slowly.[5] After the entry into force of the law, spouses, even if they had already dissolved their cohabitation, did not immediately exercise the option to apply to the courts for the dissolution of the marriage bond.

2. Malicious desertion

If we consider the cases provided for in the law for the dissolution of the marriage bond, the only one that could be proved simply by presenting a final judgment was the commission of a serious crime. In all other cases, the burden of proof made it more difficult for the spouse seeking the dissolution of the marriage. Among the absolute grounds for dissolution provided for by the law, adultery was often linked to adandonment.

A master cooper applied for a divorce under Article 77 of the Marriage Act, which he had entered into in November 1930. This section of the law provided for a finding of desertion, which could be established if it was proven that "one of the parties has deserted his or her spouse intentionally and without just cause. On the other hand, the court of first instance, whose judgment was upheld by the Court of First Instance, annulled the marriage on the basis of Article 80 of the Act, having found that the wife had "lived with strange men in the absence of her husband and since then."[6] What did the court see as proven? The parties were married on 19 November 1930. The husband was called up for military service and did not return home until the end of 1944. The defendant wife left her husband on 23 December 1944 and moved in with the man who had been her husband's kitchen gardener. Under the Marriage Act, the court could dissolve the marriage

[5] Herger, *A nővételtől*, 278.
[6] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 997/1945.

on the grounds of misappropriation if the court ordered the abandoning spouse to restore the marital relationship and the abandoning spouse failed to do so within six months. At the trial, the wife claimed that she had wanted to return to her husband in March 1946, but that he had expelled her from the house. The evidence proved that the wife had no intention of returning to her husband, who had lived with foreign men both during and after his military service.

On this basis, the court did not base the dissolution of the marriage bond on the facts of the case of the defendant's adultery, but on Article 80(c) of the Act, which referred to the "persistent immoral conduct" of the spouse, the defendant, as a ground for dissolution of the bond. This was upheld by the Court of Appeal.[7] Judicial practice shows that even spouses who have been separated for many years have only brought an action for adultery if one of the spouses has had a child as a result of the new relationship. In cases of this kind, the husband was the primary plaintiff. This can easily be explained by other rules relating to matrimonial law.

The father of a child born of a lawful marriage was the husband. It was his duty to maintain and bring up the child. If no child was born out of wedlock to either of the separated spouses, the parties did not deal with the question of the termination of the bond itself. During the period of separation, the wife was entitled to maintenance, i.e. the husband was obliged to provide her with maintenance, either in kind or in money, commensurate with her rank and social position. If, however, the wife had a child out of wedlock, the husband could only escape his child support obligation if he proved his wife's adultery.

3. The termination of cohabitation

Hungarian judicial practice has not based the dissolution of the bond solely on proof of the birth of the child, but has also required proof that the separated spouses did not have any contact with each other during the period of the child's conception, and that the spouses had broken off all forms of cohabitation. The proof was simplified if the mother lived with the biological father of the child born out of wedlock and the father recognised the child as his own. In this case, the court also found that the wife had committed adultery and disloyal abandonment and dissolved the marriage. Only then could the ex-husband bring an action to establish the illegitimate parentage of the child.

If, however, the wife did not live with the biological father of her child born out of wedlock, or perhaps had sexual relations with several men and did not know the biological father of her child, the divorcing husband had to prove her adultery, immorality and the fact that they had not had any contact during the separation. This practice has resulted in courts interpreting in the reasoning of their judgments what is meant by cohabitation and when separation actually occurs. Although the Curia had ruled on this issue, each case had been different. Therefore, although the courts often referred to established set-

[7] *Ibid.*, 1096/1946.

tled case-law, they explained this again and again in the reasoning of the judgment, adapting it to the particular situation.

In the grounds of a 1946 judgment, the court stated:

> The community of life, according to settled judicial practice, and here it refers in particular to the constant conception of the jurisprudence of the Curia, is indeed the community of life. It does not require sexual intercourse, perhaps not even cohabitation, but it is the essence of a marriage, a stable set of facts which shows that the lives of the two spouses complement each other, not only materially but also morally and spiritually. life community in this sense is essentially different from what is colloquially called a "relationship."[8]

The husband, who had married in July 1934, brought an action for breach of marital obligations (Marriage Act, §80(a)). Three children were born of the marriage, Ferenc in 1936, Terézia in 1937, Zsuzsanna in 1941, and in 1942 the wife left the shared apartment and moved to a nearby lung sanatorium, where she took a job. He did not care about the children. In May 1944, his wife gave birth to a daughter, Magdolna, out of wedlock. Her husband then filed a lawsuit seeking a dissolution of the marriage and a declaration that she was at fault. The wife admitted that she had left the household. She did this because her husband had an affair with another woman. However, in August 1943, she met her husband by chance on the train. During their conversation, they agreed to get off the train at the so-called urban forest. They did so, had sexual intercourse in the nearby forest and then both went home separately. When she realised she was pregnant, she spoke to her husband, who asked her to keep it a secret. She asked for the case to be dismissed. The plaintiff husband denied all this and proved with witnesses that his wife had started an affair with a man at work. According to the witnesses, she claimed to her colleagues and patients that this man was her husband and that she was expecting a child with him. The wife claimed that she did this as a joke.

The court did not find the defendant's claim proven because the husband had proved that he had worked at the railway company all week, could only travel home on Saturday afternoon and had to return to work on Sunday evening. The husband denied the sexual intercourse alleged by the wife. The court described the wife's behaviour of allowing a stranger to be called her husband and the father of her unborn child at work as a "deliberate and serious breach" of her marital duties. The woman concealed her pregnancy, which "suggests the continuation of an illicit, more intimate relationship, which raises serious doubts about the defendant's fidelity to his wife."[9]

The defendant appealed to the Court of Appeal, which took into account the husband's conduct during the separation in the evidentiary proceedings and changed the judgment of the first instance in this respect.[10] It took into account the fact that, when the cohabitation was terminated, the parties had entered into a notarised agreement on the division of property and the custody of the children. The two older children remained with the husband, the youngest daughter with the wife. The Court also found that the wife did not keep the household in order, but that her husband sometimes beat and abused her. Although unjustified abuse was defined as an absolute ground for annulment in the

[8] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 16. July 1946.
[9] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 934/1947.
[10] *Ibid.*

Marriage Act, the husband's right to discipline was still alive in family relationships in the 20th century. If it did not exceed the level of slight bodily harm, the dissolution of the marriage could not be based on unfounded assault. In the reasoning of a judgment of 3 February 1949, the Court of Appeal had already stated: "it is a law that a husband has no disciplinary power over his wife. The wife is not obliged to tolerate physical abuse."[11] It was proved that when the wife broke off the marriage a few months later, the husband started an affair with a woman who had given birth to a child and whom he took into his home with the child. It was proved that when the wife broke off the marriage a few months later, the husband started an affair with a woman who had given birth to a child and whom he took into his home with the child. The wife reported the husband to the competent orphanage, alleging that he was neglecting the children. The orphanage left only the illegitimate child with the husband, left the eldest son with the paternal grandparents and the daughter with the mother.[12]

In its judgment, the Court of First Instance took the view that, on the one hand, the parties had jointly agreed to terminate the marital partnership and therefore neither party was at fault. The husband had also committed adultery, for which the court found that:

> [E]ven where there is a ground for dissolution of marriage, a spouse who is himself a person of loose moral character and who is in breach of his conjugal duties to such an extent that his misconduct constitutes a ground for dissolution which is more serious than the facts of the grounds for dissolution established in the case of the spouse cannot successfully apply for dissolution of the marriage.[13]

The action for dissolution of the marriage bond was dismissed on the ground that the marriage was not so broken that it could not be restored to a state of union. The applicant then appealed to the Court of Appeal, which overturned the judgment of the Court of First Instance and held that the reasoning of the judgment of the Court of First Instance was correct. It found that both spouses had children out of wedlock, so the marital relationship was broken.

But it only found the defendant wife guilty because it was proved that, contrary to the defendant's claim, she had not had sexual intercourse with her husband after the dissolution of the partnership during the critical period of the conception of her child. The Curia was able to prove this by the fact that at the time when the wife allegedly met her husband on the train and had sexual intercourse with him when they got off at the urban forest, she did not actually leave the Lung Sanatorium.

In this particular case, the separation of the spouses was based on mutual agreement. Although at the time the action was brought, the dissolution of the marriage could not be based on a mutual agreement. An important factor in the development of the law was the fact that separation by mutual consent was appropriate for the spouses until the wife had a child out of wedlock.[14] When the child was born out of wedlock, the husband brought an action for a declaration of illegitimacy. In this particular case, both the Court of First

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[11] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1949.

[12] Within the scope of this study, it is not possible to analyse the role of orphans' courts in the placement of children of separated spouses. Jukić, *"Öszve eskettettek illyen,"* 193.

[13] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949 14. Juni 1947.

[14] Following the entry into force of the Marriage Ordinance (August 1945), the literature interpreting and explaining the Ordinance has interpreted it as effectively providing for the dissolution of a marriage by common consent. Pólay,"A házasság," 374–81.

Instance and the Court of Appeal dismissed the plaintiff's claim because they did not find that the spouses had not had sexual intercourse at the time of the separation. According to the Court of First Instance, "the decisive question is not whether the child could have come from another person, but only whether it could not have come from the husband. The determination of the personal status of the child is not a matter for the parties."[15]

During the proceedings for divorce, Act XXIX of 1947 came into force, which provided for the status of children born out of wedlock and abolished the differences between the status of children born within wedlock and children born out of wedlock. The new provision of the law considered it sufficient to prove that the husband was not sexually involved with the mother of the child at the time of conception. In the above case, it was therefore of decisive importance that the Curia considered it clear from the evidence that the plaintiff husband had no contact with the mother at the time of the child's conception. On the basis of this fact, he dissolved the marriage and found that Magdolna, born in 1944, was not descended from the plaintiff. In another ongoing case, it was precisely because of the determination of the status of the child that the Curia even stated that Act XXIX of 1947 abolished the distinction between the status of children born in and out of wedlock, which "necessarily implies that judicial practice must adapt to the legal concept of democratic legislation and apply it in ongoing litigation."[16]

4. Intentional breach of marital obligations

The courts have often had to interpret whether the conduct of one or the other spouse gave a real right to dissolve the marital partnership. In their petition for dissolution of marriage, the spouses often based their application on Section 80 of the Marriage Act. This provision allowed the court to dissolve a bond if it was proved that the marital relationship had been broken because of a deliberate breach of the marriage obligation.

The plaintiff husband asked for a divorce because his wife did not love his children from his first marriage, she abused them, accused them of a bad life, beat them and often made them leave home. She spoke disparagingly of his daughters in front of others. The wife did not provide adequate food for the husband on duty. On the street she shouted to neighbours that "her husband is not for her body or soul." In this case, the court's attempts at preliminary conciliation and bed-to-table separation did not help. The tribunal found that the defendant's conduct deliberately and seriously violated the spouses' obligations of mutual respect, esteem and support.[17]

In this issue, it is worth analysing the dissolution of the marriage of the husband, a fire major, and his wife, a schoolteacher. The action was brought by the husband on the basis of Article 80§ a) of the Marriage Act. He claimed that his wife was unjustifiably jealous, neglecting the household as well as the upbringing of the children. In front of

[15] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1947.

[16] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1947; Mikos, "A házasságon […] kapcsolatos vitás kérdések," 238; Krausz, "A házasságon," 38–45.

[17] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1077/1947.

strangers, she made serious, defamatory and slanderous statements about her husband, calling him a thief, and a useless, idle man. When her husband returned home from the front, wounded and hospitalized, she called him a cowardly dog. In his application, the applicant asked the court to annul the marriage and to declare his wife guilty. In her response to the application, the wife submitted that her husband had repeatedly breached his marital fidelity, had relations with strange women, and when he moved away had taken most of their jointly acquired property with him. The court found as a fact that the parties had married in 1921, and that two children had been born of the marriage. The applicant had left his wife on 4 April 1943. The court stated that the party who has abandoned his or her spouse must always prove the legality of the abandonment. It was found that the defendant wife's jealousy was not unfounded, as several witnesses testified that the plaintiff had been seen with strange women, and that the husband's superior had warned him to stop the behaviour that was in breach of marital fidelity. In addition, the wife's jealousy was not such as to make the cohabitation intolerable for the applicant. It is a fact that the wife neglected the household and the upbringing of the younger child, who often gave the impression of being a neglected, wandering child, but there is no evidence that her husband took any firm action against this.

The court stated that "the law is that the household is the wife's duty, but if both spouses are gainfully employed and the young child requires education, the wife must also have a reasonable desire to be at least partially relieved of the household management."[18] The court also pointed out that, under the substantive law, the party who breaks up the marriage is entitled to take with him only "furniture and effects which are his separate property and are indispensable for his own needs."[19] In contrast to this, the husband took most of the matrimonial property with him. The tribunal also pointed out that both the wife, who was a teacher, and the husband, who had been promoted to the rank of a fire major, occupied positions in society that should have set an example for others. Finally, it held that the applicant could not legitimately terminate the cohabitation in the light of the case-law according to which any conduct during cohabitation which is likely to give rise to a reasonable suspicion of fidelity from a moral point of view is intentional and serious misconduct.[20] On balance, the court found the husband at fault and dissolved the marriage.

The court interpreted in a similar way the conduct of the plaintiff, who wanted the marriage to be dissolved, even though her husband was at fault. The tribunal found that the plaintiff was not justified in terminating the marriage. The couple were married in 1908. In 1940, the husband became drunk while harvesting wine. It was not possible to establish what caused the quarrel or fight between the spouses that led to the plaintiff and her child beating the defendant so severely that the defendant's head was broken. The defendant's anger did not subside the day after the fight, so the plaintiff moved out, first to a neighbour's house and then to their shared residence. The marital cohabitation was not subsequently restored. The court found the plaintiff guilty and stated that the plaintiff did not move back in with her husband because she feared that:

[18] MNL CSCSML SZF Szeged Court of Appeal XXV.2. 1945–1949, 934/1947.
[19] MNL CSCSML SZF Szeged Court of Appeal XXV.2. 1945–1949, 677/1946.
[20] *Ibid.*

> […] her husband, sobered up, might take responsibility and take revenge for the unworthy and excessive abuse, which was beyond the moral and intellectual standards of the spouses and which was beyond all spousal tenderness and understanding, and she left the apartment voluntarily, causing the break in the living relationship.[21]

5. Termination of the marriage without fault

The judicial dissolution of the marriage bond was simplified by Decree No.6800/1945 of the Prime Minister, which stated that if the spouses prove that they have lived apart for at least five years without interruption, the court may dissolve the marriage bond without finding one or both of them at fault. At a first reading, this measure in the Prime Minister's decree shows that the government wanted to significantly ease the hitherto lengthy legal practice of divorce.[22] Leaving aside the fact of blame, further issues on the part of the wives became necessary. According to the Marriage Act, if the court found the wife guilty of the breakdown of the marital relationship, she was entitled to both child support and maintenance, the amount of which was determined by her social status. The court even had to take a decision on the name of the innocent woman, who could continue to bear her husband's name, or choose to continue to live under her maiden name, on the basis of a statement she made in court. These issues could not be decided by the court in proceedings where the marriage could be dissolved without a declaration of fault. In these matters, the fault or innocence of the wife could still be established according to the rules of the Marriage Act. According to the surviving documents, if the spouses had been separated for at least five years without interruption, if the wife did not declare or request a decision on the name and did not claim the right to remain a married woman, the court would dissolve the marriage on the basis of the spouses' declaration. In modern parlance, the mutual agreement of the spouses allowed the marriage to be dissolved by the courts.

In all other cases, the court could dissolve the marriage bond, but in order to establish maintenance, it had to be proved who was at fault for the breakdown of the partnership.

To shed more light on the question, here is a case study. The couple were married on 26 April 1921. In July 1946, the husband filed an action for an annulment of the marriage, invoking Article 4 of Decree No 6800/1945 of the M.E., requesting that the court dissolve the marriage without finding fault. The court issued a separate judgment, stating that the defendant wife's claim to name and maintenance would be decided only after the separate judgment had become final. On the basis of the evidence submitted, it was established that the spouses had broken off their cohabitation in April 1935. The defendant moved to Budapest from Baja. In June 1945, the plaintiff husband visited the defendant in Budapest with the aim of dissolving the marriage and agreeing on the methods of paying her maintenance because of the changed living conditions. The defendant, on the

[21] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, Február 18, 1946.

[22] Following the entry into force of the Marriage Ordinance in 1946, several studies were published interpreting certain sections of the Ordinance and its significance in focusing on the dissolvability of the marriage bond. Simor, "A házassági," 173–4; Beér, "A vétkességi," 14–7.

other hand, claimed that her husband had contacted her to restore their living arrangement, had invited her to move back to Baja and that they had had sexual contact during her husband's stay in Budapest. The defendant sought to prove this claim only through the testimony of his mother and sister, which the court rejected.

The plaintiff denied all of this. The evidence presented by the applicant was accepted as fact by the Tribunal. According to these, the plaintiff has already twice brought an action for the dissolution of the marriage, without success. At the same time, he lived with a woman from Baja, by whom he had two children. His application for the legalisation of his illegitimate children was rejected.[23] Since the rules of the time did not allow the father to adopt a child born out of wedlock, the plaintiff's brother adopted the woman who had given birth to the children. The adoption contract had to state the name of the adoptee, in this case the woman took the surname of the adopter, so that her own children born out of wedlock could bear the name of the biological father (the surname of the plaintiff). The evidence included the fact that the paternal grandfather had made these grandchildren his heirs in his will. In the separate judgment, the court found that the applicant had demonstrably made every effort to ensure that his children born out of wedlock were not disadvantaged in any way, that he had genuinely wanted to end the marriage and that he had simultaneously wanted to settle the maintenance due to his wife.

The court also took into account that the plaintiff's proposal for maintenance was rejected by the defendant because he expected that the "hitherto well-off, even «rich beyond his means» plaintiff, who today can only obtain a flat through the favour of his partner in a wild marriage, will be able to create a livelihood for himself again after the settlement of his property claim."[24] In her appeal, the defendant woman claimed that the tribunal had also committed a substantive and procedural violation. She saw a violation of substantive law in the fact that, although it was clear that her husband had committed adultery, the court was obliged, in the case of absolute grounds for annulment, to order the permanent maintenance of the woman who was at fault.

According to the jurisprudence that developed after the entry into force of the Marriage Act, which was based on the Curia's Principle 411 of 1915, in the case of the absolute grounds for annulment defined in the Act, which included adultery, "the final maintenance of a woman is so closely connected with the question of fault to be decided in connection with the question of the obligation that the two can only be decided as a unit."[25] Therefore, in the case of an absolute ground for annulment, it was also compulsory to decide on the custody of the children born of the marriage, the permanent maintenance of the wife and the wife's name.[26] In determining the amount of the final maintenance, the court's decision was based primarily on the social status and financial situation of the husband at the time of the divorce. If the final maintenance was not es-

[23] Although the rejection orders were not preserved in the archives, it is assumed that this was because he was separated from his wife. MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 935/1946.

[24] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 934/1947. The reasoning behind this judgment is that the nationalisation of large estates in Hungary took place in 1946. In this particular case, the applicant's entire family was left a small piece of land, which was not divided among the family members at the time of the proceedings. This was because the defendant wanted to secure a higher amount of alimony for himself.

[25] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1077/1947.

[26] Szentkuthy, Térfy, *Polgárjogi*, 17.

tablished at the time of the demolition, the practice of the courts also took into account the changes in the husband's property that had occurred by the time the maintenance was established, "because the consequences of the deterioration in the husband's financial circumstances are borne by the innocent wife just as if the demolition had been pronounced at that time."[27] In the remaining documents, the court did not specify what the plaintiff's wife had been given as temporary maintenance, but the change in the husband's financial circumstances suggests that the wife could only have claimed a smaller amount of maintenance as permanent maintenance.

This is confirmed by a judgment in another case, where the court annulled the marriage under Decree No. 6800/1945 M.E., ruling that the wife who was at fault could bear her husband's name. The husband was ordered to pay permanent maintenance. The court, referring to settled case law, awarded 30% of the husband's income as maintenance. The judgment was appealed by both parties, the wife asking for 40% of her husband's income and the husband for a reduction to 20%. The Court of Justice, in determining the extent of the appropriate degree of detention, stated the following: "in order to determine the amount of maintenance, the material and social status of the husband at the time of the termination of the marriage when the divorce decree became final shall be taken as the basis."[28]

In another case, a retired secondary school teacher was ordered by the court to pay maintenance as a plaintiff, at a rate of 25% of her pension. In its reasoning, the Court of Appeal stated that, "the substantive law imposes a limit on the extent of the maintenance obligation under the law only to the extent that the maintenance debtor – the plaintiff – should not be in danger of losing his or her decent livelihood and the right to maintenance of other persons entitled to maintenance." To this it was added that in view of the completely changed economic circumstances, the wife who is entitled to maintenance is also obliged to settle for less than the amount required for a decent maintenance.[29] Even during the war years, it was not easy to set the price of keeping a woman, and afterwards inflation made it even more difficult. As a consequence, the courts often fixed the amount of maintenance in kind rather than in money, and the husband had to pay the officially established equivalent of 1 ¼ q of wheat per month.[30]

[27] See: Szladits, *Magánjogi döntvénytár.*

[28] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949. In the case in question, the husband was the director of the financial institution of Délmagyarországi Kereskedelmi Bank Rt in Pécs, earning 1,000 forints a month in 1946. The wife's apartment in Budapest was hit by a bomb and became uninhabitable. In Monor, a 65-year-old woman, unable to earn, was living with her sister in a one-room kitchen apartment. On the basis of these facts, the court increased the definitive maintenance order. The husband was ordered to pay HUF 350 per month in final maintenance.

[29] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1946. 3. 935/1946. The Szeged Court of Appeal delivered its final judgment in 1947.

[30] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1946. 934/1946.

6. The question of lis pendens in divorce proceedings

In the case described above, where the dissolution of the marriage was pronounced in a separate decree, the Court of First Instance recorded in its decision that the action was based on Decree No. 6800/1945 M.E., to which the defendant did not object, but only requested that the action be dismissed. However, this decree did not oblige the courts to provide for permanent cohabitation in addition to the termination of the marriage bond, which had to be determined in a separate procedure. In its judgment, the Court of Appeal stated that the objective of the decree was precisely "to make possible the legal settlement of long-established marital relations as soon as possible."[31] The court of first instance acted lawfully in granting a separate decree of dissolution of marriage. At the same time, the Court ordered the court to decide, of its own motion, on the final maintenance of the separated couple and on the name of the couple after the finality of the separate judgment.

The procedural violation was seen by the defendant in the fact that the proceedings initiated on the basis of the request under Article 80 of the Marriage Act had not yet been completed. Therefore, the action based on Article 4 of Decree No. 6800/1945 M.E. should have been dismissed by the court on the grounds of *lis pendens*, since no parallel action can be brought in the same case. This application was also rejected by the court on the grounds that in proceedings based on an action under Article 80 of the Marriage Act, the court had to decide on the fault of one or both parties. On the contrary, Decree No 6800/1945 M.E. provides that separation without interruption for at least five years is the legal ground for the dissolution of marriage.

The issue of *lis pendens* also arose in another divorce case. The applicant husband brought an action under Article 4 of Decree No. 6800/1945 M.E., proving that the marital relationship with his wife had been broken in 1924 and had not been restored since then. The court dissolved the marriage on this basis. The defendant appealed against the court's decision because the court had not ruled on either name bearing or maintenance. The Court of First Instance dismissed the defendant's action because the defendant did not make any statement on these issues at the hearing at first instance and also rejected the plea of *lis pendens*. It found that it was undisputed that the plaintiff had already sued the defendant in 1943, invoking Article 80 of the Act, and that the defendant had counterclaimed invoking the same provision. This case was still pending. In its decision, the Court of First Instance ruled as follows:

> According to the law and the case-law developed on the basis of Decree No. 6800/1945 M.E., no lis pendens arises in divorce actions brought either by the same spouse against the other spouse or by the spouses against each other on different grounds under the Marriage Act or the Decree, because, although both actions are for divorce, an action under the Act is, in addition to divorce, also inextricably linked to a finding of fault, so that the facts of fault are also taken into account in this action. Whereas a suit under the Regulation is judged on the basis of the ground of fault alone, irrespective of fault. Therefore no *lis pendens*.[32]

[31] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 327/1946.
[32] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1189/1947.

The issue of *lis pendens* shows how quickly the courts' position has changed. The plaintiff husband had already filed an action for the dissolution of the marriage on 30 November 1945 at the Szeged Court of Justice, referring to the Decree No. 6800/1945, proving that the parties had been separated for more than five years. The court dissolved the marriage, against which the defendant wife appealed to the Court of Appeal. He based his appeal on the fact that he had already filed an action on 16 March 1942, requesting the dissolution of the bond on the basis of Article 80a of the Act. This procedure was not completed until the judgment of the Tribunal. He asked the Court of Appeal of Szeged to set aside the judgment of the court due to the *lis pendens*. According to the Code of Civil Procedure in force, "no new action may be brought for the same right before the same or another court during the pendency of the action." In matrimonial actions, the cause of action is the dissolution of the marriage. "As long as the action for divorce brought by an earlier action for divorce is pending, no new action may be brought on the basis of Article 4 of Decree No. 6800/1945. The plaintiff could have relied on this only if the action at first instance had been dismissed by the court."[33] The Court of Appeal annulled the judgment of the Court of First Instance, holding that the case was not pending.

If we compare this reasoning with the judgments handed down in 1946–1947, the parties to the dispute had already pleaded *lis pendens* in vain, their appeals or requests for review being rejected by both the Court of Appeal and the Curia. As explained in the reasoning, although the legal basis is the same, while the marriage law could be used to establish fault, the decree could not be used to establish fault. The answer to such a rapid change in judicial jurisprudence on the question of *lis pendens* is explained by the purpose of Decree No. 6800/1945. The legislator wanted to quickly resolve the situation of spouses who have been separated for years or even decades.

Summary

In conclusion, the termination of the marriage bond could be based on either the Marriage Act of 1894 or the Marriage Decree of 1945. The fundamental difference between the two sources of law is undeniably the fundamental difference between a court declaring one or both spouses guilty on the basis of the grounds of the established grounds for dissolution or dissolving the marriage without a declaration of guilt on the basis of the separation. In the latter case, it could not be ignored that the deterioration of the cohabitation was caused by the intentional and serious behaviour of one of the spouses or that the spouse had justifiably left the marriage. The documents preserved in the archives provide an opportunity to learn about the principles followed by the courts and the social and economic conditions that shaped the practice of law. The archival documents that have been discovered clearly show how the "permanent judicial practice" was shaped and modified within a year or two after the Second World War, even as a result of the change in social conditions – whether it is the question of *lis pendens*, the definition of

[33] MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1946 856/1947.

the content of the marital community, or the assessment of the intentional and serious behaviour of a spouse who has abandoned his or her spouse. All these factors together led to the Act IV of 1952 on marriage, family and guardianship, which, in the absence of a private law code, regulated family law, including marriage, for a long time under a separate legal framework.

Bibliography

Archival sources

Hungarian National Archives, Csongrád-Csanád County Archives, Szeged Archives (MNL CSCSML SZL) Szeged Court of Appeal XXV.2. 1945–1949, 997/1945

MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1096/1946.
MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, Július 16, 1946.
MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 934/1947.
MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1949.
MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, Június 14, 1947.
MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1947.
MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1077/1947.
MNL CSCSML SZF Szeged Court of Appeal XXV.2. 1945–1949, 934/1947.
MNL CSCSML SZF Szeged Court of Appeal XXV.2. 1945–1949, 677/1946.
MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, Február 18, 1946.
MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1946. 3. 935/1946.
MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1946. 934/1946.
MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 327/1946.
MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1189/1947.
MNL CSCSML SZL Szeged Court of Appeal XXV.2. 1945–1949, 1946 856/1947.

Secondary sources

Beér, Miklós. "A vétkességi elv a házassági bontóperben" [The Principle of Fault in Divorce Proceedings]. *Jogtudományi Közlöny*, 1–2 (1946): 14–7.

Grosschmid, Béni. *Öröklött s szerzett vagyon* [Inherited and Acquired Wealth]. Budapest: Politzer, 1879.

Herger, Csabáné, *A nővételtől az állami anyakönyvvezetőig* [From the Nurse to the State Registrar]. Budapest: Dialóg Campus, 2006.

Jukić, Zita, ed. *"Öszve eskettettek illyen egyezkedés mellett…" Drávaszögi és szlavóniai református ígéretlevelek és házassági egyezségek*. ["Married Under the Following Agreement…" Calvinist Promissory Letters and Marriage Contracts from Drávaszög and Slavonia]. Eszék: Zrinyi Magyar Kultúrkör, 2021.

Krausz, Bernadett. "A házasságon kívül született gyermek jogállásáról szóló 1946. évi XXIX. törvénycikk hatása a családjogi viszonyokra" [The Impact of Act XXIX of 1946 about the Status of Children Born Out of Wedlock on Family Law Relations]. *Jogtörténeti Szemle* 4 (2023): 38–45.

Mikos, Ferenc. "A házasságon kívül született gyermek jogállásával kapcsolatos vitás kérdések" [Disputes Concerning the Status of Children Born Out of Wedlock]. *Jogtudományi Közlöny* 17–18 (1946): 233–45.

Nizsalovszky, Endre. *Magyar családi jog* [Hungarian Family Law]. Budapest: MEFESZ Jogász Kör, 1949.

Pólay, Elemér. "A házasság felbonthatóságának, mint családjogi alapelvnek a kérdése" [The Question of Divorce as a Principle of Family Law]. *Jogtudományi Közlöny* 9 (1953): 374–81.

Simor, Antal. "A házassági rendelet a joggyakorlat tükrében" [The Decree of Marriage in the Light of Case Law]. *Jogtudományi Közlöny* 11–12 (1946): 173–85.

Szentkuthy, István; Térfy, Béla, eds. *Polgárjogi és büntetőjogi határozatok tára* [Gazette of Civil Law and Criminal Law Judgments]. Budapest: Grill, 1942.

Szladits, Károly. *Magánjogi döntvénytár. VIII. kötet* [Private Law Gazette. Volume VIII]. Budapest: Franklin, 1915.