

Legal Developments.Organization of the Judiciary.

The first post-war reorganization^a of the Hungarian judicial system was effected in 1949. Under this reorganization there were~~xxx~~ three types of courts: 1) the district courts, 2) the county courts, and 3) the Supreme Court.

The Supreme Court⁷ consisted of four colleges (Kollégium), namely the criminal, x civil, military, and the transport and communication colleges. Within these colleges there were divisions (tanács)^d organized.

The president of the Supreme Court was elected by Parliament, that is the National Assembly. The plenary session of the Supreme Court consisted of all the justices appointed to the Supreme court. In addition you also had a presidential council (division) and a disciplinary council (division).

The president of the Supreme Court (chief justice) had two rights: first of all, both he and the chief public prosecutor had the right to protest against any judgment handed down by any court (even if absolutely binding) for violations of legality. On the basis of this protest, the judgment had to be submitted to a reviewing x council (consisting of judges of the Supreme Court).

Secondly, the president of the Supreme Court had the right to bring any case (or sign out any case) before the supreme court, for² that case, ^{the Supreme} this Court would proceed to adjudicate the matter as

a court of the first instance.

The task of the plenary session of the supreme court was to formulate guiding principles in order to preserve the unity of law (jogegységi határozat). This is prescribed by the constitution. However, the plenary session did not function during the last three years. Instead, the above mentioned colleges or judicial bodies handed down their unconstitutional decisions. In fact these judicial bodies or colleges served to fill in the loopholes in the law or to iron out some of the ^c discrepancies. The decisions of these colleges were binding on the lower courts. According to the Communist tenants, ^e ~~codes~~ ^{codes} of law are not considered to be sources of the law because the task of the judiciary is only to administer justice and not to make laws. However, Communist practice viewed them as organs which would contribute to the correct ~~x~~ (Communist) interpretation of the laws.

It is interesting to note for instance, ~~the~~ decision ~~number~~ ^d ~~No.~~ ¹⁰ which was handed down by the plenary session of the Supreme Court in 1953, during the time of Imre Nagy. According to this decision it was legally possible to levy executions ~~on~~ on the assets of co-operatives. However, judicial practice, upon instructions received from the chief prosecutor's office, had to disregard this decision of the Supreme Court. This is a very interesting example of the fact that the chief prosecutor's office seemed to rank higher in the Communist hierarchy than the Supreme Court itse.

Actually, the decisions of the Supreme Court handed down by its plenary session were to be followed not only by the lower courts but also by the various colleges of the Supreme Court itself. Here again in practice it frequently happened that the individual colleges were engaged in outbidding each other usually because of personal rivalries within the colleges. To give you an example, according to the decision handed down by the plenary session of the supreme court in 1951, '52, an accessory before the fact could not receive a higher penalty than the perpetrator of the crime. This decision ~~was~~ ^{subsequently} disregarded by later decisions of certain colleges which pointed out that the accessory before the fact could receive a higher penalty than the perpetrator of the act, if his class background justified the ^{im}position of the heavier penalty.

After the downfall of Imre Nagy, three hundred judges were dismissed from the judicial bench and thereby the complete purging of the judiciary had been accomplished. No longer did we have qualified judges on the judicial bench but only lay judges who at best received their education in a short course.

The presidential council (division) was the administrative organ of the Supreme Court. It consisted of the president of the Supreme Court, of the vice-president, of the presidents and vice-presidents of the colleges of the Supreme Court.

The disciplinary council consisted of a president and six members

two of which were chosen from among the civil judges and four of them from among the criminal judges. Their selection was made by the president of the supreme court.

Now I would like to tell you a few words about the operation of the Academy for training prosecutors and judges, which had its seat in Budapest and which was set up in 1949. This institution was originally devised to provide for a one year training course mostly for those members of the Party hierarchy who had absolutely no schooling or prior training. The teachers and lecturers at this Academy consisted of Communist judges and prosecutors. And the courses were organized on the basis of a high degree of specialization. The successful graduates of the Academy were obligated to continue their education at a university after their graduation from the Academy. Usually, however, either already during their academy training or soon after their graduation they were assigned to important posts. To give you some examples about the kind of people who were trained at this academy, I'd like to mention Ferenc Ledényi, a former iron turner who was the president of the military college of the Supreme Court. Or take the case of Pál Kis Pál, a former tanner from Salgotarján, who became the chief prosecutor in military matters. These people were considered to be reliable Communists. They were hand picked for each of these posts and afterwards they had to complete their education in a short course at the Academy.

As I have mention already earlier, the Supreme Court consisted

of four colleges: the civil, criminal, military and the transport and communications colleges. On the lower level, the transport and communications matters as well as the military cases were handled not by the regular courts of justice but by special military and transport and communications courts. However, at the Supreme Court they were all integrated within the general structure of the Supreme Court itself. It may be of interest to note that a regular law student or a graduate from a law school was not taught or told about these seats and operations of the military and transport and communications courts because their organizations was secret. However, I knew ^{that} transport and communication courts functioned in Budapest, Pécs, Szeged, Debrecen, Miskolc, Szombathely, and Nyiregyháza. I also knew that the military courts were organized: ⁽¹⁾ ~~in three~~, according to the branches of the respective ~~military~~ military service, ⁽²⁾ ~~in three~~, according to divisions and ⁽³⁾ ~~in three~~, within the military college of the Supreme Court.

The Supreme Court had jurisdiction to try cases as a court in the first instance and as a court of appeals. As a court in the first instance, the Supreme Court could act in any matter by the instruction or authority of the president of the Supreme Court. As a court of appeals, the Supreme Court would review the decisions handed down by the county courts. In such cases, it would act as a court of cassation or it could remand the case for new trial.

Within the various colleges of the supreme court you have

further divisions and within each division you have several qualified judges. These judges theoretically should be elected by the National Assembly for a period of five years. In practice, however, they are appointed by the Minister of Justice. This practice, of course, is unconstitutional because the Constitution provides for the election of the judges of the Supreme Court by the National Assembly. Communist theoreticians, however, point out that the Constitution is not the embodiment of living legal principles, ~~its~~ its task is to point to future developments. Therefore, the Communists say there is no actual contradiction between theory and practice.

In all cases when the Supreme Court acts as a court of the first instance, the court is constituted of a qualified judge and ~~of~~ two lay assessors. In cases where the Supreme Court acts as a court of appeals it is constituted of three qualified judges.

The task of the qualified judge is to provide the general framework of the law, whereas the lay assessor ^{fills} ~~sees~~ that framework content. The qualified judges of the supreme court are all reliable Communists.

^{So} As far as the county courts are concerned, they usually consist of a civil and a criminal division. The court is headed by a president whose task is the general supervision as well as the signing out of cases. Another task of the president of a county court is to appoint the members of the disciplinary council (board).

The ~~Disciplinary~~ Disciplinary Council of a county court would have the authority to examine and rule concerning alleged violations of discipline by members and by the president of the district courts.

The county court acts as a court of the first instanceⁱⁿ ~~in~~ all cases which have been assigned to it by law. Among these must be mentioned homicide as well as crimes committed against state or social property.

The county court acts as a court of appeals in cases which have been appealed from judgments of district courts.

If the county court acts as a court of the first instance, it is composed of one qualified judge and two lay assessors. If it acts as a court of appeals, it is constituted of three qualified judges.

As far as the former jurisdiction of the county courts in regard to trademarks and patents is concerned, under the post-war legislation, it has been taken over by the state patent office.

In connection with the jurisdiction of the county courts as courts of appeals, I would like to mention the fact that the county courts have a right to ~~not~~ refuse the review of the case on appeal.

Under the Constitution the judges to the county court are ^{to be} elected by the local people's council (Soviet) for a period of five years. However, in practice, they were appointed by the Minister of Justice.

In regard to the composition ~~of~~ of the district courts , I would like to point out that they consisted of one qualified judge and two lay assessors. The jurisdiction of the district courts extended to any ~~a~~ matter or case which by law has not been taken out of their jurisdiction. For instance, ^{the} first phase ^{of} matrimonial suits, namely, general conciliation ^{had} to be undertaken before the district courts. Also criminal proceedings would start before the district courts unless they ~~are~~ ^{were} specifically reserved by law for the county courts. Under the Constitution members of the district court have to be elected by the people for a period of three years.

As far as ^{the} a general administration of justice is concerned, ^d it is quite obvious from the description so far given that the Hungarian judicial system is a ^{close} ~~rather~~ copy of the Soviet judiciary, with the possible ~~a~~ exception that the members of the judiciary were not elected by the People's Councils or the National Assembly, but were appointed by the Minister of Justice. In regard to the lay assessors, their selection is dependent on designations by certain ^{social} ~~xxxx~~ organs, such as the trade unions, the Democratic Union of Hungarian Women and other Communist organizations. Before ^{the} ~~these~~ designations ^{may them}, these organs would also consult the local People's Councils. From among the designated people, the ~~xxxx~~ president of the respective court ~~exists~~ calls ~~a~~ in ~~the~~ a specific number to serve during the following months as lay assessors.

Lay assessors have the same rights as the qualified judge. They lay assessors also enjoy complete immunity from arrest and prosecution. Apart from the situation where he is caught in the act, a lay assesor cannot be arrested except with the special permission of the Supreme Court.

I would like to mention finally that most of the old time judges were summarily dismissed in 1949, & In that year a law was passed enabling lay assessors to sit in on criminal trials. Also during the early part of 1950, the first group graduated from the newly established Communist "Academy for Training of Judges and Prosecutors."

The theoretical independence of the judiciary was expressed in two principles, namely, the principle of election which in fact did not obtain and the principle of immunity from arrest. This^a obtained to the extent that ~~the~~ judge could not be arrested except with the authorization of the Supreme Court.

Domestic Relations

On the basis of post-war legislation, the courts are permitted to grant a decree of ~~the~~ dissolution of ~~the~~ marriage^a if both parties request it after two years of married life. Such request has to be submitted twice and the decree of dissolution will be granted after ~~thirty~~ ^{thirty} days.

After five years of separation, either party can request a dissolution of the marriage and the court in such cases will not pas

judgment on the question of guilt.

~~It~~ ^A Also the court can decree the dissolution of a marriage upon the request of either party if the other party suffers from incurable mental disorder. Finally, the court can decree the ~~x~~ dissolution upon the request of either party on the basis of irreconcilable ideological differences.

In addition I would like to mention that post-war legislation has also changed the status of illegitimate children. Today they are considered as having the same legal status as ~~illegitimate~~ children.

In actions for affiliation, the father may declare that the child ~~belongs to him~~ ^{is his issue}, in which case there is no need for court proceedings. If the father makes no such declaration then there is a definite need for the affiliation of children. In the latter case the court usually resorts to two procedures ~~with~~ for the purposes of affiliation. One is the hearing of witnesses and the other the determination of ^{the} blood group. If the presumptive father can prove that he had ~~only one or two~~ ^{only on one or two occasions} relations with the mother then upon his request the court can order the blood test. If the affiliation is determined by court procedure, the affiliated children will by law be related to members of the family and relatives.

Post-war legislation also provided for adoptionⁿ. Under the provisions of the ~~the~~ law, any minor under eighteen years could be adopted, however, there had to be a difference of sixteen years

between the adopting parent and the child. Under the provisions of more recent legislation, husband and wife could only jointly adopt a minor.

Incidentally, I would like to mention the fact that recent legislation has also substantially altered the former provisions of the law concerning divorce. Under the new legislation the courts are no longer supposed to go easy on divorces. On the contrary, divorce can only be granted on the basis of serious grounds. This legislation ~~also~~ reflects the fact that the primary objective of the state is to protect the social interests ^{est. It also indicates} ~~and~~ the fact that the mother and child receive increasing protection by the elimination of the easy ^{ly} granted ^{ed} ~~divorces~~ divorces.

The question of what is a serious ground is, of course, up to the court to determine and there is no absolute ground for a divorce. Recent court decisions, for instance, have held that even in cases of ~~adultery~~ adultery there is no ground for a divorce if there are children out of the marriage or if the mother is expectant.

A further deviation of the jurisprudence from previous practices manifests itself in the fact that the courts no longer grant divorces on the basis of ideological differences between ~~husband~~ husband and wife. The blame is squarely placed on the ~~father~~ party having Communist affiliations. According to the new Party line, he ^{illad} should have instructed ~~and~~ and imbued his or her cohort with Communist ideology.

Furthermore, both husband and wife have to contribute to the household during the marriage, and after divorce, either cohort is obligated to support the other in case of joblessness or need. The law also recognizes the concepts of joined⁺ and separate property between the cohorts. The cohorts are also entitled by law to bear each other's names.

In case a divorce is granted, the children will remain with the mother until the time they reach seven years of age. If, however, the mother's conduct proves to be immoral or lewd, the court can use its discretion to leave the children with the husband or the grandparents. Children above seven years of age, in the case of a divorce, are placed with their parents according to their sexes.

I would like to mention that the public prosecutor also participates in the divorce proceedings and he has a right to interfere in ~~any~~ any phase of the proceedings in the interest of a society or of the children. If he so requests, the court must hear witnesses or get further evidence. If the public prosecutor is dissatisfied with any phase of the proceedings ~~ending~~^{or} the divorce decree, he has a right to appeal.

Suits for alimony must be brought before the district courts. ~~Until 1949,~~ The mother had the right to bring suits against several men for alimony at the same time. ^{From 1949 to 1953} ~~Under the post-war plans,~~ the general Communist slogan was that it was the duty of a married woman

to have children whereas the glory of the country and her honor demanded that a girl have children.

Up to 1955, abortion was one of the most severely punishable crimes. A physician was allowed to perform an abortion only in cases where the mother's life was in real danger. Penalties ranged from five to ten years imprisonment. Later the rule was to some extent relaxed in the sense that a medical committee could permit the physician to perform abortion if the mother ^{already} had three children ^{and if it} already ^{was} absolutely necessary for financial reasons.

Now I would like to pass on to some of the aspects of Hungarian inheritance law. The old distinctions between movables and immovables ^{at} person ^{al} property and real property have largely been abolished. The Communists today talk in terms of the means of production and of goods for consumption. There is no particular legislation, in effect only the judicial ~~practice~~ practice. As far as the land is concerned, it cannot be bought and sold and in general ~~it~~ it cannot be inherited. The Communists distinguish between state and co-operative property and goods which can be subject matter of contracts and those which cannot be bought and sold. Inasmuch ^{as} there is inheritance both ~~to~~ ^{TO} ~~the~~ ascendants and descendants inherit ^{up} ^{to} the great-grandparents and brothers or sisters. In case their ~~are~~ ^{it} are no eligible survivors the state will inherit ~~it~~. The testator is entitled to leave everything that he has to the state if there is no minor. However, if there is a minor he must get his portion prescribed by the law.

While the general rule is that land cannot be inherited, small land holdings under 25 acres maybe inherited. In regard to the law of contract, ~~one~~ ^{one} could distinguish private contracts from those concluded by state enterprises. You also had another group of contracts which were ~~actually~~ ^{actually} not concluded but came into operation under the Three and Five Year Plans. Inasmuch ~~as~~ ^{as} the contracts concluded by state enterprises were concerned, any disputes ~~would have~~ ^{had} ~~could~~ ^{would} have to be submitted to a central arbitral committee which then impose a penalty on the party at fault. If the contract was concluded between Government agencies under the authority ~~or~~ ^{or} jurisdiction of the same Ministry, the ~~respective~~ ^{respective} Ministry would rule in regard to the matter in dispute. ^{to mention that}

In regard to agricultural cooperatives, I would like ~~those~~ ^{to mention that} persons who cast their lots with the collectives were given complete exemption ~~tax~~ from previously unpaid taxes. The collectives were represented by their own counsel ^{ci} and by the president or head of the collective. Mostly there were two types of cooperatives, namely agricultural and livestock cooperatives. In order to ~~spur~~ ^{spur} production and to prevent the kulak from out producing the cooperatives, work-norms or units were devised for each type of work and you had to fulfill your own norm.

Finally, I would like to say a few words about criminal and civil procedure.

As far as criminal procedure is concerned, any person who is

arrested on suspicion of crime must be brought within 24 hours before a judicial magistrate. There, upon the order of the magistrate, he may be committed for a period of 30 days. This period may be extended again upon the instructions by the chief public prosecutor. It is true that the AVH did not follow this provision of the law and many of those arrested by the AVH were kept beyond the 24 hours under police surveillance.

I would like to mention that the post-war AVO became AVH in 1949, when the state security Section of the Ministry of the Interior was separated and became an independent agency of state security with ministerial rank. During the regime of Imre Nagy, the AVH was placed back again under the jurisdiction of the Ministry of the Interior from the viewpoint of general supervision. The political supervision of the AVH, however, was placed ~~and~~ under the immediate authority of the chief public prosecutor. In connection with the chief public prosecutor's office, I would like to mention that its main task was the overall surveillance of socialist legality and in this respect it was superimposed over the various ministries. Those assigned to the chief prosecutor's office were the most reliable Communists who were secret members of the AVH - the so-called civilian clothes AVH. Incidentally, I would like to add that members of the civilian clothes AVH, that is the secret AVH, were assigned to each foreign legation in BUDAPEST as well as to various universities and colleges. At the legations

~~usually~~^{usually} the driver or the domestic help were the secret members of the AVH.

Now I would like to pass on to a brief description of some of the essentials of civil procedure. Generally speaking, parties to a litigation have the right to dispose freely of their material claims as well as of the means of procedure. The court^y of justice, on the other ^{hand} have the right of active initiation. Also, the public prosecutor^{utor} has a right to initiate proceedings.

Within the right of disposition, parties to a litigation are free to make settlements or to waive their rights or to admit certain facts in the course of the proceedings. Also they have a right to submit the dispute to a panel of arbitrators. However, there is one important limitation on the right of the parties to avail themselves of the aforementioned privileges. In all instances the court must determine whether the right of disposition by the parties to a litigation is reconcil^{able with} ~~is~~ the interests of social legality. In other words, individual interests ^{are} ~~is~~ subordinated₁ to the social interests.

So far as the courts are concerned, they themselves do have the right to initiate civil proceedings in all cases where in view of the court the interest of a state enterprise is being endangered. In such cases the court has a right to call upon the public prosecutor's office to initiate civil proceedings.

In addition to the aforementioned right of the court, the public

~~XXXXXXXX~~ prosecutor may also intervene in any phase of the proceedings, that is, the public prosecutor has an independent right of action. This right is simply a reflection of the omnipotence of the public prosecutor and his right of supervision. In other words, the public prosecutor himself can initiate ~~xxxx~~ civil proceedings. Moreover, the public prosecutor has also the right to call upon the judge or the court, ^{to render} a particular type of judgment. Under such circumstances it is not difficult to see what has happened to the one-time independence of the judiciary.

In this connection, it might be of interest to note the case of ~~xxx~~ László Rajk who, according to Vilmos Olti, was persuaded by Mihály Farkas to admit his guilt in the course of his trial in order to serve the Communist ~~xxxx~~ cause. Rajk thought all along that the trial was just a mock-trial, that he would be set free afterwards. When he found out the truth, he yelled out loud: "They tricked me!" Whereupon Kádár fainted.

In the course of the preparatory proceedings, the court has the right to summon the parties, ^{in order} to instruct or advise them. It ~~x~~ also has the right to obtain information with regard to particulars.

In the course of the hearings and trials the court is entitled to do everything in its power to shed light on the circumstances^s and facts of the case. It has a right, of its own motion and discretion, to obtain evidence and to summon witnesses.

In connection with the Hungarian law of civil procedure, I would

mention that it was translated from the Soviet original upon the instruction of the Minister of Justice. When the Soviet original was first translated, the text was sent out for perusal and submission of remarks to notable legal authorities and professors of law. They had to submit their observations within a week to the Minister of Justice. However, only one or two of them sent in their observations. Nevertheless, the Minister of Justice decided to promulgate the law. The result was complete confusion and chaos so that the law had to be revised shortly afterwards.

Finally, I would like to say a few words about the law of execution. In addition to the executory judgment of the court, the interested party has to obtain a special permit from the court - so-called executory document in order to enable him to levy execution. Because of the complex provision of the law, in about 90 percent of the cases, no execution can be levied in spite of the executory judgment and ~~the~~ document. Theoretically execution can be levied against ^{the property of} any private person as well as ^{the} ~~the~~ members of agricultural cooperatives. However, in practice you cannot levy execution against the latter. Just before the outbreak of the Revolution many lawyers and judges demanded the re-establishment or revival of the old legislation concerning executions or the passing of entirely new legislation.

Now I would like to mention ^{the names of} a few people who have taught courses,

as of recently, in the University of Budapest. Civil law and comparative law was taught by Istvan Szászy and Márton Sfy. Political economy by Dienes, civil procedures by Salama Beck. Politics and international law by Gyula Hájdu. Later on Miklós Világi took over Szászy's chair and I understand that in July, 1957, he was appointed rector of the University of Budapest.

Ratings: Respondent seemed to be a very cooperative young man who seemed to have a great deal of information concerning the setup of legal institutions and respective practices.