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The Organization System of Judicial Execution in Hungary from the Early Days to 1871

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Abstract. This paper examines the process of the development of the organization system of Hungarian judicial execution up to its first overall regulation in law in 1871 (which represents the prefiguration of today's organization system). An indispensable element of the historical survey is the exploration of the earliest appearance of legal institution (in particular, of judicial execution and more specifically of the judicial officer). In accordance with that, the first part of the paper examines the procedural law of the period of the Roman Empire in more details. In the course of that, it is reasonable not to limit the survey to execution only because the key structures and still existing basic institutions of our present civil procedural law developed at that time in the period of the Roman Empire. When turning to the history of Hungarian legal regulation, first, we analyse the system of the Middle Ages and Early Modern Age; more specifically, the appearance of the institution of *pristaldus* ('poroszló' – bum-bailiff, or delegate judge) until its change in status, which occurred in the 12th century as well as the multifunctional scope of tasks of places of authentication (*loca credibilia*), which embraces execution too, the operation of these places, and the decrease of their significance in the Early Modern Age. Finally, we examine the judicial officers' system in the mirror of the legal regulation set up in 1871 (starting from the conditions of becoming a bailiff through rules of incompatibility to the fees of the judicial officers' procedure in the period).

Keywords: judicial execution, bailiff, pristaldus, Hungarian legal history

I. Antecedents of Modern Judicial Execution in Roman Law

In Roman legal proceedings, we can speak about three codes of procedure gradually replacing each other and for a certain period living side by side. The rules of procedure of civil law is the *legis actio* procedure; as a second option, lawsuit in front of the *praetor* was introduced with its formular procedure, and these

two existed at the same time up to 17 BC, when *lex Iulia iudiciorum privatorum* terminated *legis actio* procedures. The formular lawsuit was accompanied in the period of the Principate by the imperial lawsuit, i.e. *cognitio* (*extra ordinem*) as an extraordinary rule of procedure, which developed into the sole proceedings in the period of the Dominate.

In the imperial code of procedure that developed as extraordinary procedure (*cognitio extraordinaria*) besides the civil law and *praetor* code of procedure as ordinary procedure (*cognitio ordinaria*), it was possible to enforce claims that were not enforceable in the *praetor* lawsuit (e.g. estates in fee tail). The lawsuit was no longer split into two, and the trial by jury was replaced by trial by officials, and the institution of appeal (*appellatio*) evolved.[1]

In the imperial lawsuit, the sentence (*sententia*), by which the procedure was closed, had to be set in writing, in addition to oral rendition. The sentence could cover not only the amount of money but also the release of the property itself. The party losing the case did not pay lawsuit penalty as in the lawsuit in front of the *praetor* but law charges, which embraced the fees of the judge proceeding in the case, the representatives and lawyers in the lawsuit as well as the costs incurred in relation to the demonstration.[2] It was in the *cognitio* procedure where proper legal remedies, i.e. appeal (*appellatio*), were available for the first time, which had to be submitted orally upon delivery of the judgment or subsequently in writing. The appellate court could take account of new evidence in the new trial; it could decide on both legal and factual issues. The appellate system had two or, in certain cases, three levels. The judgment became final when the highest judicial forum (the emperor, or from 331, the *praefectus praetorio*) pronounced the sentence or if the option of appeal was not exercised.[3]

In the imperial law, execution could be universal (since the former rules of execution known from the praetor procedure were not abrogated) and could be (that was the genuine innovation of the imperial procedural law) singularis. In the imperial law – contrary to praetor procedure, where a separate action was required for starting the execution –, the official judge instituted the execution on the basis of the judgment-at-law (or the acknowledged debt) purely upon the obligee's request.[4]

The singularis execution, i.e. execution on specific property items/elements of property, had become general by the 3rd century AD. They were seized by sequestration (so-called *pignus in causa iudicati captum*)[5] and then were sold in open auctions. The amount received from the auction served to satisfy the

1 Nótári 2011. 113.
2 Nótári 2014. 114.
3 Nótári 2014. 114.
4 Kaser–Hackl 1996. 511.
5 Marton 1947. 44. §, Brósz–Pólay 1974. 125, Nótári 2014. 115.

obligee's/creditor's claim for property.[6] As the authority attachment was deemed as a kind of a pledge or pawn (pignus), the amount remaining after the creditor's claim had been satisfied due to the debtor.[7] For lack of a valid offer in the auction, the creditor acquired the ownership of the property.[8]

The rules of execution in the period of the Roman Empire already proceed on the basis of the principle of gradience. The amount deposited with the banker (argentarius) – on the analogy of stoppage of payment from bank account – can be directly subjected to execution.[9] For lack of such an amount, first, movables, then, immovable properties, and then the debtor's claims were executed.[10]

If the judgment ordered service in kind, i.e. release of the property, then the party winning the case could avail itself of authority's assistance for taking the property away. It is important to highlight that in this age it was already possible in execution procedure to force other behaviours set out in the judgment; in other words, if the judgment did not formulate any condemnation in cash, then it was possible to assert it too under the execution procedure. Universal, bankruptcy-like execution was carried out primarily in case of the debtor's total insolvency,[11] but the debtor's assets were subjected to auction in this case too not as a uniform mass of property but element by element.[12]

Following the judgment-at-law, the debtor had four months available for performing the terms set out in the judgment.[13] The execution was started upon the creditor's written application – the *actio iudicati* that appears in the sources was no longer an independent action serving to institute the execution but a kind of option for legal remedy, which provided possibility for the judge to control the legal basis and course of the execution.[14]

Iustinianus's law did not change basically the rules of execution of the period of the Roman Empire, i.e. in contrast with the system of execution of civil law and praetor's law that allowed action on one's own authority too, it was invariably based on the state's/authority's coercion.

Iustinianus extended *beneficium competentiae*, i.e. only the part from the debtor's assets above those necessary for their conditions of life could be foreclosed of the assets existing at the time of the execution. It was in the period of Iustinianus when *actio Pauliana* developed, which protected creditors from the debtor's fraudulent alienation of property, causing damage to them. Later on,

6 Kaser–Hackl 1996. 512.
7 Callistratus D. 42, 1, 31.
8 Ulpianus D. 42, 1, 15, 3; Antoninus Pius C. 8, 22, 2, 1.
9 Ulpianus D. 42, 1, 15 1.
10 Ulpianus D. 42, 1, 15, 2; 9, 2, 29, 7; Papinianus D. 42, 1, 40; Antoninus Pius C. 4, 15, 2.
11 Kaser–Hackl 1996. 623.
12 Inst. 3, 12 pr.
13 C. 7, 54, 2–3.
14 Kaser–Hackl 1996. 624.

actio Pauliana was extended to transactions of absorbing funds entered into with the debtor in good faith but causing damage to the creditors.[15]

The executor, the judicial officer appeared for the first time in the period of Iustinianus. His tasks included causing delivery of the property to the creditor by the authority's/armed forces' assistance (*manu militari*) if the judgment ordered release of the property.[16] In case of judgments ordering the payment of a sum of money, it was also the executor's task to seize the debtor's chattels (*pignoris capio*), carry out their forced sale, and the delivery of the so realized amount to the creditor.[17] The amount received was distributed in proportion to claims; however, so-called privileged claims (debt outstanding towards the state treasury, the costs of the execution procedure, the executor's fee, etc.) were given advantage.

Under the so-called *cessio bonorum*, the debtor was allowed to keep the properties absolutely necessary for subsistence;[18] in other words, the law of the period of the Roman Empire regulated the scope of property that could not be subjected to attachment.

With respect to personal execution, private captivity was replaced by state captivity, i.e. the state's coercion,[19] the strictness of which gradually increased from the 3rd century AD.[20]

II. Organization of Judicial Execution in Hungary in the Middle Ages and the Early Modern Age

László Komáromi makes it clear that in the early days of Hungarian written legal documents private parties set down their unilateral and multilateral transactions in a charter before the king or they were confirmed by the king's seal, which provided full-scope validity for them. This procedure, on the other hand, was not applied with respect to the legal acts of the common people; so, working out other institutions of authentic attestation became necessary.[21] The first such institution was the delegate judge ('poroszló'). Determination of their earliest scope of tasks and dating the appearance of their institution was prevented by serious hindrances because no written notices were made of their activity in the earliest period since their task was primarily to attest orally to the legal acts concluded in their presence.[22] The delegate judge is referred to by sources in Latin as *pristaldus* – the

15 Brósz–Pólay 1974. 125; Nótári 2014. 115.
16 Ulp. D. 36, 4, 5, 27; 43, 4, 3 pr.; Nov. 18, 10; C. 7, 65, 5, 1.
17 C. 1, 12, 6, 4; Nov. 53, 4, 1; C. 8, 21, 1.
18 Kaser–Hackl 1996. 630.
19 C. 7, 71, 8. pr.
20 Kaser–Hackl, 1996. 625.
21 Komáromi 2007. 168.
22 Komáromi 2007. 168.

phrase is of southern Slavic origin (*pristav*), from which the Latin word *pristaldus* (and the Hungarian word 'poroszló') has developed.[23] Etymologically, the term *pristaldus* carries the meaning 'to be present', 'to stand by it'.[24] In those days, pristaldus/delegate judge meant a court person who, on the one hand, acted as the office assistant of the judge, i.e. as a kind of 'permanent court employee', and, on the other hand, proceeded in specific cases as a person assigned to this task.[25] (The *pristaldus*, who was appointed by the court, acted as the mediator of the parties; i.e. after the parties had been heard, he pleaded their claims – somehow similarly to the *Vorsprecher* known from ancient German law.)[26]

In terms of the institution of execution, as appropriate, their first role can be considered more important since as the judge's assistant they summoned the parties, accompanied them to the process of administration of an oath and executed the judgments, which is clear also from the fact that the name of the *pristaldus* was recorded in the letter of judgment too.[27] In the course of the execution, they entered the party winning the case in the possession of the disputed land and, if necessary, designated the borders of the lot.[28] The role of the delegate judge was thus inseparably connected with the judge's task and with the judgment, as it is shown also by the sentence-like formulation of the charter cited by László Solymosi: *nullum iudicium sine pristaldo*, i.e. naming the delegate judge is an essential part of the adjudication.[29] This is also supported by the fact that the *pristaldus* was appointed by the judge immediately at the beginning of the procedure for the entire duration of the action at law.[30] The law set forth the same requirements towards the *pristaldus* as towards witnesses, where an essential element was that the *pristaldus* had to have a landed estate to enable him to take responsibility for failures or irregularities committed in the course of his procedure[31] – i.e. the institution of the 'executor's liability/responsibility' appeared already in this early period.

Already the first texts of laws of the Age of the Kings of the House of Árpád make several references to *pristaldus* while providing information on their various tasks. For example, in accordance with Chapter 40 of the *decretum* of (Saint) László I, the task of the bishop's delegate judge in the course of collecting the tithe is to survey the property/produce of the person obliged to pay the tithe

23 Solymosi 2002. 523.
24 Komáromi 2007. 168, Zlinszky 1976. 10.
25 Juhász 1930. 258.
26 Zlinszky 1976. 8. Vértesi Lázár: Az ügyvédek hivatástörténetének áttekintése a kezdetektől a 20. század elejéig. *Jura* 2003/2. 179. (172–183).
27 Kálmán Juhász: A marosmenti hiteles helyek legrégibb emlékei. 258.
28 Solymosi 2002. 523.
29 Solymosi 2002. 523.
30 Kálmán Juhász: A marosmenti hiteles helyek legrégibb emlékei. 258.
31 Solymosi 2002. 523.

and collect the tithe[32] – thus, their task here is to execute tax liability. László I's *decreta* make reference to the delegate judge at other points in the text too. Foreigners may enter into a sale and purchase contract in the presence of the king's delegate judge[33] – so, their task here is to act as transaction witnesses, i.e. to ensure public attestation. Notification or charge on any theft committed in a nobleman's courtyard must be made to the owner/operator or delegate judge of the mansion house[34] – in this case, the *pristaldus* is again the guard of demonstration of evidence/authenticity. Two-thirds of goods/properties roaming about (which are collected by the king's stableman and by the overseer (*ispán*) of the county) are due to the delegate judge and one-third of it to the overseer[35] – thus, the law also provided for the remuneration of the delegate judge. King Kálmán Könyves's *decretum* stipulates that if the king's delegate judge is beaten up by somebody owing to the judgment/the property awarded, the fighting person should be sent to the overseer of the county and the provisions set out in the sentence should be executed[36] – accordingly, in the course of execution procedures (if the issue required statutory regulation) defiance, unlawful violence was certainly performed by the obligor in several cases. It was also prescribed by King Kálmán that the provisions prescribed for witnesses had to be applied to delegate judges too[37] – i.e. the *pristaldus* may be only a person who has a landed estate so that he could reimburse the 'damage caused in the course of the administrative act'. If the delegate judge proceeded in the case unlawfully, he was liable for it together with the judge who gave instruction to do so[38] – so, liability might have been joint and several; or, if the judge caused any damage through the delegate judge, he was liable for it by his assets[39] – this clearly indicates the fact that owing to the referred joint and several liability the *pristaldus* was also liable with his own property. The captured thief was led to the judge by the *pristaldus*[40] – in the absence of private and criminal law procedure being separated, which characterized the law and order in the Middle Ages and the Early Modern Age, the *pristaldus* was given a role also in criminal procedure.

At the same time, the system provided possibility for numerous abuses since during the period while the *pristaldus* took part in the action at law (and – as his role was not limited to execution – they were appointed at the beginning of the lawsuit) the party to the action at law was obliged to maintain them. For this

32 Decr. Ladislai I. liber I. cap. 40.
33 Decr. Ladislai I. liber II. cap. 18.
34 Decr. Ladislai I. liber III. cap. 12.
35 Decr. Ladislai I. liber III. cap. 12.
36 Decr. Colomani liber I. cap. 28.
37 Decr. Colomani liber I. cap. 29.
38 Decr. Colomani liber I. cap. 30.
39 Decr. Colomani liber I. cap. 31.
40 Decr. Colomani liber I. cap. 51.

reason, Article 22 of Act of 1231, which renewed the Golden Bull of Hungary (1222) owing to 'false delegate judges' (*falsi pristaldi*), prohibited that a party should keep the delegate judge at his place for a period longer than one or two years.[41] Simultaneously with (and most probably owing to) the loss of public faith in the *pristaldus* and oral evidence, the requirement of written form in procedural law started to gain more ground. Article 22 of the above-mentioned Act of 1231 stipulated that the summons and testimonies of delegate judges (*citationes vel testimonia*) should be regarded as valid only when confirmed by the *testimonium* of the county bishop or chapter (or convent).[42]

The phrase analysed above is inseparable from the development and operation of *loca credibilia* (or *loci credibiles*), places of authentication. The activity of places of authentication covered the powers and scope of responsibilities of several bodies that operate today since it carried out notarial, investigatory, and lawyer's duties at the same time.[43] Once the *pristaldus* was no longer allowed to proceed in the case independently, the presence of the chapter or convent was required for the operation. On the basis of the *testimonium* of the ecclesiastical person appointed to proceed besides the delegate judge, the church institution (originally the cathedral chapter and collegiate chapter and then other orders of monks, so the Benedictine, the Premonstratensian and Johannitan convent) issued a charter on the *pristaldus* procedure; for example, in case of border disputes, borders were designated as follows: the delegate judge carried out the designation in the presence of the agent of the competent place of authentication, of which the place of authentication issued a charter.[44] Now the judge usually forwarded a request to the place of authentication, calling it to assist and requesting information on the measures taken; the agent of the place of authentication accompanying the delegate judge was present at the summons, the demonstration of evidence, and execution. The church body issued a charter with a seal affixed thereto on the relevant act of procedure, which recorded the name of the delegate judge too.[45]

Once the activity of the place of authentication had spread, the institution of delegate judge continued to exist in the king's man, *homo regius*, which meant that in the act of procedure the *homo regius*, *homo palatinalis* (in Transylvania, the so-called *homo voyvodae*) sent by the king (palatine) had to be present.[46] The *homo regius/palatinalis* reported on his measures taken in the case to the agent of the place of authentication appointed to act beside him.[47]

41 Komáromi 2007. 168.
42 Komáromi 2007. 168.
43 Kőfalvi, 2008. 12. skk.
44 Solymosi 2002. 527.
45 Solymosi 2002. 527, Juhász 1930. 261.
46 Juhász 1930. 261.
47 Komáromi 2007. 169.

In accordance with the regulations of Werbőczy's Tripartitum (*Tripartitum opus iuris consuetudinarii inclyti regni Hungariae*), entry in possession of goods (real estates), land inspection, the so-called warning, and other judicial measures had to be implemented with the *homo regius*/*homo palatinus* and with the assistance, *testimonium* of the competent place of authentication (chapter or convent) (the chapter of Fehérvár, Buda, and Bosnia and the convent of Fehérvár had national competence).[48] Concerning the status of the *homo regius* and the agent of the place of authentication, it is worth highlighting that the Tripartitum classifies the cases of violence committed against the members of the court and the persons that implemented execution as cases of treason.[49] The wording of the Tripartitum seems to reveal that the law separates two phases of execution from each other: the act of ordering execution and the acts of execution themselves, emphasizing that implementation of the execution is conditional upon *res iudicata*, i.e. judgment on condemnation having become legally binding; the separation of these two phases of execution should not be considered insignificant in the history of the legal institution of execution.

As a new institution, the independent adjudicative power of noble magistrates appeared in the 16th century. Legislative Act 40 of 1588 pronounced that noble magistrates may conduct execution independently in so-called 'clean debts' (which may be interpreted as undisputed claims or *res iudicata*) up to the amount of 20 forints (in case of appeal, the county court of justice passed the judgment-at-law).[50]

Legislative Act LXV of 1635 enacted during the reign of Ferdinand II is worth mentioning, the title of which indicates that concerning the rules of execution numerous contradictions and unlawful violence hindering the process of execution appeared: 'judgments adopted by a judge lawfully must be implemented by execution so that contrary orders and private power should not prevent them'. The legislative act – without formulating any particular measures – simply declares that judgments-at-law may not be prevented either by 'private power' or by the parties 'finding faults'.[51]

The cited legislative act apparently did not bring any solution to the problems occurred because in 1638 the legislative act on extending the cases of abuse of power describes a particular problem: in the course of execution, the estimation of the property subjected to execution is not carried out in accordance with its real value – i.e. pursuant to the provisions of the law it shall be carried out 'not on the grounds of the claimant's oath but on the basis of the sum conscientiously charged by the county judges'.[52] In this legislative act, further provisions can be

48 Tripartitum liber II. cap. 21.
49 Tripartitum pars I. tit. 14. § 13.
50 Act. XL of 1588.
51 Act LXV of 1635.
52 Act XXVII of 1638. Art. 2.

read: if the deputy-lieutenant (*vice-ispán*) is unable to cause to carry through the execution of the judgement-at-law, then the Lord-Lieutenant (*főispán*) shall arrange for it under penalty of loss of office.[53] So, this provision brought a new aspect in a certain sense in the system of institution of execution since eventually it delegated remedying unsuccessfulness of execution procedures at a lower level to the Lord-Lieutenant.

In order to enforce executions prevented by arbitrary measures, legislative Act XLIV of 1659 – entitled 'Bailiffs Who Straighten out Disturbed Execution of Lawful Judgments Will Be Appointed' – ordered and repeated that if deputy-lieutenants should be insufficient for that, then lord-lieutenants and, in case of their insufficiency, the palatine (*nádorispán*) and, in case of his incapacity, the judge royal (*országbíró*) should arrange for it.[54]

Legislative Act XXXI of 1681 has the following title, which indicates that the outlined issues were invariably unsolved: 'Punishment and Proceedings Shall Be Ordered against Persons Who Disturb and Do Not Allow Judicial Executions and Persons Who Recapture Goods Sequestrated by a Judge'.[55] On the one hand, it orders that 50 marks 'promptly executable compensation for life punishment' (i.e. a kind of on-site fine) shall be imposed on the persons who oppose or hinder the execution, and, on the other hand, it encumbers them with the costs of the force of arms employed by the deputy-lieutenant or Lord-Lieutenant ordering the execution and obliges them to reimburse the damage caused to the property subjected to execution.[56]

The abuses meant to be eliminated by law-making efforts several times in the course of the 17th century survived in the 18th century, which can be shown by purely listing various acts of the age. In order to strengthen the protection of creditors, legislative Act CVII of 1723 ('On Registration and Mortgaging (*Intabulatio*) to Be Performed in Counties and Towns') orders that records of so-called mortgage books shall be kept, which was later on confirmed and made more accurate by Legislative Act XXI of 1840 ('On Mortgaging Debt Claims in Order to Secure Priority'). Legislative Act XXXII of 1723 ('On Setting Deadlines, Appearance of Litigators, Shortness of Arguments, and Execution of Judgments') confirms the effect of the cited Legislative Act XXXI of 1659 with respect to the execution procedures.

The operation of the place of authentication (chapter or convent) was regulated, and thereby the efficiency of execution was meant to be strengthened by Legislative Act XXXIX of 1723 ('On Chapters and Convents and Their Office and the Personnel to Be Employed by Them'), which quite instructively contained the oath to be taken by persons of places of authentication, which is worth

53 Act XXVII of 1638. Art. 3.
54 Act XLIV of 1659.
55 Act XXXI of 1681.
56 Act XXXI of 1681. Art. 1.

quoting: '...I swear to the living God .... that in all executions and in every thing that pertains to my chapter's or convent's office and to the chapter's or convent's authentic evidence, without taking account of any person, that is to say of rich and poor, and by laying aside any begging, award, favour, affection, fear, hatred, and search for pleasure and by making them depart, in the duties to be fulfilled in the chapter or convent just as outside the chapter or convent, in the provinces I shall carry out loyal execution and report...'[57]

A similar purpose was set by Legislative Act XL of 1723 ('On Evidence of Chapters and Convents to Be Sent for Execution'), which intends to confirm competence of places of authentication in order to 'prevent certain inhabitants of the country from keeping to flee treacherously and harmfully to more remote chapters and convents'.[58]

Action was taken against hindrance of execution procedures also by three legislative acts put into force in 1729: Legislative Act XXXIII of 1729 ('On Repelling'), Legislative Act XXXIV of 1729 ('On Opposing to Judge's Sentences and Recapturing Goods Subjected by Judge to Execution'), and Legislative Act XLI of 1729 ('On the Action at Law in Progress at a Lord's Court'). Frequent and repeated regulation allows one to draw the conclusion that the elimination of abuses and defects must have been far from being effective.

From the second half of the 18th century, the significance of places of authentication highly decreased since required written form was more and more generally employed in the practice of counties, towns, and notaries public; owing to that – as pointed out by Tamás Kőfalvi, too –, places of authentication became bodies to keep charters safe and issue authentic copies of the documents kept safe by them.[59] Their significance in terms of law of execution terminated by the 19th century and Legislative Act XXXV of 1874 deprived them of their other functions too: 'places of authentication may continue to issue authentic office copy of the deeds under their care in the future; however, they shall be no longer authorized to issue and keep safe new authentic documents'.[60]

III. Setting up the System of the Organization of Judicial Officers in 1871

Legislative Act LI of 1871 on Judicial Officers (i.e. setting up the organization of judicial officers) was sanctified by the ruler on 16 December 1871 and was

57 Act XXXIX of 1723.
58 Act XL of 1723.
59 Kőfalvi 2008. 25.
60 Act XXXV of 1874. Art. 214.

promulgated in the House of Representatives on 20 December 1871 and in the Upper House on the day following it.[61]

In accordance with the provisions of the law, the Minister of Justice shall assign judicial officers in a 'necessary number' to the court of justices proceeding in first instance and district courts.[62] The law did not specify and did not detail it in the explanatory provisions what should be meant by the phrase 'necessary number'; therefore, most probably, this number was defined in terms of the demand identified by practice; in other words, by the requirement of proper and efficient performance of judicial officers' duties. This provision seems to correspond with the regulation of the law in effect, which allows the appointment of several bailiffs to the same seat or to the same district court.[63]

Appointment of judicial officers was made subject by the law to satisfying four conjunctive conditions that the applicant had to comply with.

Accordingly, the first condition was for the applicant to have turned 24[64] – i.e. legal age, which started at this age in accordance with the regulations of the period. This provision – although our effective law does not tie any legal consequences to age 24 with respect to capacity to act under the law –, purely in terms of the age limit, corresponds with the statutory provision, which stipulates that turning 24 is a prerequisite of becoming an independent judicial officer even today.[65]

The second condition set out in law was 'unimpeachable character'.[66] Logically, this can be connected with several categories and prerequisites of appointment applied today: on the one hand, with the declaration of having a criminal record,[67] criminal law liability by court by final order,[68] and with the category of being banned from practising any profession,[69] while, on the other hand, with the concept of being unworthy of public trust owing to way of life or behaviour.[70]

As a third condition, the law required that the person to be appointed must have right of disposal over his/her assets.[71] On the basis of our present concepts, this simply meant that the relevant person could not be subject to the scope of guardianship affecting (fully or partly limiting) capacity to act under the law or of supported decision-making.[72]

61 Kormos 2002. 167.
62 Act LI of 1871. Art. 1.
63 Act LIII of 1994. Art. 232. (2).
64 Act LI of 1871. Art. 2. a).
65 Act LIII of 1994. Art. 233. (1) c).
66 Act LI of 1871. Art. 2. a).
67 Act LIII of 1994. Art. 233. (2) a).
68 Act LIII of 1994. Art. 233. (2) b).
69 Act LIII of 1994. Art. 233. (2) d).
70 Act LIII of 1994. Art. 233. (2) g).
71 Act LI of 1871. Art. 2. a).
72 Act LIII of 1994. Art. 233. (2) i).

As the fourth condition, beyond lack of grounds for exclusion of general nature, the law stipulated a professional requirement for the appointment of judicial officers: to pass the bar examination with 'good success',[73] which in terms of today's provisions may be related to a law degree and bailiff's examination.[74] The examination prescribed by law, which consisted of written and oral parts, could be taken before courts of justice proceeding in first instance. The board of examiners was composed of a chairman and two judges as members.[75] The material of the oral examination was made up by the applicable law (i.e. Legislative Act LI of 1871) and the 'instruction to be issued on the grounds thereof', i.e. its 'implementing decree' as well as the provisions of other laws that were in harmony with execution, the bailiff's operation. The written examination meant the 'judgement of the applicant's capacity to formulate' – the law specifically pointed out that this is justified by the 'accounting and written' tasks connected with the bailiff's activity.[76] The law set forth the option of exemption from examination too. In accordance with that, no examination had to be taken by persons who 'have competencies determined in Section 6 and Section 7 of Act IV of 1869 on the Judge's Power'.[77] The relevant provisions of the law stipulating the conditions of appointment of judges, on the one hand, set forth personal criteria (turning 26, unimpeachable character, lack of bankruptcy proceedings and guardianship, etc.)[78] and, on the other hand, prescribed qualification in theory and practice.[79] By this, as appropriate, a law degree had to be meant, which could be certified, on the one hand, by a general practice lawyer's examination[80] and, on the other hand, by legal studies completed at a domestic or foreign institute and three years' legal practice following it (the first year had to be spent at a court and the two years following it at a court other than that or beside an attorney-at-law), which was concluded by a successful judge's examination.[81] In other words, applicants who had a certificate of attorney's or judge's (bar) examination were exempted from the judicial officer's examination.

With respect to judicial officers, the law stipulates other grounds, too, for exclusion (using today's term: grounds for incompatibility): in accordance with that, a judicial officer may not fulfil any office and may not pursue any economic activity (using the term employed by the law: any 'business') and any occupation that might hinder them in the 'exact and loyal performance' of their

73 Act LI of 1871. Art. 2. b).
74 Act LIII of 1994. Art. (1) e)–f).
75 Act LI of 1871. Art. 3.
76 Act LI of 1871. Art. 3.
77 Act LI of 1871. Art. 3.
78 Act IV of 1869. Art. 6. a)–d).
79 Act IV of 1869. Art. 6. e).
80 Act IV of 1869. Art. 7. (1).
81 Act IV of 1869. Art. 7. (2).

judicial officer's profession.[82] This provision of the law is clearly a prefiguration of today's incompatibility rules that regulate judicial officers' other wage-earning activity, stating that solely scientific, academic, artistic, literary, educator's, inventor's, and sports activities are compatible with it as wage-earning activity,[83] and several economic and legal activities are excluded (among others, executive officer's position, membership in a supervisory board undertaken in a business association, and any enterprise activity carried out personally or with unlimited liability;[84] real estate and loan mediation;[85] and membership in a board of arbitration[86]).

As appropriate, not in connection with the appointment of bailiffs but with regard to the particular case, the law formulated grounds for incompatibility too. Judicial officers may not proceed in cases in which they themselves, their spouse, fiancé (/fiancée), a person under their guardianship, a person under their wardship, their lineal kin or collateral kin up to second degree of consanguinity, and persons who are their relatives by marriage in first degree are interested. They were obliged to notify these grounds to the competent court within 24 hours from receipt of the demand.[87]

In accordance with the provisions of law, within 30 days from appointment, the judicial officer had to take an oath before the chairman of the court of justice the territory of which he was assigned to and was obliged to start his activity immediately after the administration of the oath.[88] (The law determined this 30 days' deadline under penalty of forfeiture of right and loss of office because if within 30 days the appointed bailiff did not take an oath and did not start his operation, then this failure was deemed as a resignation. The bailiff could exculpate himself from the failure only by certifying 'hindrances beyond control',[89] which formulation allows one to draw the conclusion that the cause had to reach the level of force majeure, i.e. inevitable act of God.) The provision applying to the deadline for taking an oath corresponds with the effective rule which stipulates that independent judicial officers must take an oath before the chairman of the department within one month after they were appointed.[90]

The law does not specifically address the question whether the judicial officer was independent or was an 'employee' (using this not too fortunate term, which, as we shall see, corresponded with the terminology of the statutory provision)

82 Act LI of 1871. Art. 5.
83 Act LIII of 1994. Art. 227. (1).
84 Act LIII of 1994. Art. 227. (2) a).
85 Act LIII of 1994. Art. 227. (2) b).
86 Act LIII of 1994. Art. 227. (2) c).
87 Act LI of 1871. Art. 17.
88 Act LI of 1871. Art. 5.
89 Act LI of 1871. Art. 5.
90 Act LIII of 1994. Art. 238. (1).

of the court/court of justice; however, the wording of specific provisions gives a clear answer to that. The passage on appointment reads: 'judicial officers shall be employed for all courts of justice of first instance and district courts',[91] and the provision applicable to the seal states that 'it contains the specification of the court where the relevant person is employed';[92] furthermore, the stipulation set out regarding completion of the act of execution reads: 'he shall submit his report to the court where he is employed'.[93] The wordings used with respect to right of supervision 'The right of direct supervision over judicial officers employed at the seat of the court of justice shall be due to the chairman of the court of justice' and concerning disciplinary powers 'it shall be exercised by the disciplinary court of first instance on the territory of which they are employed'[94] leave no doubt that the employer of judicial officers was the court/court of justice. In other words, assignment to court/court of justice did not cover purely competence – so, it was not by chance that the attribute 'independent' appears nowhere in the text of the law regarding judicial officers since they were not independent in this sense.

The law contains an interesting provision which states that judicial officers were obliged to live as habitual residents in the place where their appointment assigned them to.[95] The effective law, as a matter of fact, does not set forth any provision of this sense, but under the conditions/possibilities of infrastructure and transport of the period this was by all means reasonable in the 19th century.

Judicial officers had an official seal, which was granted to them by the chairman of the court of justice following administration of the oath and after payment of its price. The seal showed the arms of Hungary and the notice 'judicial officer' as legend as well as the specification of the court where the relevant bailiff belonged to.[96] Our effective law does not provide specifically for the issue of the seal but stipulates the necessity of affixing the seal at several points, as for example with regard to the foreclosure of movable properties kept safe in a strongbox[97] and attachment,[98] which clearly indicates judicial officers' right to independent use of the seal.

The law makes not only execution but also service of documents the task of judicial officers.[99] This might seem to be a significant difference compared to today's regulation, as it is underlined also by Erzsébet Kormos,[100] because in accordance with the effective Code of Civil Procedure service by bailiff may

91 Act LI of 1871. Art. 1.
92 Act LI of 1871. Art. 7.
93 Act LI of 1871. Art. 14.
94 Act. LI of 1871. Art. 20.
95 Act LI of 1871. Art. 11.
96 Act LI of 1871. Art. 7.
97 Act LIII of 1994. Art. 103/C. (1).
98 Act LIII of 1994. Art. 105. (1)–(2).
99 Act LI of 1871. Art. 12.
100 Kormos 2002. 186.

be carried out only in particular cases specifically named in law and upon the petition and at the expense of the concerned party.[101] Quite interestingly, the law distinguishes service at the seat of the court and of the judicial officer from service performed outside them – and this holds in case of service in actions at law and in extrajudicial proceedings too. Service at the seat shall be the task of the judicial officer, while outside of it only if service in another manner could be performed with greater cost or upon the request and at the expense of the concerned party.[102] In other words, in view of the latter case, the 19th-century regulation can be related to the effective statutory provision.

As a general rule, acts of execution were carried out by the judicial officer except for (to use the words of the law) 'more important cases', when it was the task of one of the members of the court.[103] It should be added that at the same time the law does not determine more accurately what such 'more important cases' might have been, i.e. most probably decision on this issue fell within the powers of the judge.

The costs of execution were determined by the judicial officer.[104] They were obliged to charge them in a record and notify them to the court, which carried out the assessment thereof.[105] (Similarly, the court adopted decisions also with respect to ownership and priority issues that arose in the course of the execution procedure.)[106]

After completion of the act of execution, the judicial officer was obliged to make a report to the court/court of justice within 48 hours and had to hand over to the court the amounts of money and movables seized during the execution if it was not possible to hand them over to the party requesting the execution or its authorized representative. In case of failure to fulfil this obligation, a penalty up to the amount of 100 forints and, in case of repeated default, loss of office could be imposed on them.[107]

Judicial officers were obliged to take measures 'promptly' with respect to both service and execution tasks; consequently, as it is emphasized by the law, they were not allowed to postpone them owing to failure to pay the fee in advance.[108] On the other hand, the law allows an exception to this general rule – on the basis of the seat. If the judicial officer had to carry out the relevant execution or service task outside his seat, then, with respect to his per diem allowance and travel

101 Act CXXX of 2016. Art. 141.
102 Act LI of 1871. Art. 13.
103 Act LI of 1871. Art. 14.
104 Kormos 2002. 186.
105 Act LI of 1871. Art. 14.
106 Act LI of 1871. Art. 14.
107 Act LI of 1871. Art. 14.
108 Act LI of 1871. Art. 15.

expenses,[109] he was entitled to claim payment of the allowance and the expense in advance.[110] (The judicial officer was obliged to give a receipt of the amount paid either as a fee or as advance by the party requesting the execution.)[111]

The law regulated the right of supervision over judicial officers as follows. The right of supervision over judicial officers operating at the seat of the court of justice was exercised by the chairman of the court of justice and over judicial officers operating beside district courts by the district judge, who was obliged to report to the chairman of the court of justice. The chairman of the court of justice and the district judges verified the judicial officers' official proceedings, were obliged to examine the records taken and official documents made by them, and obtain information about exact and lawful fulfilment of their tasks and possible delays and their causes. The investigation had to be carried out at least on a quarterly basis.[112] The task of the chairman of the court of justice and the district judge, however, covered not only the revision of the judicial officer. If a judicial officer resigned, died, was transferred to another position, was suspended, or moved out of his office, he was obliged to hand over his seal, book, and all official documents to the chairman of the court of justice or the district judge – the latter forwarded them to the chairman of the court of justice within 24 hours –, and they were obliged to enter the fact and date of receipt thereof under the last current number of the bailiff's office book and sign it.[113]

The scope of the act on the judge's liability – i.e. Legislative Act VIII of 1871 on the Liability of Judges and Court Officials – was extended to judicial officers too.[114] The right of supervision over judicial officers was exercised by the disciplinary court of the court of justice of first instance on the territory of which they operated; the disciplinary penalty that could be imposed upon them was maximized in 300 forints by the law.[115]

Judicial officers were entitled to procedural fee, per diem allowance, and travel expense;[116] the latter two fees had to be paid in advance by the party requesting the execution or by the person in whose interest the proceedings were ordered by the court.[117] Judicial officers were bound by obligation to settle accounts with respect to the advance received against a receipt[118] and by obligation to return the remaining amount.[119] The law sets forth procedural fees in the following manner: with respect

109 Act LI of 1871. Art. 21. b)–c).
110 Act LI of 1871. Art. 15.
111 Act LI of 1871. Art. 15.
112 Act LI of 1871. Art. 18.
113 Act LI of 1871. Art. 19.
114 Kormos 2002. 186.
115 Act LI of 1871. Art. 20.
116 Act LI of 1871. Art. 21. a)–c).
117 Act LI of 1871. Art. 22.
118 Act LI of 1871. Art. 15.
119 Act LI of 1871. Art. 23.

to service, the procedural fee for service of 'first order adopted on the claim' was 30 pennies (*krajcár*) and 20 pennies in the case of service of further orders. With respect to acts of execution not exceeding one day (foreclosure, list of items, auction, or making an inventory): if the estimated value of the seized/listed assets was below 300 forints, the procedural fee was 1; in the case of assets with an estimated value from 300 to 1,000 forints, it was 2; in the case of assets with estimated value over 1,000 forints, it was 3 forints. If the duration of the act of execution is more than one day, then the fee will rise per half a day proportionately.[120] If the act of execution is carried out at the seat of the court, the judicial officer shall be entitled – over the procedural fee – to 2 forints per diem allowance.[121] With respect to travel expenses, the law orders application of court administration rules.[122]

The schedule of fees precisely set forth by the law was presumably not always applied in reality, as it is shown by the speech of Kornél Emmer too, which is quoted also by István Vida[123] and Erzsébet Kormos:[124]

> There were endless complaints raised against the, unfortunately, quite human carriers and manifestations of the lawmaker's idea resting in the institution… righteously or unlawfully the institution had to be considered almost as a national calamity by the general public searching for rights ... Inertness, ignorance, proneness to hack writing, jacking up prices – these were the main columns under which complaints against bailiffs received at the ministry of justice and the supervisory authority could be registered, which were, however, accompanied by more serious items.[125]

Conclusions

This paper examined the process of the development of the organization system of Hungarian judicial execution, the historical development of the institution system up to its first overall regulation in law in 1871.

In the course of the historical analysis, we found and established the following:

– the prefiguration of civil law proceedings can be found in Roman law in view of the fact that the development of law in the period of the Roman Empire worked out the uniform legal procedure conducted before an official judge, based on required written form and providing the option of ordinary and extraordinary legal remedy;

120 Act LI of 1871. Art. 24.
121 Act LI of 1871. Art. 25.
122 Act LI of 1871. Art. 26.
123 Vida 1978. 83.
124 Koromos 2002. 194.
125 Emmer 1911. 396–397.

– on the basis of the above, we could establish that the judicial officer (*executor*) as an independent institution appeared for the first time also in Rome in the law of the period of the Roman Empire – i.e. the roots of this institution (just as in the case of numerous substantive and procedural institutions) should be searched in Roman law;

– the first stage of mediaeval Hungarian legal development in execution law was represented by the institution of the *pristaldus* (delegate judge – 'poroszló'), who, in addition to their numerous other functions, carried out the task of execution of judgments independently too;

– once public trust in delegate judges had weakened, places of authentication (*loca credibilia*) evolved, which not only fulfilled activities that correspond to today's notarial activities but also supervised the work of the *pristaldus*; in other words, from the 13th century, delegate judges were allowed to implement acts of execution only jointly with the agent of the place of authentication;

– by the 18th century, the significance of places of authentication decreased and then by the 19th century terminated when in 1871 (following regulation of judicial execution in 1869) the order of judicial officers evolved – while analysing this regulation in the mirror of today's laws, we could establish that the regulation applying to the organization of judicial officers of the period survives even today with respect to several points and that 19th-century law-making applied several solutions that can be considered up-to-date even in the early 21st century.

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