THESES OF Ph.D. DISSERTATION

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HUNGARIAN CITIZENSHIP LAW IN THE 19th CENTURY

(THE ANTECEDENTS, DOGMATIC BASIS AND PRACTICE
OF THE FIRST CITIZENSHIP LAW [ACT L OF 1879]. 1880-1890)

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The goals of the dissertation and the brief summary of the research project

The first statutory regulations concerning citizenship law appeared in Hungary in the 19th century. The goal of my dissertation is to describe the historical antecedents of Act L of 1879, paying special attention to the bills and the proposals that played a role in the drafting of the act. In the course of the research and the processing of the materials, I considered those legal institutions related to the concept of citizenship in the feudal period (ceremonial and implied naturalisation) which continued in effect and influenced the process of obtaining citizenship until 1879, and some elements of which were even taken over into the system of naturalisation used in the bourgeois period.

The citizenship law of the times cannot be described without an analysis also of certain fundamental dogmatic questions. Therefore, I had to also deal with the concept of citizenship, its status in terms of the branches of law, as well as its system of basic principles, paying attention also to the scope of citizenship law, the content of the legal relationship of citizenship, and last but not least, the theoretical examination of dual citizenship. The dogmatic approach to the concept of citizenship may clarify a number of issues that constituted the subject of the political and public law debates in the age of dualism.

The examination of the legal practice, which is often unjustly neglected in the course of research in the field of constitutional history, may serve as evidence for some theorems. In my dissertation I aim to introduce not only the history of the creation of the act and the relevant secondary literature but, with the help of some legal cases, I also intend to illustrate the system of citizenship applied in the practice of the second half of the 19th century. It is only such combined examination of the practice and the theory that can provide a comprehensive image of the actual implementation of the act and the practical process of its enforcement.

The goal of my dissertation is to provide an overview of the emergence of 19th-century citizenship law, to explore the theoretical, public law and political background of the reform efforts, as well as the problems emerging in the course of the execution of the law, which shed light on this significant areas of the public law of the dualistic era, also often fraught with dogmatic debates.

In the course of setting up the research hypothesis, a question that emerged concerned the antecedents of the first citizenship law, which had an impact on the subsequent drafting of
its provisions. How and when did the concept of citizenship first appear in Hungarian public law? When did the status of citizenship law change with respect to which branch of law it belongs to? What were the most important basic principles of citizenship law? How did the personal, territorial and temporal scope of citizenship law change? The issue of dual citizenship also raised certain public law dilemmas concerning the Austrian-Hungarian, and Croatian citizenship, as well as that of the royal family.

The dissertation provides an analysis of the public law reform of the dualistic era, one that was also of political significance, through the discussion of the antecedents, the dogmatic system and the practice of Act L of 1879.
II
The research methods used

I intend to present the 19th-century history of the development of citizenship law by way of a combined examination of the theory and the practice. By way of the exegesis of the legal cases, I place the emphasis on answering the questions arising in the course of the practical implementation of citizenship law, which is a rather neglected area of public law.

A significant amount of archival materials are held in the Section of the Ministry of Interior of the Hungarian National Archives, which had never been systematically processed before. Consequently, the temporal (and, of course, thereby also the physical) scope of the sources to be analysed for the purpose of the dissertation had to be defined. The examination of the ten-year period indicated in the title (1880-1890) proved sufficient to introduce the system of citizenship law, and it also provided an opportunity to analyse the subsequent changes (such as the institution of absence, the acquisition and loss of citizenship status) as well. The majority of the sources related to the creation of the acts discussed in the dissertation (Act XVIII of 1871, Act L of 1879. Act IV of 1886 and Act XXI of 1886) can also be found among the archival materials, with the exception of the materials from the Ministry of Justice that were destroyed, as well as those documents from the Ministry of Interior that were discarded since.

Documents of cases concerning citizenship and municipal residential status can be found among the general archival materials of the Ministry of Interior. It was the task of the first officials of the municipalities (the deputy lieutenant or the mayor) to submit the applications and their annexes, which were returned after processing to the counties or the municipal towns. It follows from the above that the files of the Ministry of Interior include the decisions of the Ministry and the official documentation generated in the course of the administration of these cases.

The detailed examination and analysis of the cases provided an insight into several dogmatic issues. These include the use of the concept of citizenship, the question of territorial, temporal and personal scope, the emergence and the elimination of dual citizenship, the primary enforcement of the principle of *ius sanguinis* in addition to the subsidiary application of the principle of *ius soli*. The problem of the content of the relationship of citizenship, including in particular the issue related to the exercise of political rights, also appeared.

The detailed analysis of the archival materials of the Parliament could not be omitted either, with special attention to the ceremonious naturalisation processes, as well as the debate
of the first citizenship law and other related provisions of law, which yielded further new, never previously published research findings. I followed the parliamentary debate of the bills linked to the legal institutions examined in the dissertation. In addition to the journals of both houses of the Parliament, researching and processing other written documentations also proved indispensable. The collection of documents in the Library of the Hungarian Parliament contains the bill of 1848, in which the proposed changes in handwriting can also be found. From among the documents of the Parliament, it was not only the sources related to the time period identified in the title of the dissertation, but other documents concerning issues of public law that also had to be examined.

Apart from a few short pieces, the articles published in contemporary newspapers (Pesti Hírlap, Pester Lloyd, Pesti Napló, A Hon, Egyetértés, Magyar Néplap) mainly included short reports on the sessions of parliament. The draft bill of 1844 cannot be found among the materials of the Parliament; this was discussed by László Szalay on the pages of the newspaper Pesti Hírlap. Longer articles, also often informed by political bias, were published on the institution of absence, due to Lajos Kossuth’s loss of citizenship.

The analysis of certain acts, decisions, decrees and administrative court rulings that were important from the point of view of the topics of the dissertation could not be omitted either. The preliminary rulings of one of the most significant courts of special jurisdiction served as guidelines, and its rulings were also taken into consideration in practice.

In addition to the analysis of the primary sources, the study and use of earlier scholarship in the field was also very important. The work of the author was rendered more difficult by the fact that the topic of the dissertation was less researched. In their monographs and textbooks, historians and scholars of 19th-century constitutional law (e.g. Ödön Polner, Gyöző Concha, Károly Kmety, Gejza Ferdinándy, Ferenc Ferenczy, Veronika Bajáki, Artur Balogh, Károly Besnyő, Andor Csizmadia, Árpád Királyfi, Lajos Szamel) primarily relied on a mere description of the provisions of the act, and few ventured into a dogmatic analysis of the examination of the practical execution. In the present doctoral dissertation I primarily discussed the cases of the Ministry of Interior that can be found in the Hungarian National Archives, in consequence of which the 19th-century system of norms of Hungarian citizenship law can be placed in a new light.

From among legal historians, it was Károly Kisteleki who dealt with the history of citizenship law most extensively. The majority of legal historians (e.g. István Kajtár, Barna Mezey, Lajos Rác, István Stipta, Mária Homoki-Nagy, József Ruszoly, Mihály Révész T., László Heka) mainly discussed the constitutional and legal historical institutions of the age.
examined in the dissertation. We should not forget about articles and monographs of scholars of contemporary constitutional law (e.g. Klára Fürész, Barnabás Kiss, Judit Tóth, Antal Ádám, Barnabás Hajas, József Petrétei, Balázs Schanda, János Sári) either, since certain chapters of the dissertation (e.g. those on the concept of citizenship, on citizenship as a legal relationship and the basic principles of citizenship) relied on the historical analyses provided by these authors.

The international comparative aspect of the dissertation is provided by the analysis of the literature published in this field aboard. I paid special attention to the discussion of the results of the research of English, American, German and Austrian scholars (e.g. Ludwig Adamovich, Edmund Bernatzik, Wilhelm Brauneder, Rogers Brubaker, Andreas Fahrmeir, Georg Jellinek, Emanuel Milner) deemed relevant from the perspective of constitutional history. Several Hungarian constitutional historians (e.g. István Szabó, Lajos Rácz, Mihály Révész T., Gábor Máthé, Barna Mezey, László Heka, Katalin Nagyné Szegvári) also dealt with the period examined. On the other hand, I found it indispensable to also discuss the international treaties concluded by the Austro-Hungarian Monarchy, as well as the related literature (e.g. Prentiss Webster).

I deemed it important that I should approach and answer the individual dogmatic questions via the analysis of legal cases, thus moving beyond the often schematic descriptive practice of historical scholarship.
III

Summary of the results and contributions to scholarship

The bourgeois transformation created the conditions subsequent to which the demand for statutory regulation of citizenship could emerge. The codification of citizenship law was helped by the appearance of the idea of sovereignty and of the principle of equality before the law. The development of a bourgeois state organisation striving to rid itself from the vestiges of feudalism made the reform of citizenship law, as one of the elements of state sovereignty, unavoidable.

In the first half of the 19th century, citizenship could only be acquired by way of either ceremonial or implied naturalisation. In my dissertation, I discuss the rules of naturalisation in effect in the feudal period, along with the cases of ceremonial naturalisation before the 1839/1840 session of Parliament. József Hajnóczy, constitutional scholar, had previously addressed the issue of citizenship, since the uniform regulation of citizenship law in the larger framework of public law was a major requirement of society and public law, especially because of the institution of implied naturalisation, which was based on local ordinances.

The passing of the draft bill of 1844 would have been a step forward from the earlier system of naturalisation, which mainly incorporated elements of customary law. The significance of the bill is also shown in the fact that the next draft bill also reached back and built on it as a foundation. Due to the revolutionary pace of the bourgeois transformation, however, there was no time left for passing the bill of 1848, in which it would have been carefully defined who can be regarded as a Hungarian citizen and what are the conditions under which one can obtain or lose Hungarian citizenship.

Subsequently, in the age of neo-absolutism, Austrian law dominated also in the field of public law. The Austrian Civil Code provided rules for the acquisition and loss of citizenship. Owing to the Austrian rules of public administration, the notion of the introduction of municipal residential status was not without antecedents in Hungary.

Between 1848 and 1867, Hungarian citizenship could only be obtained by way of simple naturalisation. It was in this historical period that the notion of imperial citizenship first emerged. After the restoration of legal continuity, it was the Hungarian constitutional rules of public law that were enforced also in constitutional law. On the basis of Act XII of 1867, citizenship was not an issue under joint jurisdiction, but it was one of the autonomous powers of the Hungarian state.
The draft bill submitted by Boldizsár Horvát was basically built on the provisions of the bills of 1844 and 1848. The draft bill, however, was never put on debate by Parliament, as there were several other issues of larger importance from the point of view of the reconstruction of the state (e.g. justice, public administration) that had to be regulated by legislation before.

The bourgeois transformation played a major role not only in the extension of the principle of equality before the law, but also in changing the meaning and the content of the concept of citizenship. Citizenship was an expression of the legal relationship existing under public law between a state and its citizen. In the public law of feudalism, this concept did not exist. As a result of this process, citizenship law also became a part of public law in Hungary, despite the fact that certain elements of private law continued to play a role in case of both the acquisition and the loss of citizenship. In Hungary, in the system of citizenship law, two fundamental principles were enforced. It was primarily the principle of *ius sanguinis* that dominated, which was also supported by the legal titles indicated in the materials on citizenship. Taking as its basis the earlier practice, the law only allowed the principle of *ius soli* to take effect in a supplementary way.

A fundamental dogmatic issue in citizenship law was the question of scope. The scope of citizenship as a legal relationship must be separated from the scope of the citizenship law. Beside the consideration of the personal and the temporal scopes in effect at the time, it was the interpretation of the territorial scope that posed the biggest problem in the dissertation. As far as the personal scope is concerned, it had to be precisely clarified who would qualify as a Hungarian citizen, and who would fall under the scope of power of the state. In the documents issued in cases of citizenship, they precisely indicated the names of those to whom the decision of the minister of the interior applied was applicable. The first citizenship law also defined the date of entry into effect. It did contain, however, certain provisions (e.g. the institution of absence) which only entered into effect or was withdrawn from it after the elapse of a certain length of time. With respect to the definition of the territory of the Hungarian state, the “countries of the Hungarian crown” had to be taken into consideration. The evaluation of the status of Bosnia-Herzegovina (which indirectly also involved the issue of citizenship) was not clear-cut under international law either.

The examination of the content of the relationship of citizenship, including in particular the issue related to the exercise of political rights (e.g. suffrage right, the right of virility), was another important task. Members of Parliament formed their opinions regarding dual citizenship in accordance with the political system of dual monarchy. As a general
principle it was accepted that the emergence of dual citizenship should be prevented by any means possible, in which effort a major tool was the institution of dismissal from citizenship. The Austro-Hungarian Monarchy had no joint citizenship. The interpretation of the original text of the draft bill would have facilitated the transformation of the “real union” between Austria and Hungary into an even closer alliance by way of creating joint citizenship, which would have involved a further narrowing down of state sovereignty. There was no Croatian citizenship, since citizenship was “one and the same” in the countries of the Hungarian crown. The problem was temporarily solved in Bosnia-Herzegovina by way of creating regulations pertaining to provincial residential status.

Yet another question emerging was the citizenship of the Hungarian royal family. Our first citizenship law made no mention of the Hungarian citizenship of the members of the royal family, which could have been deduced from and dogmatically justified by the Pragmatica Sanctio and other provisions of law (e.g. Act VII of 1885).

Citizenship law was closely linked to the settlement of municipal status (Act XVIII of 1871, Act XXII of 1886), since a precondition of obtaining citizenship was the acquisition or the prospect of residential status (domicile). Special attention should be given to the issue of Croatian residential status, which was considered an issue of autonomy under Act XXX of 1868, and therefore, the same citizenship could be acquired by way of two legal institutions entitled by way of different content. On the basis of the archival documents of the Ministry of Interior it can be established that the clarification of municipal residential status was the biggest problem when it came to proving Hungarian citizenship.

On the basis of the first citizenship law, citizenship could be primarily obtained by way of descendancy. The law contained provisions for the naturalisation of aliens by way of three means. Two of these, the simple and the ceremonial types of naturalisation were specifically mentioned by the law. On the basis of the analysis of the legal practice, however, it can be seen that there was also a third, a tacit or implied naturalisation procedure, which meant the maintenance of citizenship within the deadline specified by the law.

The Hungarian rules applicable to simple naturalisation satisfied the requirements of the bourgeois state. In case of ceremonious naturalisation, which took place by way of the bestowal of a royal diploma, it is not difficult to identify the earlier, partly surviving feudal institution of ceremonial naturalisation. This latter case of naturalisation raises several questions under public law, which concerned the royal prerogative and the centuries-old powers of legislation. The acquisition of citizenship did not involve ennoblement or the automatic attainment of the right to participate in legislation.
Owing to the nationality policy of the dual empire, a fierce debate unfolded concerning the powers of the “bán” of Croatia. As a consequence of the Croatian-Hungarian compromise (Act XXX of 1868), the application of citizenship law belonged in the scope of autonomous powers, which meant in practice that the bán was given powers identical with those of the interior minister of Hungary; this did not break up the unity of the concept of citizenship, since it was only the execution that was left to the bán.

Due to the large-scale repatriation of people, it was necessary to regulate the re-naturalisation of the families who immigrated from the country generations before.

In addition to the cases mentioned above, Hungarian citizenship could also be obtained by way of legitimation, since illegitimate children followed the legal status of their mother. *Legitimatio* could take place by way of the subsequent marriage of the parents (*per subsequens matrimonium*) or by way of royal “mercy” (*per rescriptum principis*). From the area of private law, mention should be made of the institution of marriage, since in case a woman of foreign citizenship married a Hungarian man, she automatically obtained Hungarian citizenship.

Act L of 1879 provides an exhaustive list of the cases of the loss of Hungarian citizenship. In the public law sense, the citizenship as a legal relationship was not indissoluble, and consequently, the rights related to it could also be terminated. Most of the citizenship cases involved dismissal, which presupposed a coincidence of the will of the individual and of the state. On the basis of the practice we can say that the biggest problem was the assessment of whether the defence obligations have been discharged. If the rules applicable to form were observed, a petition could be submitted to the interior minister for granting a permit for dismissal. Persons could lose their Hungarian citizenship by way of a ruling of an authority if they failed to return to the territory of Hungary after being called upon to do so.

From among the cases of the loss of citizenship, the largest public law debates concerned the institution of absence, since it was also used for political purposes, as well demonstrated by the example of Lajos Kossuth, who was deprived of his citizenship under this legal title. The automatic loss of citizenship by way of long-term absence was clearly aimed against politicians in emigration. On the basis of a minutes found among materials of the Council of Ministers, we can establish that the institution of absence – and especially with respect to the citizenship of Lajos Kossuth – created a major political crisis situation, which was not even alleviated by the fact that Kálmán Tisza proposed an amendment of the citizenship law and that obtaining honorary citizenship should be regarded as the maintenance of Hungarian citizenship. The significance of the political debate is shown by the fact that Kálmán Tisza, after losing his stability in Parliament, was forced to resign.
Legitimation and marriage were not only means of obtaining citizenship, but also means of losing it. Adoption was not listed among cases for the acquisition and the loss of citizenship in the act, but it did make the process of obtaining citizenship easier, since it was regarded as a favourable circumstance for the adoptee. International treaties also served as important sources of citizenship law. In the period examined, the Austro-Hungarian Monarchy concluded treaties with the USA, Switzerland and Serbia, the significance of which was demonstrated in practice. Exceptions from under the effect of the provisions of the citizenship law were only available in case of states with which the Monarchy had an international treaty in effect. On the basis of reciprocity, they clearly defined the scope of such exemptions, which fundamentally referred to the rights and obligations involving the content of citizenship as a legal relationship. The significance of international treaties was inherent in the fact that the debates arising from the legal relationship of citizenship could be settled faster and with fewer conflicts.

Despite its faults, the law was unique in the field of Hungarian citizenship law, since it provided a systematic framework for the conditions of the acquisition and the loss of citizenship. The law contained detailed provisions concerning how citizenship could be established and terminated in the formal and substantial senses of the word. The aim of the law was to make the system clearer and more transparent.

The citizenship law can be regarded as a lasting piece of legislation, since it remained in effect, with minor amendments, until 1948. The first among the amendments of the law was Act IV of 1886 on the re-naturalisation of the people in mass-repatriation, which was followed by Act XVII of 1922 on the settlement of the specific legal relationships concerning citizenship emerging as a result of the peace treaty of Trianon. Further major amendments were made in Act XIII of 1939 concerning the automatic loss of citizenship.

I intend to discuss the partial results of my research in scholarly publications and at conferences. I also have plans for a monograph discussing the topic of Hungarian citizenship law in the whole of the 19th century.

The possibilities for the use of the dissertation are inherent in the fact that citizenship law, with special attention to the question of dual citizenship, is also a topical issue today. The dissertation provides a general overview of the system of citizenship in the given period not only for legal scholars and historians, but can also be useful for those interested in status rights and researchers in the field of contemporary law.

I can also put the results of the research to use in the framework of university education, especially by way of elective courses offered on this topic.
IV

List of publications related to the subject of the dissertation


3. The antecedents of the introduction of municipal authorities pursuant to Act XLII of 1870 in the royal free borough of Debrecen. Collega, 2002. p. 64-68.


18. The Dismissal and the Hungarian Citizenship in Accordance with Act 50 of 1879. Timisoara, International Conference of PhD Students and Legal Experts, Conference Paper (accepted for publication, 2009).