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THE JURY IN HUNGARY

When areas outside the British islands – the homeland of the jury – are considered,¹ in German territories a 12-member court was first organized in modern history by *Constitutio Criminalis Carolina* (1532), then the constitutional reform reached the Holy Roman Empire of the German Nation through the mediation of the Rhineland principalities upon the effect of the French Revolution (e.g. the principalities of Kurhessen, Württemberg, Baden, Braunschweig, Saxe-Weimar, Meiningen, Hannover, Hessen, Nassau, and also Bavaria and Prussia, and even Austria [from 1850] for some time).² In France the jury, subject to much subsequent ordeal and regulation, was introduced in 1791, and it was later adopted both by the *Code d'Instruction Criminelle* (1808) and by the *Code Pénal* (1810), and then it was passed on to Belgium at the time of its foundation (1830).³ In Europe the golden age of the jury was in the second part of the 19th century, it spread to almost each 'civilized state' with the exception of Spain and the Netherlands – even to Russia.⁴ It is not surprising that Hungary was also affected by this development.

The idea of the introduction of the modern jury in Hungary was raised in the proposals of the thinkers only towards the end of the Reform Era. Although

¹ Compare with: Turner, *Ralph V.*: The Origins of the Medieval English Jury: Frankish, English or Scandinavian? *The Journal of Brithis Studies*. May 1968. Vol 7. No 2. pp. 2–6.

² *Réső Ensel, Sándor*: Az esküdtszék Magyarországon. [Jury in Hungary] Pest, 1867. pp. 127–128.

³ *Donovan, James M.*: Magistrates and Juries in France, 1791–1952. *French Historical Studies*. 1999. Vol 22. No 3. pp. 379–420., *Ruszoly, József*: Európa alkotmánytörténete. Előadások és tanulmányok középkori és újkori intézményekről. [The Constitutional History of Europe. Lectures and Essays on Institutions of the Middle Age and the Modern Age] Budapest, 2005. pp. 270–272., pp. 352–355.

⁴ *Kucherov, Samuel*: The Jury as a Part of the Russian Judicial Reform of 1864. *American Slavic and East European Review*. April 1950. Vol 9. No 2. pp. 77–90.

it was mentioned by István Széchenyi in *Stádium* (1833, *Stadium*), Ferenc Kölcsey also argued for a court organization adhering to the feudal nature – Hungarian personalities with decisive influence both in national and county political life supported the further maintenance of the traditional court organization at the beginning of the 1830s.⁵ The change was brought about by the Twelve Points of Szatmár in 1841, in which Antal Somogyi, Ferenc Darvay and others demanded the introduction of trial by indictment and the jury, in the case of the latter – similarly to the English model – both the grand jury and the trial (‘petit’) jury, and the establishment of a court of cassation was also propagated.⁶ Following this, the transformation of the court system modelled partly on the Anglo-Saxon example was encountered in an increasing number of delegate instructions, until Bertalan Szemere, in his work entitled *Utazás külföldön* (1840, *Journey Abroad*), openly acknowledged the superiority of the French jury procedure over the Hungarian jurisdictional organization.⁷ Lajos Kossuth supported the proposition in the columns of *Pesti Hírlap* (*Pest Print*), which declared, in line with the aim of achieving the freedom of the press, the civilization-establishing power of the jury and the free press in an ever-wider range of the intellectuals (e.g. Ferenc Pulszky, Dániel Vay, Lajos Kuthi, and even Leibniz in his pamphlet entitled *Ungarn im Jahre 1841*⁸).

In the national board appointed by Act V of 1840 the adaptation of the jury system was rejected notwithstanding the arguments made by Ferenc Deák, István Bezerédj, József Eötvös, Gábor Klauzál and Ferenc Pulszky, but the members standing up for it attached a dissent to the official standpoint. A short time later, on 28th November 1843, the debate on the code of criminal procedure was started at the district session of the national assembly (*Országgyűlés*), during which the introduction of the jury system irrespective of the feudal differences was first adjourned, then voted for by the counties on 27th January 1844, with a proportion of votes of 28:22.⁹ However the lords rejected the entire bill.

The *Ellenzéki nyilatkozat* (1847, *Manifesto of the Opposition Statement*) did not support the jury system openly but the desire for the jury as one of the

⁵ *Both, Ödön*: Küzdelem az esküdtbíráskodás bevezetéséért Magyarországon a reformkorban és az 1848. április 29-i esküdtzéki rendelet. [Struggle for Jury Jurisdiction in Hungary in the Reform Period...] *Acta Juridica et Politica Szeged*. Tomus VII. Fasciculus 1. Szeged, 1960. pp. 5–7.

⁶ *Rácz, István*: Az 1841. évi szatmári 12 pont. [Twelve Points of Szatmár in 1841] *Acta Universitatis Debreceniensis de Ludovico Kossuth Nominata*. Tomus II. Budapest, 1955. Read point No. 11 par No. 3! pp. 122–123.

⁷ *Szemere, Bertalan*: Utazás külföldön. [Journey Abroad] Budapest, 1983. pp. 160–161.

⁸ *Tarnai, János*: A sajtótörvény keletkezésének története. [The History of the Formation of Press Act of 1848] *Jogtudományi Közöny*. 31 May 1912. (No 22.) p. 188.

⁹ *Both* 1960, pp. 9–13., *Stipta, István*: A magyar bírósági rendszer története. [The History of the Hungarian Court System] 2nd addition. Debrecen, 1998. pp. 133–134.

then ideas of Europeanism could be observed in the delegate instructions issued by several counties on the eve of the last feudal national assembly. As a matter of fact, the issue was neglected by the address proposal of March 1848, too, but Item 8 of the Twelve Points of March already included the demand to this effect *expressis verbis* ('juries and representation on an equal basis'). Article 17 of the sanctioned Act XVIII of 1848 (Press Act) already declared that 'Press offences shall be judged publicly by a jury.'

On 19th April 1848, Ferenc Deák Minister of Justice – as drawn up by rapporteur István Békey – issued the decree regulating the jury procedure on the basis of the draft of the code of criminal procedure of 1843, which was the first 'codified' and *officially applied* legal matter of criminal procedural law in the bourgeois era of the Hungarian history.¹⁰ Based on this decree – as far as we know – one complete jury procedure was held while another case reached only the grand jury; both cases occurred in Pozsony (Bratislava).¹¹

The issue of reactualizing the juries was raised immediately upon the reorganization of the courts at the time of the Compromise between Austria and Hungary: the jury had to be fitted into the structure replacing the juridical system of neoabsolutism after 1867 – for lack of experience, according to the social-political considerations of the time.

Károly Pfendeszak expounded his views about the issue of organization simultaneously with the publication of *Jogtudományi Közlöny (Legal Gazette)*; he outlined the guarantee principles on which the *corpus* was to be founded: according to these, jurisdiction had to be separated from public administration and one had to guarantee the judges' independence both as regards unremovability and exemption from instruction, as well as publicity and orality, the freedom of the press, and he proposed 'in terms of criminal cases to vest the juries with judgement of guilt' with the simultaneous establishment of a well-trained faculty of lawyers.¹²

A question to be decided in the first place was what the nature of the institution of the jury should be. Should it be a legal, political or judicial means? Starting from these questions, *in a wider sense* the jury meant a complex institution which embodied the opposite of the exercise of jurisdiction based on the prince or on the systematized tribunal officials of the state. *In a stricter sense*,

¹⁰ The formation and the text of the decree in 1848 are analysed by *Both* 1960, pp. 19–40.

¹¹ *Sarlós, Béla*: Az 1848/49-es forradalom és szabadságharc büntetőjoga. [The Criminal Law of the Revolution and the War of Independence in 1848/49] Budapest, 1959. p. 45., *Both, Ödön*: Sarlós Béla: Az 1848/49-es forradalom és szabadságharc büntetőjoga. (Recenzió) [Béla Sarlós: The Criminal Law of the Revolution and the War of Independence in 1848/49. Review.] *Századok*. 1963. pp. 261–264.; *Résző* 1867, p. XII.

¹² *Pfendeszak, Károly*: A bíróságok szervezéséről. [About the Organization of the Courts] *Jogtudományi Közlöny*. 12 March 1866. (No 11.) pp. 169–171.

however, it was a legal institution of procedural law and a means through which the persons selected made a decision concerning the issues of fact and law of the case under the chairmanship and leadership of trained judges.¹³ In the following the juries are going to be examined as *legal instruments* instead of being considered primarily political institutions.

When planning the organization, it seemed expedient to take the European experience into consideration, too, in addition to the Hungarian solutions from the years of 1843 and 1848, as juries were working not only in England but also in Portugal, France, Belgium, in the German territories of the Rhine, in Prussia, Geneva and other Swiss cantons, in Malta, Sweden and Norway. Scholars of the time were familiar with and propagated mainly the English, French and German models – the former one as ‘faultless’, the latter ones as ‘faulty adaptations’.

The starting point for science also was that the jury should not be a purely political institution as it was in France, where *mairs* and *prefects* gained substantial influence in compiling the jurymen’s lists and where the secrecy of vote and the determination of voting proportions also changed whimsically between 1791 and 1852.¹⁴ Furthermore, folk elements should not be excluded from the organization and the influence of government organs on compiling the lists should not be too considerable.

Norm formation was repeatedly started in 1867 in view of the professional debates and discussions, based primarily on the draft of year 1843 and on the decree of year 1848. The legislative competence of the first governments of dualism was recognized by the national assembly by means of statutory authorizations even for subjects typically falling into the range of statutory regulations, at the same time demanding that the solution applied should be only provisional; however – like in this case – enactment failed to be carried out in many cases.¹⁵ *Ergo* the codification of criminal procedure was implemented on the level of decrees, more than 20 of which were issued by the Ministry of Justice in the subsequent four years.

The first such norm was the proposal submitted by the Minister of Justice – presented at the government meeting of 5th February 1867 and made into a ruling in the House of Representatives (*Képviselőház*) on 9th March and in the House of Lords (*Főrendi Ház*) on 12th March – in which the idea was expressed for the first time that the press jury procedure should be adjusted to the altered public law

¹³ *Ek Mayer, Ágost: Az esküdtszék. [Jury] Jogtudományi Közlöny. 16 Jun 1867. (No 24.) pp. 127–128.*

¹⁴ *Donovan, James M.: Magistrates and Juries in France, 1791–1952. French Historical Studies. 1999. Vol 22. No 3. pp. 379–420.*

¹⁵ *Máthé, Gábor: A magyar burzsoá igazságszolgáltatási szervezet kialakulása 1867–1875. [Conformation of the System of the Hungarian Bourgeois Jurisdiction, 1867–1875] Budapest, 1982. pp. 64–65.*

circumstances in such a way that – by enacting the press act again – juries would not be working in all the municipalities but only in the seats of district courts of appeal and the royal court of appeal. This meant that preliminary censorship was to be terminated and the press act to be reactualized.¹⁶ For this purpose the government called upon the municipalities concerned to compile the list of potential jurors already in March and at the beginning of May.¹⁷

The ‘great decree’ regulating the jury procedure was prepared as early as at the end of April in accordance with the government meeting held on 25th April,¹⁸ but it was promulgated by Boldizsár Horvát only on 17th May 1867 and came into force on 16th June: thereby a special norm, intended to be provisional yet staying in effect until 1st January 1900, was created, which at the same time represented our first ‘code’ of criminal procedure ‘codified’ statutorily in the period of the Dualism.¹⁹ Essentially, the government observed considerations of expediency and centralization when repeating the seats of the courts in it: as concerns the personal side, it was illusory to operate a jury in every municipality in the first place; moreover, the number of press offences was not so high and thus the members of the judicial council could be appointed by the government. All these were entirely in harmony with the later Article 3 of Act IV of 1869 on exercising judicial power to be enacted later, pursuant to which judges were appointed by the king and countersigned by the minister of justice. In our opinion the objections made by *Béla Sarlós*, according to which this would have abused the freedom of the press, are not well-founded.²⁰ The new decree was

¹⁶ HNA. K27 X57. 3744. 25 February 1867. p. 7. and 9 March 1867. p. 5.

¹⁷ Miniszteri előterjesztés 1867. február 25-ről a sajtóügyben [...]. [Memorandum of the Minister of Justice on the press on 25th February 1867] CHR 1867. 2nd addition. Pest, 1871. pp. 34–36., A m. k. bel- és igazságügyminiszternek 1867. márczius 17-én kelt 490/B.M. és 16/I.M.E. számok alatt kelt rendelete a sajtóviszonyok tárgyában [...]. [Decree of the Minister of Justice on the press conditions on 17th March 1867. No 490/B.M] CHR 1867. 2nd addition. Pest, 1871. pp. 39–41., A m. k. igazságügyminiszter 1867. évi május 4-én 174/el. sz. a. kelt rendelete, az esküdtszékek tárgyában [...]. [Decree of the Minister of Justice on the subject of juries on 4th May 1867. No 174/el. sz. a.] CHR 1867. 2nd addition. Pest, 1871. pp. 83–84., also *Máthé* 1982, pp. 66–67.

¹⁸ HNA. K27 X 57. 3744. 25 April 1867. p. 4.

¹⁹ A m. k. igazságügyminiszteriumnak 1867. május 17-én 307/el. sz. a. kelt rendelete a sajtóvétségek felett ítélandó esküdtszékek felállítására iránt. [Decree of the Minister of Justice on the subject of the organization of press juries on 17th May 1867. No 307/el. sz. a.] CHR 1867. 2nd addition. Pest, 1871. pp. 89–115., *Révész, T. Mihály*: A sajtószabadság érvényesülése Magyarországon 1867–1875. [The Emergence of the Liberty of Press in Hungary, 1867–1875] Budapest, 1986. p. 38., *Sarlós* 1959, pp. 59–60., *Sarlós, Béla*: A sajtószabadság és eljárásbiztosítékainak fő vonásai. [The Liberty of Press and the Main Features of its Assurances] in: *Jogtörténeti tanulmányok II. A dualizmus korának állam- és jogtörténeti kérdései*. [Essays on Legal History II. The Legal Historical Questions of the Era of the Dualism] Editors: Both Ödön, Csizmadia Andor [...] Budapest, 1968. pp. 195–196.

²⁰ *Sarlós* 1968, p. 195.

based on that of the year of 1848 and its text also showed considerable similarities, but it differed in some major points *mutatis mutandis*: for instance, the grand jury was abandoned, the voting proportions were changed (the number of votes required to ascertain guilt was decreased from 8 to 7), compulsory defence was ignored, yet all these did not render it a reactionary means allowing governmental absolutism over the freedom of the press.

However, the Decree of 1867, which not so much rejected the virtues of the Decree of 1848 but rather refined it, did not prove sufficient. As only one procedure was held on the basis of the Decree of 1848 – as already mentioned in Pozsony – its Achilles' heels could not be revealed either, but as legislators were compelled to make amendments in the years after the Compromise, the deficiencies soon came to light *in praxi* – this prompted the long process of norm formation during which the ministers of justice settled and refined each institution created, thereby contributing to legal security. This is how the first additional decree, which made the legal rule of 17th May more concrete and precise in 19 points, as well as Decree 480/1868 of the Minister of Justice for the correction of the previous two, appeared already in July 1867.²¹ This legislation by decree proved to be sufficiently flexible to eliminate the anomalies.

The scope of the Decree of 1867 was not extended to Transylvania²² so only the two decrees issued on 14th May 1871 created the enforceable freedom of the press there; the first one was drawn up on the basis of Article 12 of Act XLIII of 1868 on the detailed rules of the union of Hungary and Transylvania and provided for the introduction of the jury in Transylvania, while the other one was a decree regulating the operation of press juries in Transylvania, based on the text of the norm formulated for Hungary in 1867, which also incorporated several amendments made during the years since then and which designated Marosvásárhely (Tirgu Mures) as the seat of the press jury.²³

It is interesting and noteworthy that Act LVI of 1868 on the expropriations in the area of the cities of Buda and Pest also provided for a jury, pursuant to the

²¹ A magyar kir. igazságügyministernek 1867. július 25-én 307. számhoz kelt pótrendelete [...]. [Expletive decree of the Minister of Justice on 25th July 1867 to No 307] CHR 1867. 2nd addition. Pest, 1871. pp. 242–248., A m. kir. igazságügyminister 1868. évi május 15-én 480. sz. a. kelt rendelete [...]. [Decree of the Minister of Justice on 15th May 1868. No 480] CHR 1868. 3rd addition. Pest, 1884. pp. 184–185.

²² HNA. K27 X57. 3744. 28 May 1867. p. 12.

²³ A m. k. igazságügyministernek 1871. május 14-én 1498. eln. sz. a. kelt rendelete [...] az esküdtszéki eljárásnak Erdélybe való behozatala iránt. [Decree of the Minister of Justice on the organization of the jury process in Transylvania on 14th May 1871. No 1498] CHR 1871. Pest, 1872. pp. 183–186. and A m. kir. igazságügyministernek 1871. május 14-én 1498. eln. sz. a. kelt rendelete a marosvásárhelyi sajtóbíróság előtt követendő eljárás iránt. [Decree of the Minister of Justice on the process of the press jury in Marosvásárhely on 14th May 1871. No 1498] CHR 1871. Pest, 1872. pp. 186–214.

French model, for the settlement of disputed cases of indemnification, thus for a short period of time juries appeared in private law, too.²⁴ However, the Act of year 1881 on expropriation did not adopt this institution.

However, the history of the regulation of juries in Hungary was not ended by this: the process of the comprehensive codification of criminal procedure repeatedly raised the question of transforming juries and extending their scope of authority.

Juries were not yet included in the codification of the criminal procedure led by Károly Csemegi in 1882, and neither were they in the bill submitted by Teofil Fabiny Minister of Justice in December 1888. This bill was withdrawn by Dezső Szilágyi, the new Minister, specifically because of the disregard of the juries. It was he who commissioned Lajos Schédius to prepare the draft of the jury procedure in 1890. Jenő Balogh, the then ministerial under-secretary of state and university professor was commissioned to draw up the new rapporteur draft of the entire code of procedure with the consideration of the comments received. The draft was submitted to a panel of experts, after which a six-member formulating committee was set up under the leadership of Dezső Szilágyi. Its members were Jenő Balogh, Imre Battlay, Ferenc Chorin, Lajos Schédius, Ferenc Vargha and Gyula Wlassics. The text intended as the final version was finished by April 1893. The work and expertise of Jenő Balogh had to be credited for the majority of the text formulation. Subsequently the reasoning of the previous bill was also revised in order to adjust it to the new draft. The final bill finished at the beginning of 1895 was submitted to the House of Representatives by Sándor Erdélyi Minister of Justice on 4th May, 1895.²⁵

The accepted Code of Criminal Procedure left two questions open: the establishment of the scope of authority of the courts and the organization of the

²⁴ *Ruszoly, József*: A kisajátítás törvényi szabályozásának története Magyarországon (1836–1881). [The History of the Regulation of Expropriation in Hungary (1836–1881)] in: Ruszoly, József: Tíz tanulmány a jog- és alkotmánytörténet köréből. [Ten Essays on Legal History] Szeged, 1995. pp. 81–82., *Held, Kálmán*: Esküdszéki eljárásunk kisajátítási ügyekben. [Our Jury Process in Expropriation Cases] *Magyar Themis*. 30 July 1872. (No 31.) p. 255.

²⁵ *Finkey, Ferenc*: A magyar büntető perjog tankönyve. [Textbook of The Hungarian Criminal Procedure Law] Budapest, 1916. pp. 58–59., *Jellinek, Arthur*: A büntető bíróságok szervezete és hatósági köre tekintettel a magyar bünvádi eljárás tervzetére. [The Organization of Criminal Courts and their Competence in Special Regard to the draft of the Hungarian Code of Criminal Procedure] EHJA XI. Budapest, 1883. (Reading: 3 February 1883.) pp. 26–37., *Fayer, László*: Bünvádi eljárás a törvényszék előtt. Szokásjogi forrásból. [Criminal Process at the Court. By the Common Law] Budapest, 1885. Paper 1–3.. Also about the reforms: *Liszt, Franz von*: A jövő büntetőjoga. [The Criminal Law of the Future] EHJA LXXVI. Budapest, 1892. (Reading: 4 April 1892.) pp. 4–23. *Szokolay, István*: Az esküdszék körüli téveszmék. [Delusions about the Juries] *A Jog*. 11 January 1891. (No 2.) pp. 9–10., *r-e*: Erdélyi Sándor. [Sándor Erdélyi] *Ügyvédek Lapja*. 17 July 1897. (No 29.) p. 1.

juries. The first draft of these smaller acts was prepared by Imre Battlay commissioned by Szilágyi in 1894, then it was entirely rewritten in 1895 and in 1896. Finally, Jenő Balogh formulated both bills after the review of two panels of experts. These were submitted to the national assembly by Sándor Erdély in March 1897.²⁶

Thus the much-awaited reorganization of the jury system was eventually realized by several acts: first of all Chapter XIX of the Code of Criminal Procedure (Act XXXIII of 1896) regulating the main trial before the jury and Act XXXIII of 1897 on the organization of juries. The provisions were presented in detail by *Andor Csizmadia*.²⁷ Act XXXIV of 1897 on the enactment of the Code of Criminal Procedure specified the new scopes of authority of the jury (Article 15). Here only the issues of accepting the criminal procedure related to the present topic are going to be dealt with.

The parliamentary debate of the Code of Criminal Procedure started on 3rd September 1896 at Session 647 in the House of Representatives. This was preceded by the report on the bill by the judicial board in which they voiced their opinion as to acknowledging and supporting the reorganization of the juries: ‘the greatest value of the jury – according to Glaser, the renowned supporter of this institution²⁸ – lies in the fact that judicial power is shared between permanent qualified judges and irreproachable men from the ranks of the citizens destined for judicial function. Insistence on the indispensability of the juries does not stem from distrust in the court but rather from the idea what dizzying power is vested in the jurist working in a constant community when judging over life, freedom and social existence on the basis of an oral trial and the free appreciation of evidence.’ The report emphasized: ‘the situation in which the laws meant to ensure the law and order and the existence of the society are administered by a closed body of professional judges with the total exclusion of

²⁶ *Finkey* 1916, p. 60., Read About Dezső Szilágyi *Antal, Tamás*: Szilágyi Dezső igazságügyi reformjairól (1890–1900). [About the Judicial Reforms of Dezső Szilágyi (1890–1900)] in: *Jogtörténeti tanulmányok VIII*. [Essays on Legal History VIII] Edited by Kajtár István [...]. Pécs, 2005. pp. 9–28., Read about Gyula Wlassics *Mezey, Barna*: Wlassics Gyula, a büntetőjog és a bűnvádi perjog professzora. [Gyula Wlassics, Professor of Criminal Law and Criminal Procedure Law] in: *Wlassics Gyula és kora 1852–1937*. [Gyula Wlassics and his Age, 1852–1937] Zalaegerszegi füzetek 8. [Zalaegerszeg Papers 8.] Editor: Kapiller Imre. Zalaegerszeg, 2002. pp. 60–78.

²⁷ *Csizmadia, Andor*: Az esküdtbírótság Magyarországon a dualizmus korában. [The Jury in Hungary during the Era of the Dualism] in: *Jogtörténeti Tanulmányok I*. [Essays on Legal History I] Budapest, 1966. pp. 131–147., compare with : *Vámbéry, Rusztem*: Kézikönyv esküdtek számára. [Handbook for Jurymen] Budapest, 1900. pp. 1–96.

²⁸ *Julius Glaser* was a Wiener professor and law scientist in the 19th century. His most important literary works: *Zur Juryfrage*. Wien, 1864.; *Anklage, Wahrspruch und Rechtsmittel im englischen Schwurgerichts-Verfahren*. Erlangen, 1866.

the citizens can hardly be maintained'. Thus the incorporation of the institution of the jury in the criminal procedure was accepted by the board unanimously. On the other hand, the introduction of the institution of the people's tribunal (*Schöffengericht*) in the county courts, similarly proposed by the bill, was not recommended.²⁹ Concerning the jury procedure, only a few less significant modifications can be read in the detailed report.³⁰

The general debate of the code of criminal procedure in the House of Representatives started with the opening statement of Ferenc Chorin, rapporteur from the judicial board. The procedural bill of 1843 and the press juries of 1848 were designated as the starting point for the reform of the juries. However, he called attention to the fact that the judgement of press offences showed a very kaleidoscopic picture in Hungary: in territories beyond Királyhágó (Bucea) the Austrian press procedure of year 1852 was in force with a jury, the same in Fiume (Rijeka) without a jury, in the Határőrvidék (Military Frontier) the Austrian press procedure of year 1862 and in other parts of the country the decree issued in 1848 and then in May 1867 was governing.³¹ (Then again, in other regions of Transylvania the already mentioned decree of year 1871 had to be applied.)

The principles of the bill were identified as follows: indictment system, the assertion of orality and directness, publicity as well as the ensuring of the rights of the accused, the possibilities of the right to legal remedy and the regulation of the jury in such a way that judgement over not only criminal offences committed through printed matters but also over other serious crimes was referred to its scope of authority.³² It was the jury itself which was regarded as the most important change in the bill: 'the judicial organization qualified for applying the criminal procedure cannot be construed properly without a jury'. As regards the press jury it was emphasized that 'they operated fairly satisfactorily when retaliation for a crime against the state or the nation was the case but several – let me remark that well-founded – objections were raised to their work in defamation and libel cases'.³³

He claimed that data proved that jurymen were mistaken at the expense of the accused much more rarely than permanent trained judges were. The reason for this was that in contrast with other judicial forums jurymen enjoyed the great advantage of publicity, confidence in the verdicts, the right of rejection, the high proportion of votes when establishing guilt, the alert legal control on

²⁹ WHR92–96. XXXIV. (1896) No 1110. pp. 7–8.

³⁰ WHR92–96. XXXIV. (1896) No 1110. pp. 152–162.

³¹ CHR92–96. XXXIV. (1896) p. 20. p.

³² CHR92–96. XXXIV. (1896) pp. 21–22.

³³ CHR92–96. XXXIV. (1896) p. 25.

the part of the court and experience in life. ‘The jury confined to press cases is more of a political than a legal institution – Chorin continued – because it deals exclusively with political or personal issues. The jury which investigates exclusively press cases is like an isolated tree, exposed to the vicissitude of times on barren soil, which cannot take roots, which cannot be uprooted by the storm of political passions. [...] But apart from this, juries are looked upon everywhere as the great security of civil and political freedom. [...]’ This institution also prevents the alienation of the citizen and the judicial organization.

The objections raised regarding diversity of nationality and denomination were not considered substantiated as nationalities also lived in France, in England and in Germany. Language could not be problematic, either: there was not a single tribunal in the country where the sufficient number of jurymen with a command of the language of the state was not available – the rapporteur maintained.³⁴

In addition to Sándor Erdélyi, Minister of Justice, only a few representatives spoke in the further debate of the bill: Géza Polónyi, Lajos Ragályi, Dániel Haviár, Győző Issekutz and Soma Visontai expounded their comprehensive view, and based on these and on the voting ordered the bill was deemed to be suitable for detailed debate by the House of Representatives.

The detailed debate proved to be surprisingly short and constructive. Here only the comments relating to the chapter on juries are mentioned: on 10th September Géza Polónyi, Győző Issekutz, Ferenc Chorin, Sándor Plósz (undersecretary of state at that time, later Minister of Justice) and Soma Visonta, while on 11th September Lajos Mérey and Károly Szalay commented on the planned norm text. The House of Representatives – after the speech of Sándor Erdélyi voicing his support – accepted some of them which were of slighter importance (e.g. the possibility of the jurors’ voting by ballot as proposed by Issekutz).³⁵

The third reading was made on 12th September 1896, then the accepted text was passed on to the lords. In the House of Lords, on 19th September 1896, Sándor Erdély argued for the jury and suggested that the bill be accepted in the form as already proposed in the House of Representatives. He pointed out that the code of procedure could not be formulated without juries considering public opinion, too.³⁶

The only speaker in the debate was Nándor Zichy, who did not consider the introduction of ‘administration of justice by jury’ in Hungary fortunate on account of the proportions of nationalities and the under-representation of the

³⁴ CHR92–96. XXXIV. (1896) p. 26.

³⁵ Antal, *Tamás: Törvénykezési reformok Magyarországon* (1890–1900). [Jurisdictional Reforms in Hungary (1890–1900)] Szeged, 2006. pp. 223–229.

³⁶ CHL92–96. VII. (1897) pp. 6–7., WHL92–96. XXIII. (1896) No 989. pp. 5–8.

Hungarians in some places. He held the view that juries could not be based on firm grounds in this way. The reason was that the jury could be composed only of citizens who understood the Hungarian language while it was dangerous to exclude the others. Yet, because of the progressive and necessary nature of the code of procedure, he proposed the bill for *en block* acceptance. In agreement with Zichy's proposal, all the 592 articles of the bill on the code of criminal procedure were passed by the lords *en block*, at the same time.³⁷

A separate act was made by the national assembly on the organizational issues of the jury, particularly with respect to the compilation of the jurymen's lists and the manner of selection, which was passed – unlike the code of criminal procedure after a fierce and lengthy debate – by the House of Representatives on 29th May 1897 and by the House of Lords on 16th August of the same year (Act XXXIII of 1897). In contrast with the code of criminal procedure and Act XXXIV of 1897 putting it into force, this rule of law came into force as early as on 1st January 1899 as the jurymen's lists and other organizational tasks of year 1900 had to be prepared in 1899.³⁸

The Hungarian adaptation of the institution of the jury was completed with this, a major change was effected in it only by Act XIII of 1914 in the twenty-fourth hour of its history. As the case was, the use of the jury was suspended by the government in several of its decrees in autumn, 1914 – first only in Transylvania and in Felvidék (Upper Hungary), then also in the inner areas of the country³⁹ – which was reinforced by Prime Minister Károly Huszár in 1919 with reference to Paragraph 2 of Article 12 of Act LXIII of 1912, emphasizing its temporary nature.⁴⁰ However, it became *de facto* permanent, but it is worth

³⁷ CHL92–96. VII. (1897) pp. 8–10.

³⁸ Antal 2006, pp. 229–243.

³⁹ A m. kir. ministerium 1914. évi 5486. M. E. számú rendelete egyes bűncselekményeknek az esküdtbíróság hatásköréből a kir. törvényszékek hatáskörébe utalásáról. [Decree of the Government on the transfer of some of the crimes from the competence of juries to the competence of courts. No 5486/1914] CHR 1914. Budapest, 1914. p. 1433.; A m. kir. ministerium 1914. évi 5487. M. E. számú rendelete az esküdtbíróságok működésének egyes kir. törvényszékeknél felfüggesztéséről. [Decree of the Government on the waiving of the functioning of several juries. No 5487/1914] CHR 1914. Budapest, 1914. p. 1434.; A m. kir. ministerium 1914. évi 5735. M. E. számú rendelete a háború esetére szóló kivételes intézkedések tárgyában kiadott rendeletek hatályának kiterjesztéséről. [Decree of the Government on the extension of the effect of several decrees connected with the special actions in the case of a war. No 5735/1914] CHR 1914. Budapest, 1914. pp. 1448–1450. (point No 9., 10.); A m. kir. ministerium 1914. évi 6082. M. E. számú rendelete a háború esetére szóló kivételes intézkedések tárgyában kiadott egyes rendeletek hatályának kiterjesztéséről. [Decree of the Government on the extension of the effect of several decrees connected with the special actions in the case of a war. No 6082/1914] CHR 1914. Budapest, 1914. p. 1473. (point No 1., 2.).

⁴⁰ A magyar kormány 1919. évi 6898. M. E. számú rendelete az esküdtbíróságok működésének ideiglenes felfüggesztéséről. [Decree of the Hungarian Government on the provisional waiving

mentioning that the relevant rules of law were not repealed expressly; this was realized *de jure* only by repealing the entire code of criminal procedure (1st January, 1952).⁴¹

The introduction of the jury system in Hungary took place not because of its ‘infallibility’. In the late 19th century a jury meant the *sine qua non* of the rule of law in every developed European country. Since there were no constitutional courts at the time, people regarded it as the means that would break legal positivism and govern laws. They also thought it would balance the text-based power of judges as there was a general disbelief in judges throughout Europe then. On the continent – except for Spain and the Netherlands –, the jury was praised and regarded as a victory of liberal democracy.⁴² Hungary itself could not evade the mainstream since the idea of a ‘unified’ Europe already existed at that time, although it did not last for long.⁴³

Abbreviations

WHR92–96	Writings of the House of Representatives of the Hungarian National Assembly (1892–1896)
WHL92–96	Writings of the House of Lords of the Hungarian National Assembly (1892–1896)
CHR92–96	Chronicles of the House of Representatives of the Hungarian National Assembly (1892–1896)
CHL92–96	Chronicles of the House of Lords of the Hungarian National Assembly (1892–1896)
EHJA	Essays of the Hungarian Jurist Association
HNA	Hungarian National Archives
CHR	Collection of the Hungarian Regulations

of the functioning of the juries. No 6898/1914] CHR 1919. Budapest, 1919. pp. 967–968. The title of the mentioned act is the following: *About the special actions in the case of a war*.

⁴¹ Az 1951. évi III. törvénybe iktatott büntető perrendtartás hatálybaléptetéséről szóló 1951. évi 31. tvr. [Law-Decree No 31 of 1951 on giving effect to Act III of 1951 on the Code of Criminal Procedure] 1., 2. §.

⁴² Read the classic work of *Jerome Frank: Law and the Modern Mind*. London, 1930.

⁴³ *Kosáry, Domokos: Az európai kis államok fejlődési típusai*. [The Types of Development of the Small States in Europe] in: *Kosáry, Domokos: A magyar és az európai politika történetéből*. [From the History of the Hungarian and European Politics] Budapest, 2001. 594–603. p., 627–636. p.

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Porota u Mađarskoj

Rezime

Ustanova porote u Mađarskoj nije bila duga veka; postojala je samo u vreme Austro-Ugarskog dualizma (1867-1918). Iako su prvi pokušaji regulisanja porote učinjeni još 1848. godine, neposredno posle revolucije, porota u sudskom postupku zaživela je tek nakon sklapanja Austro-Ugarske nagodbe 1867. godine. Njeno postojanje, sa istorijskopravnog stanovišta, može se podeliti na dva dela: prvi počinje uredbom od 1867. godine, a drugi 1. januara 1900, kada je mađarski Zakonik o krivičnom postupku stupio na snagu. Autor je u radu prikazao razvoj porote u Mađarskoj od vremena njenog uvođenja, pa sve do napuštanja sudske porote u prvim godinama Prvog svetskog rata.