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**Citizenship and Civil Procedure Law
(Act I of 1991) in Hungary**

**Norbert Varga
Associate Professor
University of Szeged
Hungary**

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Athens Institute for Education and Research
8 Valaoritou Street, Kolonaki, 10671 Athens, Greece
Tel: + 30 210 3634210 Fax: + 30 210 3634209 Email: info@atiner.gr
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Norbert Varga
Associate professor
University of Szeged
Hungary

Abstract

Procedural law could only be codified at the beginning at the 20th century in Hungary.¹ The advanced attributes of accusatory and an inquisitorial procedure were incorporated in civil procedural law (Act I of 1911), based on the mixed procedural system, basically took the German and Austrian example into account. The role citizenship or foreign citizen's status has in this act of procedural law created by Sándor Plósz,² Professor of Law is a very interesting thing to examine. The objective of my paper is, among other things, to describe the role citizenship had, taking personal and territorial effect into account, how the jurisdiction against foreign citizens were regulated, and the question of legal aid, all in connection to the civil procedure code. The importance of residential and habitation also arises in connection to the topic. Who could refer to the extraterritorially? I do not want only to analyze the results of the specialized literature of jurisprudence, but also want to support my point of view with legal cases (for example the case law of Supreme Court of Justice of Hungary: Curia)

Keywords: civil procedure code, citizenship, personal and territorial scope, jurisdiction against foreign citizen, legal aid, extraterritoriality

¹Former civil procedure codes are: Act LIV of 1868, Act LIX of 1881, Act LX of 1881. Herczegh, M.: *Magyar polgári törvénykezési rendtartás*. Franklin-társulat, Budapest, 1981., Fodor, Á. – Márkus, D.: *A Polgári Törvénykezési Rendtartás Kézikönyve*. Singer és Wolfner, Budapest, 1894., Falcsik, D.: *A polgári perjog tankönyve*. Politzer-féle Könyvkiadó-vállalat, Budapest, 1908.

²Magyary, G.: *Plósz Sándor ig. és t. tag emlékezete*. In: Géza Magyary r. tag összegyűjtött dolgozatai. A polgári eljárás, a magánjog és a kereskedelmi jog köréből. 1. vol. Magyar Tudományos Akadémia, Budapest, 1942. 71-82.

Introduction

One of the most important aspects of civil procedure code is the effect, which, among many other things, is closely connected to the matter of citizenship. The first civil procedure code of Hungary in the 20th century (Act I of 1911) regulated the territorial extent, which refers to nothing more and nothing less than all of the countries under the Hungarian crown. This is what paragraph 789 of the aforementioned civil procedure code considered to be national person/Hungarian citizen: “In this law, inland is understood as all of the countries under the Hungarian crown, and all of the Hungarian citizens are considered to be national”.¹ The term “national” referred to the citizens of Croatia, and, of course, the inhabitants of all the territories of Hungary. According to this law, even those people were classified under the extent of this law who were included in residential status in any one of the countries under Hungarian crown.²

Hungarian Citizenship

The first statutory regulations concerning citizenship law (Act L of 1879) appeared in Hungary in the 19th century. 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.

After the restoration of legal continuity (1867), 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.³

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. With respect to the definition of the territory of the Hungarian state, the “countries of the Hungarian crown” had to be taken into consideration.

¹Jancsó, Gy.: *A magyar polgári perrendtartás rendszeres kézikönyve*. 1. Vol., Athenaeum Irodalmi és Nyomdai Részv.-társ., Budapest, 1912. 32., Magyary, G.: *A magyar polgári perjog nemzetközi vonatkozásai*. In: Géza Magyary r. tag összegyűjtött dolgozatai. A polgári eljárás, a magánjog és a kereskedelmi jog köréből. 1. Vol. Magyar Tudományos Akadémia, Budapest, 1942. 296-297.

²Meszlényi, A.: *Bevezető a polgári perrendtartáshoz*. Athenaeum Irodalmi és Nyomdai Részvénytársulat, Budapest, 1911. 9., Nagy, E.: *Magyarország közigazgatása (Államjog)*. Athenaeum Irodalmi és Nyomdai R.-T., Budapest, 1907. 43-75., Eöttevényi Nagy, O.: *Oszták közigazgatása*. Hornyászký Viktor, Budapest, 1913. 29-36., Molnár, K.: *Magyar közigazgatása*. Danubia, Pécs, 1929. 42-74.

³Eöttevényi Nagy, 1913. 44-49.

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.

On the basis of the first citizenship law, citizenship could be primarily obtained by way of descent. Hungarian citizenship was obtained by naturalization, marriage and legitimation too. Act L of 1879 provides an exhaustive list of the cases of the loss of Hungarian citizenship: dismissal, absence, marriage, legitimation and jurisdiction of authority.¹

Effect of the Civil Procedure Code

In the area of the effect of the Hungarian civil litigation, the Hungarian state had absolute power in the area of its judicial rights.² This meant that they not only had judicial rights over those citizens who were considered national, but also in the matter of foreigners. These individuals were referred to in the text of the act as foreigners. This meant that not only Hungarian citizens could resort to the legal protection of the Hungarian court, and they could sue, but these foreigners could also do the same. Regardless to the fact whether only one or both parties were from other countries during a legal procedure, or whether the law of the object of lawsuit was originated from an inland or a foreign territory. To sum it all up, this law meant that the Hungarian state could extend its judicial powers to foreign areas, too. And, as an exchange, the state allowed that its citizens could be involved in legal actions outside its borders. In general, it can be said that each state gives its citizens an equal footing with each other. In a legal sense, this manifests if a state does not limit its legal services to the citizens of said nation, but extends those to foreigners, too.³

Reciprocity

The appearance of dealing on an equal footing in the field of legal services created the concept of mutuality (reciprocity). The idea of mutuality is based on the theoretical equality of the sovereignty, autarchy of states, which is an

¹Nagy, 1907. 107-115., Molnár, 1929. 103-108., Kiss, I.: *Magyar közjog (Magyar államjog)*. Eggenberger-féle Könyvkereskedés, Budapest, 1882. 180-185., Tomcsányi, M.: *Magyarország közjoga*. Királyi Magyar Egyetemi Nyomda, Budapest, 1940. 145-152., Varga, N.: *A magyar állampolgársági jog a 19. században*. Akadémiai Kiadó, Budapest, 2012.

²Magyary, G.: *Területi, időbeli, személyi hatály. Jogsegély*. In: Géza Magyary r. tag összegyűjtött dolgozatai. A polgári eljárás, a magánjog és a kereskedelmi jog köréből. 1. Vol. Magyar Tudományos Akadémia, Budapest, 1942. 83-94.

³Jancsó, 1912. 33., Magyary, 1942. 308.

additional condition of peaceful international cooperation. Mutuality can be either formal or substantive.¹ If a state does not differentiate between a foreigner and a local individual in the field of civil legal justice, it can be said that they are both provided with equal treatment, which means that the conditions of mutuality are fulfilled. This can also result in a case where such a lawsuit has more severe legal consequences on a foreigner. The national judicial system is obliged to use the local procedure laws, which is fitting for foreigners as it is fitting for domestic citizens. This is what formal mutuality was all about. Opposite to this, substantive mutuality referred to the case when a national court enforces another country's judicial law in a lawsuit against a citizen of the aforementioned nation. This meant that foreign citizens use the judicial law of their mother-countries in a foreign country, thus avoiding the enforcement of a procedure law which can have more severe consequences. This means that the state of Hungary provides privileges to a foreigner over its own citizens. It is common that this substantive mutuality is not introduced in many countries. Mainly because it infringes the sovereignty of the given state.

Mutuality can also be divided into the categories of presumed and not presumed.² It can be said that it is presumed mutuality is present when a given state hypothesizes that another country gives equal rights to its citizens in a foreign country as the rights given by the aforementioned state to the citizens of the foreign country in question. In the case of not presumed mutuality, the Hungarian state would disregard the conditions mentioned above, and would require proof of the practice of mutuality in each lawsuit originating from the foreign country. The Hungarian civil procedure code used the not presumed mutuality, and required a proof of reciprocity in each distinct legal case, supposing that the given court didn't know this practice.³

The question of mutuality was established in the so-called international treaties, which were ratified afterwards.⁴ In a case when a country didn't practice mutuality in connection to the state of Hungary, then the state of Hungary declared that mutuality would not be introduced in cases against said country. However, in cases when a foreign state deviated from the practice of mutuality, thus discommoding the state of Hungary, retribution followed. This referred to the practice of Hungarian courts where they reciprocated this disregard of mutuality in cases against citizens of the aforementioned state, thus approaching these citizens unfavourably.

With the presumption of mutuality, a foreign citizen in Hungary could either be a plaintiff or a defendant. In cases where the foreign citizen was the plaintiff, his or her rights of action depended on the provision of the retainer (*cautio iudicatum solvi, cautio pro expensis*).⁵ If this condition was not fulfilled, then a domestic or foreign citizen could attack the lawsuit with a bar

¹Magyary, 1942. 301., Magyary, G.: *Magyar polgári perjog*. Franklin-társulat, Budapest, 1939. 49.

²Ibid, 301.

³Jancsó, 1912. 34. See: 19206/1878 case law about proof of reciprocity. Ibid, 302.

⁴Magyary, 1942. 303-307., Magyary, 1939. 48.

⁵Magyary, 1942. 309., Meszlényi, 1911. 12.

to proceedings. Apart from this, the conditions of a foreigner being the plaintiff were the same as of a local resident, and he or she didn't even have to prove mutuality, apart from the cases where the court specifically ordered proof that this practice was introduced during the case.¹

The same rules applied to primary interveners from another mother-country as to the foreign plaintiffs. A person could only be a secondary intervener if said individual was also listed as a joinder.² But, of course, a foreigner could be listed as a defendant without any more of these vindications.³

The Hungarian civil procedure code did not dictate any differentiation between foreigners and indigenous citizens in the case of cognizance regulations, because, for example, next to the general jurisdiction (living area), the act also stated the residential address.

Personal rights (for example, the reimbursement of the cost of the legal procedure by the state) could be given to any foreigner if the courts of the said individual's mother-country provide the same rights to Hungarian citizens.⁴

International Jurisdiction

There are three main questions which could arise in connection to international jurisdiction: 1. Does a state practice jurisdiction over the citizen of another state, and does it provide legal protection to a foreign citizen? 2. Does it provide legal aid to the court of another state? 3. Does it carry out the verdicts of another nation?

We already gave an answer to the first question, at least partially. However, there were exceptions in this particular case. Namely, there were individuals above whom the Hungarian court could not judge over, mostly because of international regulations. These individuals were those people who had the rights of extritoriality: for example: other countries' heads of states, the diplomatic representatives of foreign nations and their family members, their official employees, and even their servant staff.

According to paragraph 9 of the civil procedure code: "the international rules are normative in the cases involving the jurisdiction of local courts and extritorial individuals, according to the regulations of international law". Only those cases could be brought into action where the competence/jurisdiction of the court was the locality of a real estate.⁵ The voluntary submission meant the only exception from these legal actions.

¹Jancsó, 1912. 35., Magyary, 1942. 311.

²Jancsó, 1912. 35.

³Jancsó, 1912. 35., Magyary, 1942. 311.

⁴Magyary, 1942. 320-321., Meszlényi, 1911. 11.

⁵Jancsó, 1912. 37., Magyary, 1942. 314., Bacsó, J.: *A polgári perrendtartás tankönyve*. Grill Károly Könyvkiadóvállalata, Budapest, 1917. 17., Kovács, M.: *A polgári perrendtartás magyarázata*. Pesti Könyvnyomda Részvénytársaság, Budapest, 1927. 118-121., Gaár, V.: *A magyar polgári perrendtartás (1911. évi I. t.-cz.) magyarázata*. 1. Vol. Athenaeum Irodalmi és Nyomdai R.-T., Budapest, 1911. 13-14.

The previous statement is also supported by the following legal case (leading case No. 445). During a lawsuit at the Royal Courthouse of Budapest, the plaintiff asked for the Turkish royal treasury to be amerced, for the aforementioned organization did not deliver a shipment of merchandise with the quantity of 500 railway cars from Trieste to Dedeagac. The legal action was rejected by the court of first degree. The court of the second degree, the Royal Appeal Court of Budapest accepted this adjudication (August of 1916, 1st P. IV., No. 5081.). The lawsuit finally ended up at the Chateau, where the adjudication of the court of the first degree was approved. In its justification, the court stated that a foreign nation (for example, the treasury) or the head of a foreign state cannot fall under the jurisdiction of a domestic courthouse. Naturally, there were some exceptions, but these did not predominate in this lawsuit.¹

Certain family members of foreign royal families had the privilege of having the same legal status as extraterritorial individuals. There were legal actions where the state of Hungary did not ratify the jurisdictional rights of another nation. These were legal actions which were in connection to personal status, for example, marital suits.²

There were also some nations where the local courts did not have jurisdictions over the citizens of the Hungarian state, for the nation of Hungary had the opinion that their legal services were inadequate. Eastern states fell into this category at the beginning of the 20th century, for example Turkey, Bulgaria, Morocco, Persia, Siam, China, Zanzibar, and Korea.³ In these cases, the consuls have the judicial rights over the citizens of Hungary. The High Court was in Constantinople.⁴ The foundations of such legal actions were established in 1891.

Legal aid could be defined as the help another court or authority provided to a courthouse holding a certain lawsuit by implementing a certain legal action, for example, supervision or the interrogation of witnesses. In cases where this aid had to be performed in a foreign country, we can define such actions as international legal aid.⁵

Carrying out verdicts of another nation: this was the most debatable question of international legal services. This question refers to the extension of jurisdictional powers of the adjudicating nation by the executive nation. This

¹Royal Appeal Court (Hungary, Budapest) 1 August 1916 P. IV. 5081 Nr. In: Kovács, M. (ed.): *Perjogi döntvénytár*. Franklin-társulat, Budapest, 1917. 314-318.

²Jancsó, 1912. 38., Magyary, 1942. 315-318., Magyary, G.: *A jog- és cselekvési képesség a nemzetközi magánjogban. Les rapports internationaux du droit hongrois privé*. In: Géza Magyary r. tag összegyűjtött dolgozatai. A polgári eljárás, a magánjog és a kereskedelmi jog köréből. 2. Vol. Magyar Tudományos Akadémia, Budapest, 1942. 718., Meszlényi, 1911. 13.

³Varga, N.: *International Legal Sources of Hungarian Citizenship Law in the 19th Century*. In: Mária Homoki-Nagy (ed.): FORVM Acta Juridica et Politica. II/1. University of Szeged, Faculty of Law, Szeged, 2012. 187-203., Magyary, 1939. 47.

⁴Magyary, 1942. 333-344., Jancsó, 1912. 38-40.

⁵Jancsó, 1912. 40., Magyary, 1942. 95-100. See The Hague Convention of Civil Procedure (about the consulate broadcasting) in 1905. Magyary, 1942. 304-307., Magyary, 1939. 50., Gaár, 1911. 15-18.

was strongly connected to the question of sovereignty and could cause harm to the rights of citizens. The litigation of that era accepted the verdicts carried out in foreign territories, but only if those verdicts fulfilled the conditions established in paragraph 414 of the civil procedure code.¹ According to this policy, these verdicts could not be carried out “if the court which adjudicated the verdict did not have the competence to do so according to the law of Hungary, or its process was based on such competence reasons which could not be put into force according to the law of the expediting nation; if the amerced defendant is a citizen of the nation of Hungary, and if he or she did not get involved in the lawsuit because of his or her absence without leave, [...] if the participant is the citizen of the state of Hungary and was excluded from the process of the lawsuit because of the malpractice of a legal action; a citizen of the state of Hungary, in lawsuits involving his or her personal status; if the acceptance of the validity of the judgement is in conflict with the legally binding verdict of the indigenous verdict, matters of public morale, or the purpose of the mother-country’s laws; if the mutuality is not settled with the courts of the state which adjudicated the aforementioned verdict”.

To sum it all up, it can be stated that the role of citizenship arose in connection to the rules of procedure. In this sense, the regulation based on the principle of reciprocity had an outstanding significance between the concerned nations. The partial rules and exceptions were regulated by either the international treaties or the judicial practice.

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¹Jancsó, 1912. 41.

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