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The Difference between the Legal Status of Minor Children Born In and Out of Wedlock Regarding Maintenance in the Hungarian Customary Law and Court Praxis before 1946

Before Act IV of 1952 on Marriage, Family and Guardianship came into force, the maintenance of minors was only regulated by customary law provisions and the drafts of the Civil Code. Although in 1946, the maintenance of children born out of wedlock was regulated in an act, the comprehensive regulation was delayed until 1952. It is necessary to study the court practice of the era in order to draw a picture of child support before 1946. During my research, I examined the relevant regulations and most importantly, the material of the royal courts between 1938 and 1945 in the National Archives of Hungary Zala County Archives. I will present the legal framework and practice of the era mainly through the royal court decisions of Zala County. Since the legal situation of minor children born in and out of wedlock differed before 1946, it is vital to examine the subject and compare their situations.

Keywords: children born in and out of wedlock – court praxis – customary law – Hungary – maintenance

I. Introduction

The paper results from an aspect of my PhD research regarding the legal history and the current Hungarian and European regulation of the maintenance of minor children.¹ In the following, only a section will be presented, namely the regulations on minor children born in and out of wedlock in the Hungarian customary law and court praxis before 1946.

The reason for examining the question of legitimate and illegitimate children separately before 1946 is that prior to Act XXIX of 1946 on the Legal Status of Children Born out of Wedlock coming into force, the legal situation of these minors differed. The legal framework will be

presented with examples from the judicial decisions of the royal courts of Zalaegerszeg (where most of the case files in the county survived in full) in order to discuss the differences.

But why is it important to examine the decisions of the court as well? Before Act IV of 1952 on Marriage, Family and Guardianship came into force in Hungary, the matter of child support was mainly regulated by customary law and a couple of paragraphs of effective acts. The customary law provisions were the Hungarian Civil Code Proposals of 1900, 1913 and 1928. Hungarian judges followed the regulations of the Civil Code Proposal of 1928 (hereinafter: CCP 1928) as a reference and guidance, yet it was not officially in effect. Next to the civil code proposals, some paragraphs of Act XX of 1877 on the Matters of Guardianship, Act XXXI of 1894 on Mat-

¹ See also: KRAUSZ, A kiskorú gyermek tartása; KRAUSZ, A törvényes születésű kiskorú gyermek tartása.

rimonial Law and a Prime Ministerial Decree² regulated child support matters. Although these were effective and substantive laws, they only partially covered the topic.

The legal literature of the era on the subject matter is insufficient and the novum of my work is the disclosure of the court practice, since no previous research has been carried out in this specific field and on these records. I have so far examined the civil law cases of the Royal District Court of Zalaegerszeg³ and the Royal Tribunals of Zalaegerszeg⁴ and Nagykanizsa⁵ between 1938 and 1945 in the National Archives of Hungary Zala County Archives. Because of the lack of acts of parliament and literature, studying the court practice of the era is inevitable in order to draw a full picture of the institution before 1946.

First, a general overview will be given about the legal framework and after that, a sample of case law will be studied.

II. The legal framework

Two definitions must be clarified: 'child support' and 'minor', since these terms had different meanings back then.

Child support meant the expenses for the upbringing of the child according to his or her social status, the expenses for education in general and the expenses for their studies that qualified them for work.⁶ The age when they reached the ability to work differed according to social status. Legitimate children had the social status of their parents and illegitimate children their mother's, since illegitimate children were only

related to their mother and her family.⁷ According to the practice and the opinion of the royal Curia, children were able to work at the age of 16,⁸ but if the mother or the parents were wealthy then the children could be deemed unable to work even until 24 years old, if they studied.⁹

Minor meant a person under 24 years old, not emancipated,¹⁰ and an unmarried woman.¹¹

The maintenance matters of illegitimate children fell into the jurisdiction of the Royal District Courts.¹² The child support issues of legitimate children were tried together with the parents' divorce case,¹³ yet in real life – among the cases I have studied – no verdict could be found that decided on them. The reason for this is that after 1930, tribunals – which tried divorce cases¹⁴ – cast a verdict only if it was urgent and enough information was provided. Otherwise, courts transferred the case to the Orphan's Court.¹⁵ The Orphan's Court followed the same principles as the Royal Tribunals or the Royal District Courts.¹⁶

In the era researched, the traditional family model prevailed, so it is no surprise that according to the Act on Guardianship, the father was the first person obligated to support his children whether they were born in or out of wedlock.¹⁷

In the cases of illegitimate children, at first, the person of the father had to be identified, then the court determined the amount of child sup-

² Nr. 3982/1916. Prime Ministerial Decree

³ 259 cases of child maintenance still exist (29 in 1938, 46 in 1939, 35 in 1940, 43 in 1941, 36 in 1942, 40 in 1943, 17 in 1944, 13 in 1945).

⁴ 51 divorce cases still exist.

⁵ 11 divorce cases still exist.

⁶ § 227 CCP 1928.

⁷ § 174 CCP 1928.

⁸ CSORNA, Rokonság 329.

⁹ § 16 CCP 1928.

¹⁰ §§ 1–4 Act XX of 1877.

¹¹ §§ 1 and 2 Act XXIII 1874.

¹² §§ 1 and 2i) Act I 1911.

¹³ §§ 95 and 97 Act XXXI 1894.

¹⁴ §§ 2 and 642 Act I 1911.

¹⁵ The Orphan's Court was an administrative body, the guardianship authority, which dealt with the matters of minors among other matters.

¹⁶ § 137 Act XXXIV 1930.

¹⁷ MÁRKUS, Felsőbírósgaik elvi határozatai 139–144.

port per month and obliged the father to pay it. Until the father could be identified, the mother alone had to cover the expenses of the upbringing,¹⁸ although it should be stressed that according to court practice, the mother had to contribute to the finances for the upbringing of the child as well.¹⁹

As for legitimate children, parents were only obligated to support them if they had no income from their assets that covered the expenses of their upbringing. It is important to add that it was not enough to have assets, since only its profit had to be taken into consideration. In the absence of profit, separated parents should have contributed to the welfare of their children in line with their financial situation.²⁰

If the father was incapable of supporting his children alone, then the mother had to help. If both were unable to provide for their children, the grandparents were obliged to do so.²¹

Concerning illegitimate minors, it is interesting to see that if the father of the child worked at the family estate and thus the grandparents were freed from hiring a servant, then the grandparents had to pay child support for their grandchild since the father himself had no income but contributed to the family budget.

As an example, case P.543/1940.²² was initiated on 31 January 1940 at the Royal District Court of Zalaegerszeg. The claimant was Mária Cs., who claimed maintenance from her grandparents, Sándor Cs. and his wife. She stated that the court had already declared that their son was her father and that he was obliged to pay maintenance, but he had no income, so he did not fulfil his obligation. The court rejected the claim on the grounds that the defendants were middle-aged people, they also had two daughters, one of them was

13 years old and the other was 16, and their work altogether was enough to cultivate the land, so their son's work was surplus and they were not freed from hiring a servant.

In general, the obligated person had to take care of the maintenance until the child was able to work.²³ If the parents of the legitimate child were together and the child had assets or an income from those, then the father managed the money and had to spend it on the maintenance of the child. The sanction for not doing so was that the guardianship authority would have done it instead of him.²⁴ If the parents were separated, the parents could only be obligated to support the child if the child had no income and needed maintenance.²⁵

Maintenance primarily had to be rendered in kind, in one's household, and secondly, in the form of money, on a monthly basis.²⁶ When the parents did not live together, then the parent living with the child contributed to the expenses mainly in kind and the other parent paid child support.

The amount of money had to be such that it covered the expenses for the upbringing of the child according to his or her social status, the education in general (upbringing) and the studies that qualified them for work. In terms of upbringing, these were the costs of feeding, clothing, healthcare and living. The expenses for education varied according to the social status as I explained before.²⁷

The principles of the means of child maintenance and its amount correlated with the principles of the determination of alimony in the era.²⁸

In the case of illegitimate children, the mother on top of child support could also claim the

¹⁸ CSORNA, Rokonság 326–327.

¹⁹ MNL ZML VII. 10. c. P.2399/1939/6.

²⁰ § 95 Act XXXI 1894.

²¹ § 11 Act XX 1877.

²² MNL ZML, VII. 2. f. P.543/1940.

²³ CSORNA, Rokonság 317.

²⁴ §§ 16, 22 and 37 Act XX 1877.

²⁵ § 95 Act XXXI 1894.

²⁶ §§ 234 and 252 CCP 1928.

²⁷ CSORNA, Rokonság 318.

²⁸ HERGER, Alimony 67–76.

expenses that occurred with the giving of birth. These were the maintenance of the mother for six weeks (two weeks prior to birth and four weeks after, which covered the costs of better nutrition and the lack of income) plus the cost of the baby trousseau.²⁹ If the child died as a minor, then the expenses of the funeral had to be paid by the father.³⁰

The obligated person should limit their own maintenance if needed for the sake of the child, but this did not mean that they had to jeopardize their own livelihood.³¹ The amount of child support was usually defined in monthly maintenance costs and was 15–30 % of the father's income before Royal Courts, whereas the Orphan's Court defined it as 20 %.³² The parents could settle on child support, but the opinion was not unanimous on whether the approval of guardianship authority was necessary for the settlement to become valid. Claimants in the cases of illegitimate children could ask for maintenance payments six months prior to the completion of the claim form, but a maximum of three years beforehand, and in the latter case only if the father had promised to marry the mother.³³

III. Cases of legitimate children

In the following, some cases will be highlighted in order to gain a glimpse of court practice as well.

In the first case, at the Royal Tribunal of Zalaegerszeg,³⁴ the claimant, the mother, worked as a seamstress, and the defendant was a private

entrepreneur. Their child had been living with the grandparents. Only the minutes from the case have survived, so it is unclear why the child lived there, but there could be two explanations based on the previously mentioned regulations. It could mean that the parents were not able to support the child, so the grandparents took care of the maintenance, or the father, as the primary obligated person, supported the child by placing them at his parents' home and probably covered the costs of maintenance.

In another case at the Royal Tribunal of Zalaegerszeg,³⁵ a whole picture is drawn about maintenance. The claimant, the mother, worked as a corset maker and the defendant, the father, was a corporate man. They had two daughters: Nóra, the older one, was 20 years old and lived with her aunt where she worked as a corset maker as well. The younger one, Judit, was 17 years old and lived in Újpest with a Mrs. L. and was still studying. The father paid Mrs. L. 80 pengő³⁶ per month for food and shelter, 10 pengő pocket money and covered the expenses of Judit's tuition and provided her with the necessary clothes. This tells us that the 17- and 20-year-old girls were indeed considered minors. The older one had enough income to support herself and the father covered the expenses of the upbringing, according to Judit's social status, by placing her at a home in the capital city, giving her pocket money and new clothes regularly and he also paid for her tuition. This younger girl did not have enough money to take care of herself and she was still in need of education to be able to work. The Court did not separate the parties so no further information is given.

Divorce cases fell into the jurisdiction of the Royal Tribunals according to the Civil Procedure Code of 1911. Yet based on § 137 of

²⁹ 3982/1916. Prime Ministerial Decree and all cases regarding maintenance of MNL ZML VII. 10. c. documents.

³⁰ MNL ZML VII. 10. c. P.45/1940/4., P.1148/1940., P.2693/1940/3., P.1244/1941/9., P.164/1942/3.

³¹ CSORNA, Rokonság 318.

³² *Ibid.* 319.

³³ *Ibid.* 330–331; MESZLÉNY, Magánjog 526.

³⁴ MNL ZML, VII. 2. f. P.426/1938.

³⁵ MNL ZML VII. 2. f. P.331/1938.

³⁶ Pengő was the Hungarian currency at time.

Act XXXIV from 1930 on the Simplification of Judicial Procedure, the maintenance matters of children fell into the competence of the Orphan's Court, the guardianship authority, and the Royal Tribunal only decided in urgent cases and if enough information was available to the court.

A total of 62 divorce cases were examined; there were 35 cases involving children. In seven of these cases the court did not separate the parents, in 12 cases no data could be found about the decision, in one case it only decided on custody, and in one case the judgement did not decide upon the children. In 14 cases the court transferred the matter to the Orphan's Court of Zala County based on them not being urgent. In only one divorce case³⁷ did the court consider the custody of the children as urgent, since the defendant, the mother, was an alcoholic and unemployed, and she did not take care of her children in any way, so the court gave the right of custody to the claimant, the father, and in this case the father did not ask for child support so it was not part of the decision.

Since all the matters of child support in relation to legitimate children fell into the jurisdiction of the Orphan's Court, I tried to examine the relevant documents in the National Archives of Hungary Zala County Archives but the material was under processing so I was unable to retrieve any of it.

But luckily, in one case of the Royal Tribunal of Zalaegerszeg, the final decision of the Orphan's Court of Zala County 17.515/1938.³⁸ was attached to the case file. The custody of the two children in question was given to the mother and the father was obliged to pay 10 pengő for every child, on a monthly basis.

In this case, the mother was unemployed, and she only worked when there was a chance to do so. The father had a property with a house, he

worked as a farmer and was also a job recruiter. He was paid 25 hundredweight of wheat every six months plus he received 35 pengő per month and 2 pengő for every worker he recruited. The court determined the amount of maintenance as 10 pengő per child. It can be deduced that the amount of 20 pengő was approximately 50 % of his income, 25 % per child.

This was a common amount in that area in 1938, because in the child support cases of illegitimate children, when the parents were farmers, the amount was always 10 pengő (in 1938 the common daily fee of farmers in Zala County was 1 pengő).³⁹ This means that the average monthly income of a farmer was around 30 pengő, so approximately 33 % of it was paid as maintenance.

IV. Cases of illegitimate children

In the following, two cases will be presented where the children were born out of wedlock.

The case P.3754/1939. of the Royal District Court of Zalaegerszeg⁴⁰ began in 1937. Between May and July that year, the defendant Ferenc Sz., a gendarmerie sergeant, was serving at the sentinel post in the village of Bucsuszentlászló and had intercourse several times with Ilona U., who was a cook there at the time. Thus, on 15 March 1938, their son, László, was born. Since the father did not take care of the child and he denied that the baby was his son, the mother filed a claim on 30 April 1938 for maintenance payments of 20 pengő per month, plus 40 pengő for birth expenses, 40 pengő for the baby trousseau and 42 pengő maintenance for the mother. The court rejected her claim since she could not prove that the defendant was the father and the defendant had denied it.

³⁷ MNL ZML VII. 2. f. P.1695/1938.

³⁸ MNL ZML VII. 2. f. P.560/1938.

³⁹ Based on the documents of MNL ZML VII. 10. c.

⁴⁰ MNL ZML VII. 10. c. P.3754/1939.

Later in 1938, in the retrial, the court also rejected the claim, since the claim was again not proved efficiently.

After that, on 21 November 1939, the prosecutor as a guardian of the minor, filed another claim for child support and the legal costs of all the cases, since the mother had learned, during the summer of 1939, that Ferenc Sz. had talked to another cook from the sentinel post and he admitted to her that “he had an affair with Ilona, but he would not make a settlement with the mother, because she would ask for too much, plus she had no witnesses, she could not prove it, and he would deny the whole thing if anyone asked”. The claimant also attached a letter from a midwife, in which the midwife rejected a claim to carry out an abortion for Ilona U. as requested by the defendant. On 14 February 1940 the court delivered a judgement and obliged the defendant to pay 12 pengő child support every month, and the court of second instance, the Tribunal, approved this on 1 April 1940.

In another case of the Royal Tribunal of Zalaegerszeg, under P.4022/1939,⁴¹ the claimant was Sándor P., an illegitimate child, whose mother, Erzsébet P., was a kitchen maid at the house of the defendant, Antal J. Not many documents have survived from the case, but it can be deduced from the circumstances that the defendant had a wife and two children. He also owned a home, where he employed three servants, including the claimant’s mother, who was recruited by the wife of the defendant, Mrs. J. One night in January 1939, the wife of the defendant and his two children attended a theatre show and left their home on a carriage, which shows that the family must have been wealthy. That night, according to the claimant’s mother, the other two servants, who were sisters, went out as well. Then, as she was working in the dining room after dinner, the defendant came in and

closed all the doors. She sensed that something was wrong, so she tried to run away, but the defendant ran after her and hung the hook of his walking stick to the neck of the claimant’s mother and forced himself on her. On 18 September 1939, the claimant was born. The claimant asked for maintenance and motioned to interrogate the prosecutor, who was the guardian of the child, and to obtain the documents from the case of the Orphan’s Court of Zala County, since the defendant offered at first 600 pengő, and after that 1200 pengő to the prosecutor for the maintenance of the child. At the trial, the defendant claimed that he was not the father of the claimant.

The court interrogated two witnesses, the other two servants, employees of the defendant, Júlia D. and Mária D., who both stated that they had been working there from the days before Christmas in 1938 until 15 February 1939 (one day after the incident), and there was no other servant employed, and also, one of them always had to stay at the house, and they could not even go to church together because of that. The court decided not to listen to other witnesses, namely the prosecutor, or the wife of the defendant, who allegedly employed the mother of the claimant, since the statements of these two unbiased employees contradicted the claim and the statement of the claimant. Thus, the court refused the claim and the second instance confirmed this. In this second case, it was not determined that the defendant was the father, so he could not be obligated to pay child support.

V. Summary

To sum up, it can be stated that the lack of a thorough substantive legal regulation of the matter resulted in the fact that the judicial practice shaped and crystallized the institution of child support with the guidance of the Civil Code Proposals. When determining the mainte-

⁴¹ MNL ZML VII. 10. c. P.4022/1939.

nance of minors, similar principles were followed in the cases of both legitimate and illegitimate children, and the responsibility for their upbringing was with the close family, although children born out of wedlock were in a less favourable situation, since at first the father had to be identified. This could be difficult since the court mainly leaned on the statements of the parties, documents and witnesses. However, after the person was identified, the child was entitled to maintenance, and this was an amount that could help in the upbringing of the child.

The regulation of the maintenance for illegitimate children was important not only for the individuals but also for the State, since the child mortality rate of illegitimate children was double that of legitimate children⁴² and the State and the Royal Courts recognized that these mothers and babies were in need of protection for their own sake and for the benefit of society as a whole.

All in all, there were differences between legitimate and illegitimate children, and these arose mainly from the social and economic differences of the era.

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Abbreviations:

- 3982/1916. M. E. számú rendelet [Nr. 3982/1916. Prime Ministerial Decree].
- Act XXIII of 1874 = 1874. évi XXIII. törvénycikk a nők teljeskorúságáról [Act XXIII of 1874 on the full age of women].
- Act XX of 1877 = 1877. évi XX. törvénycikk a gyámsági és gondnoksági ügyek rendezéséről [Act XX of 1877 on matters of guardianship].
- Act XXXI of 1894 = 1894. évi XXXI. törvénycikk a házassági jogról [Act XXXI. of 1894 on matrimonial law].
- Act I of 1911 = 1911. évi I. törvénycikk a polgári perrendtartásról [Act I of 1911 on civil procedure].
- Act XXXIV of 1930 = 1930. évi XXXIV. törvénycikk a törvénykezés egyszerűsítéséről [Act XXXIV of 1930 on the simplification of judicial proceedings].
- Act XXIX of 1946 = 1946. évi XXIX. törvénycikk a házasságon kívül született gyermek jogállásáról [Act XXIX of 1946 on the legal status of children born out of wedlock].
- CCP 1900 = A magyar általános polgári törvénykönyv tervezete. Első szöveg. [Civil Code Proposal. First text] (Budapest 1900).
- CCP 1913 = A magyar általános polgári törvénykönyv tervezete. Második szöveg. [Civil Code Proposal. Second text] (Budapest 1913).
- CCP 1928 = Magyarország Magánjogi Törvénykönyve, a m. kir. igazságügyminiszter által 1928. március 1-én az Országgyűlés elé terjesztett törvényjavaslat (Budapest 1928) [Hungarian Civil Code Proposal of 1928].
- MNL ZML = Magyar Nemzeti Levéltár Zala Megyei Levéltára Zalaegerszegi Királyi Törvényszék iratai, Polgári peres iratok [National Archives of Hungary, Zala County Archives, Documents of the royal Tribunal of Zalaegerszeg, Civil litigious cases] VII. 2. f. (1938–1945.).

⁴² CSORNA, Rokonság 326.

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