

Lessons and Criticism of the Criminal Jury in the History of Hungary

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Abstract

The present study gives data to the history of lay jurisdiction in Europe focusing the attention to the criticism of the Hungarian jury system between 1867 and 1914 via the presentation of the legal status of juries and the summary of a famous criminal case happened in Hungary concerning to jury behaviour. One can read details about the professional opponent of and the experiences of trials by jury written by outstanding Hungarian jurist at the beginning of the 20th century.

Key words: European juries; Hungary; Legal history; Criminal law; Austro-Hungarian Monarchy

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INTRODUCTION

In the last third of the 19th century, the jury was an essential element of the ideal of rule of law in all the developed European countries. In the absence of constitutional jurisdiction, many celebrated it as the instrument to lessen and to provide relative control for the inflexibility of rules of law, and at the same time it was regarded as the means of curbing the judicial power based on statutory positivism as a continent-wide distrust arose towards professional, trained judges remunerated by the state. Due to the intermediary effect of the Napoleonic

codification in France (1808), the jury was respected as one of the utmost democratic, liberal legal institutions, which held the most prestigious place among the values of procedural law of the European states for half a century. This also proves that the ideal of “Europeanism” resting upon common traditions – as the need for a substantial ideal uniting the nations – already existed at that time. However, the First World War overthrew the conception of the liberal state and pushed judgment by the jury into the background, too, although such signs could be observed from the turn of the century.

1. INSTITUTIONAL HISTORY

In the last third of the 19th century, the jury was an essential element of the ideal of rule of law in all the developed European countries. In the absence of constitutional jurisdiction, many celebrated it as the instrument to lessen and to provide relative control for the inflexibility of rules of law, and at the same time it was regarded as the means of curbing the judicial power based on statutory positivism as a continent-wide distrust arose towards professional, trained judges remunerated by the state. Due to the intermediary effect of the Napoleonic codification in France (1808) (Donovan, 1999, pp.379-383; Schnapper, 1987, pp.165-194), the jury was respected as one of the utmost democratic, liberal legal institutions, which held the most prestigious place among the values of procedural law of the European states for half a century. This also proves that the ideal of “Europeanism” resting upon common traditions – as the need for a substantial ideal uniting the nations – already existed at that time. However, the First World War overthrew the conception of the liberal state and pushed judgement by the jury into the background, too, although such signs could be observed from the turn of the century.

The Compromise of Austria and Hungary established an extraordinary connection between the two monarchies

in 1867, which is technically described as a real union of states. It meant that both Austria and Hungary were sovereign states but they had three common relations: foreign affairs, defence in the case of a war and the finances connected with the preceding areas (the term “Austro-Hungarian Monarchy” is rather a political than a legal expression). This cooperation functioned well but it came to a sudden end after World War I (Ruszoly, 2002; Máthé-Pölöskei-Zlinszky, 2000, pp.217-248, 305-342).

When, after several decades of preparation (Both, 2009; Antal, 2009, pp.279-289; Balogh, 2010, pp.1-46), the Hungarian Parliament debated the Code of Criminal Procedure in 1896, the desire for the extension of the powers of the jury seemed to be general in Hungary, too. Both jurists and the lay public hoped that it would promote the intact nature of judgement. Since the establishment of the Austro-Hungarian Monarchy (1867) there was some negative experience regarding the press offences sanctioned by Act XVIII of 1848, the Press Act (Varga, 2012, pp.60-61; Révész, 1986, pp.37-54, 183-227) and later by Act V of 1878, the Criminal Code,¹ or more precisely as to their judgement by a jury – the most frequent jury cases were in connection with the following crimes: defamation, vilification, outraging the Royal Family, offences against constitutionality or offences against the connections between Austria and Hungary by press –, but everyone hoped that the new statutory regulation would be sufficiently prudent to eliminate the earlier mistakes. For this reason, the Code of Criminal Procedure (Act XXXIII of 1896) created under the intellectual leadership of Dezső Szilágyi, Minister of Justice² was passed by Parliament unanimously, partly regarding the extension of the scope of authority of the jury in the main trial (Bónis-Degré-Varga, 1996, pp.211-231). However, the single act on the organization of jury panels (Act XXXIII of 1897) and the act on the enactment of the Code of Criminal Procedure (Act XXXIV of 1897, further on: ‘Bpé’) received criticism from the opposition

wherever possible (Antal, 2006, pp.222-243; Antal, 2009, pp.289-295). This was nobody’s expressed professional interest, but since the Code of Criminal Procedure came into force only as from January 1, 1900, this served as a good reason for the opposition to obstruct the government majority.

The new jury tribunals – that is the joint criminal forums, which were set up of three professional judges and twelve, for the most part lay persons, and which were assembled usually once in a quarter year or in two, possibly in two and a half months – existed only in the seats of royal appeal courts before 1900 (Antal, 2012),³ but later there were juries in sixty-four cities – almost in every county – until their suspension nearly countrywide in the autumn of 1914, which *de facto* meant their abolishment (Csizmadia, 1966; Vámbéry, 1900, pp.15-18; Stipta, 1998, pp.133-138).

These juries with an extended scope of authority judged in the main trials of actions filed in the following criminal offences: 1. in basic cases of high treason, 2. in the criminal act of assaulting the king, 3. in most kinds of infidelity, 4. against groups organized for the purpose of rebellion, 5. in the aggravated case of unlawful deprivation of personal freedom, 6. in particular cases of premeditated homicide (murder) and 7. voluntary manslaughter (e.g. American duel), 8. for the culpable abandonment of a child (exposure), 9. some types of bodily harm with fatal consequences and 10. criminal acts against public health, 11. in the cases of kidnapping a child and eloping with a girl under the age of fourteen, 12. in the case of the violation of personal freedom committed to the injury of a person in custody of the police, 13. in basic cases of robbery, 14. in the case of arson and if 15. causing a waterflood was to be punished severely, moreover 16. in the cases of damage to railroad equipment or damage caused on a steamboat, 17. in the cases of bribing judges and investigators, and finally 18. in the case of incitement in a gathering or by way of public display if such behavior was aimed at committing a criminal offence referred to the competence of the jury (Bpé, § 15).

The juries operating in the seats of the eleven royal appeal courts continued to have exclusive scope of authority in criminal offences committed through printed matters and press media, too, as well as in cases of minor offense committed through printed matters, moreover, in lawsuits of defamation and libel made in the press aimed at the members of the authority, or committed to the injury of a person acting in public service, concerning his or her official actions (Bpé, § 16).

¹ Károly Csemegi (1826-1899) was a recognised jurist during the Dualism; he worked for the Ministry of Justice as an Undersecretary of State and he led the codification of the first Hungarian Criminal Code (Act V of 1878), which is still called Csemegi-codex by the jurists. He formulated the first version of the Code of Criminal Procedure in 1872, which in fact was a reference book and not a statute, although judges used it as an authentic regulation until 1900. He did not support the introduction of the jury or the jurisdiction of any kind of lay courts.

² Dezső Szilágyi (1840-1901) was one of the most important Ministers of Justice in Hungary. Earlier he was a member of the House of Representatives and a Professor in Law at the University of Budapest. As a minister (1889-1895) he realized complex juridical reforms like the organization of the new appeal courts in 1890/91, the modernisation of the legal status of Hungarian judges (1891), the transformation of the institutions of the Austro-Hungarian consular jurisdiction (1891) and the turning of church weddings into marriages registered by the clerks of the state (1894). Between 1895 and 1898 he was the president (Speaker) of the House of Representatives in the Hungarian Parliament.

³ The places of the royal appeal courts were: Budapest (Hungary), Debrecen (Hungary), Győr (Hungary), Kassa (Košice, Slovakia), Kolozsvár (Cluj-Napoca, Romania), Marosvásárhely (Târgu Mureş, Romania), Nagyvárad (Oradea, Romania), Pécs (Hungary), Pozsony (Brislava, Slovakia), Szeged (Hungary), Temesvár (Timișoara, Romania).

From among the great number of interesting legal cases – mostly related to murder or robbery –, I am going to briefly present a resounding criminal procedure held in Szeged City in the year of 1904. Its significance is also shown by the fact that it was partly due to this case that Ferenc Vargha, one of the most prominent Hungarian criminal lawyers of the era, published his great study against the jury right thereafter (Vargha, 1905).⁴

2. THE PÁL EREMIT'S MURDER

A traumatic event was reported in the papers on January 6 and 7, 1904: parliamentary representative Pál Eremit's was murdered in Nagyikinda City. Since Eremit's had a large number of enemies there – according to general public opinion he was an unscrupulous usurer and mercenary – the Supreme Court appointed the unbiased jury of Szeged to make a judgement. June 21, 1904 was set by the chairman of the tribunal as the first date of the trial, before which journalists and jurists wishing to learn flocked to Szeged from all over the country in great numbers.

Following the opening of the trial the jury was set up. After practicing the mutual right to challenging by the royal prosecutor and the two accused men: Mladen (48) and George (28) Sibul, four merchants, a great entrepreneur, a chief accountant, two lawyers, a newspaper editor, a butcher, a jeweller and a baker were chosen as common jurors. Two craftsmen were selected as substitute jurors. Based on the occupations, the jury could be regarded as ordinary, or even more than average, considering that it included more intellectuals – including two jurists – than in general; it could not be labelled, using the contemporary expression, a “peasants’ jury” (Buchwald, 1900; Kármán, 1904).

The royal prosecutor stated the charge, which was premeditated murder committed with an accomplice and punishable by death according to the Criminal Code. The facts of the case were relatively simple: the accused admitted that on that fateful day in January they had murdered Pál Eremit's – with extreme cruelty –, attacking him from ambush outside the district courthouse in broad daylight, in the presence of passers-by. They committed the crime with an iron rod and a revolver that they had purchased specifically for this purpose in the autumn of the previous year. They did not deny the motive, either: they had committed the murder because of their father, Próka Sibul being cheated out of his wealth, the ordeal caused by litigation for years and in the end losing it. The accused – obviously following their defence counsel's

advice – testified that they had wanted only to frighten, and not to murder, the ruiner of their family, who had acquired their properties by using a sham contract. What they sought to achieve with the alleged frightening was to persuade Eremit's to give back some of their former lands after the unsuccessful criminal and then civil actions (1886, 1897).

However, in the light of the contentions and all the circumstances of the case it was clear – and also found so later by the jury – that their intention had been not to frighten but to kill in a resolute and premeditated manner. It was also obvious for the audience skilled at law that in spite of drinking earlier, they had acted with complete capacity of discretion and in a planned way. The medical examiners also confirmed this in their testimonies. Neither of the accused was found to have a mental disorder which would exclude culpability. The weapons experts found that the revolver was working faultlessly and was an appropriate instrument for carrying out the act of murder. The hearing of more than fifteen witnesses did not bring any further developments.

In accordance with the law, the final pleadings were started by the prosecutor. In anticipation of antipathy on the jury's part towards Eremit's, he drew their attention to the fact that they were not above the law, consequently they had to abide not only by their own conscience, but also by the legal system. This message was not accidental: he referred to another nationally renowned case, the case of Mihály Nyuli, who the jury of Budapest acquitted in 1900 by making a very unusual verdict. In the statement of the prosecution on the merits he argued for premeditated murder and expounded that the intention to frighten could not be sustained by evidence, it was the case of express premeditated murder. He did not think that the passion of the accused was a realistic possibility because they clearly knew what they were doing and were able to weigh the consequences of their actions. Also, he had no doubts about the motive: they sought to avenge the injury that their family had suffered, which was intensified by the public feeling arising after the 1901 parliamentary elections in Nagyikinda in the wake of the suspicion of corruption.

The counsel for the defence began his speech with just the opposite reasoning: he admonished the jurors against acting as jurists and asked them only to keep the truth in view. The essence of his pleadings was constituted by the assertion of the exclusion of liability in criminal law: the accused parties' will be influenced by despair and drinking *pálinka* (Hungarian brandy). He also doubted premeditation, saying that it was precluded by despair. He concluded that the accused had not been able to assess the life-endangering nature of their act – they had not been liable in criminal law. Finally, he referred to Eremit's lawsuits for usury and 120% interest, 271 of which were kept in evidence and proved with documents. He closed his speech in defense of the accused: “What despair

⁴ Ferenc Vargha (1858–1940) was an outstanding legal professional both in practice and theory. His carrier included being a public prosecutor, a presiding judge at the high court of justice, and finally the Crown Prosecutor (highest public prosecutor). He also took part in the process of the codification of the 1896 Criminal Procedural Code mentioned. Concerning the present topic he did not appreciate lay men in jurisdiction.

could have risen in their hearts when they saw that the administration of justice on Earth could not find them the truth. Here, they administered justice to themselves and took revenge in their own way.” He gave the matter an appearance as if not Eremites, but the two brothers were the moral victims and asked for their acquittal.

The trial continued on the third day and the jury retired after the advisory instruction by the presiding justice. They were asked twenty-one questions altogether. They deliberated for two hours, then appeared in the courtroom again and revealed a surprising verdict to the judges and the audience: when they were asked the question whether the accused had committed the alleged act, they answered *yes*. However, as to the question of guilt, they answered *no* with reference to strong passion, and by doing so they accepted the position of the defense, namely that the perpetrators had not been liable in criminal law at the time of committing the murder. Thereafter, the judges – not having a right to do differently – passed their judgment, in which they *acquitted* the Sibul brothers of the charges and released them immediately. After the rendition of the verdict, the audience cheered enthusiastically and the jurors themselves congratulated the accused (!).

The representative of the prosecution lodged an appeal in cassation and argued that the court had applied the rule of law regarding liability in criminal law erroneously, in which Eremites’s heirs joined. However, since the decision was absolution – meaning that the jurors “erred” to the benefit of the accused and not to their detriment – there was only slight legal chance for cassation; in spite of this, “the opinion dominated even among judges and jurists that the Supreme Court was going to overrule the verdict of acquittal and grant the appeal in cassation under some pretext”. The Supreme Court discussed the case publicly at the end of 1904 and dismissed the aggrieved parties’ appeal in cassation, claiming that they had no right to it pursuant to the Code of Criminal Procedure, and the prosecutor’s motion for legal remedy was withdrawn unexpectedly by the Royal Prosecutor’s office a few days later, and thereby all legal grounds for a cassation procedure ceased to exist and the decision of the Szeged jury tribunal became final (*res iudicata*). Thus the case ended *de jure* in January, 1905 (Antal, 2006, pp.265-270).

CONCLUSION

In the days following the proclamation of the jury court’s decision, journalists covered the case nationwide; some with appreciation, some with stoic disappointment. Generally, the political newspapers stated their position in accordance with their party affiliation: the events were commented on negatively by the pro- government ones and positively by the opposition. However, the legal profession and the intellectual weeklies were shaken by the fiasco of the Szeged jury (Antal, 2006, pp.275-277): They had to face what the English legal literature

called the jury’s merciful discretion – the right that in the case of a verdict of acquittal, there is no possibility for legal remedy against the decision because of the wilful violation of the rules of substantive law. This anomaly arose in the late 18th century in England especially in the cases in which the accused, having been found guilty, might as well have been sentenced to death by the court, therefore the sympathetic jury (“pious perjury”) acquitted them instead (Handler, 2002; Hostettler, 2004, pp.97-99, 109-115; Radzinowicz, 1948, pp.527-607).

There occurred similar cases of acquittal in Szeged later as well, which did no good for the national judgement of trial by jury. From among these, it was perhaps the infamous Haverda case (1910) which harmed this legal institution the most, even if eventually the Budapest jury, after rehearing the case, was able to remedy the damage to the reliability of the Hungarian administration of justice in that particular case (Jánossy, 1910).

The opinion on the Hungarian trial by jury is still controversial today. Undoubtedly, it had no time to run its course, as the criminal jury with an extended scope of authority functioned in Hungary only for fifteen years, whereas the earlier press juries worked only in a narrow field of law. The political- economic environment did not really favour the jury either, considering the tensions between the nationalities in the Hungarian society (Ruszoly, 2009).⁵ Theoretical jurists were rather in favour of the jury, while the majority of practicing jurists – particularly judges and public prosecutors – could not be convinced of the “advantages” of lay judgement (Antal, 2009, pp.295-297) although – naturally – a large number of judgements corresponded to criminal law.

The attack of the legal profession on the jury culminated in the previously mentioned series of articles published in 1905 by Ferenc Vargha (1858-1940), later Crown Prosecutor. He expected a good judge to have three “golden” properties: legal knowledge, adequate psychological and logical abilities and, finally, to pass a vocational judgment which was suitable for review by the court of appeal. As far as the lay persons’ legal knowledge is concerned, it was distrusted already by the French, this was the reason why only the judgement of the question of facts was left to the jury in 1791. In contrast, the Hungarian code of procedure, which was based on the Austrian and German models, referred both the questions of facts and of law to the jury’s competence. Vargha

⁵ Hungary was a multi-national country in the 19th century which caused several tensions in politics from 1848. Some say that these difficulties were responsible also for the death of the dual monarchy in 1918. The following minorities lived in Hungary at that time: Bulgarians, Poles, Romanians, Ukrainians, Serbians, Croats, Slovenians, Slovaks, Saxons and other German speaking nationalities, also Armenians and Russians. Although the Hungarian Parliament carried acts on the rights of nationalities in 1849 and 1868, the legal problems of minorities were not solved in Hungary or in Centre Europe.

demanded professionalism in judgement, too, in contrast with those who considered this “perilous”. When he was asked the question whether trial by jury had improved the administration of justice, his answer was a definite “no”. In his view, expertise at law and professionalism are the *sine qua non* of a judge’s character, whereas jurors did not have real responsibility for their decision because there was no official reason for the verdict.

He demonstrated the superiority of professional courts by analyzing the psychology of passing a judgement. During the procedure of evidence, key elements in making a decision are attention, recollection and the logical processing of the recollected material, the external form of appearance of which is: the decision of the court. A trained judge passes the judgement by collating and weighing the evidence, and this process of his can be checked in the reasoning, which the judge words *a posteriori*. Jurors, however, are characterized by greater “suggestibility”, and each new impression imparts a different color to their sentiments, thereby continuously changing their frame of mind. He did not consider the verdict of a juror with a balanced, “more energetic” disposition more valuable than the verdict of a “capricious, changeable lay judge” either, because in the end he also decided on the basis of sentiments. This was also professed by the doctrine of the irradiation of intellectual sentiments, which propagated the preponderance of the dominant impression in the process of perception – instead of the words of law. As opposed to this, Vargha looked upon the “stereotyped” thinking of professional judges as the safest guarantee for finding the truth. He warned: even though the jury was democratic in composition, it was aristocratic in sentiments; the counsel for the defense could have a great effect on lay persons with a persuasive speech, which was coupled with the influence arising from personal contacts and the press.

Ferenc Vargha reached the conclusion that lay persons should not be entrusted with the task to decide about questions of law, but at the same time he did not really consider them suitable to resolve questions of fact, either (Vargha, 1905; Finkey, 2000, pp.188-189).

Jenő Heimann (1881-1940) also held the view that Hungary was not mature enough for extending the trial by jury. Analysing the verdict of acquittal in Szeged, he pointed out that “the juror is not a judge, but a man who, as such, looks upon the accused as a suffering fellow-man and is involuntarily inclined to acquit him/her”. He agreed that the jurors were guided in making their decision by subjective moments, which excluded a fair, impartial verdict. He sighed painfully, “if Dezső Szilágyi could have lived to see a few years of statistics and could have seen how the most evil criminals were acquitted by the jury indiscriminately, he would have cried out – I say –: This is not what I wanted, not this” (Heimann, 1904).

Hardly anyone opposed trial by jury with more wit than Izidor Baumgarten (1850-1914). Starting from Jean

Jacques Rousseau’s doctrines, he identified the reasons for the introduction of the jury as giving preference to total ignorance and inexperience over the “schematic thinking” associated with every profession. In the age of Enlightenment, the false premise was that nature endowed the jurors with an “instinct for truth”. In the philosophical language of that age, the juror was the suffering, feeling and speaking instrument of criminal law, and his verdict was “the speech arising voluntarily from nature”.⁶ In fact, however, the members of the jury “want to play human instruments although they do not have the slightest idea of the rules of the functioning of human spirit, and they believe that a short description of the technique of art is worth as much as the masterful skill acquired through years of hard work learning how to play the instrument. [...] Art – Baumgarten continued – is nothing else but nature in the sentiment of a temperament, [...] [whereas] judgment is an event on the scales of intellect.” For this, reason must overcome sentiments. However, he held the legislator responsible for the mistakes, since the Hungarian procedure was of such nature that the juror could not always keep his oath – or the law – in it (Baumgarten, 1905, pp.14-18; Finkey, 2000, pp.182-183).

The problems mentioned weighed heavily on the judicial system until the First World War. A strange turn of history is that eventually the amendment of the Code of Criminal Procedure in the year of 1914 would have allowed cassation (the annulment of the verdict) by the Hungarian Supreme Court regarding verdicts of acquittal by the jury, too, if the jury erred in the “merits of the case” (Act XIII of 1914). Following the French model, the deliberation of the jury would have been chaired by the presiding judge personally, who earlier could not even enter the lay men’s room where the jurors retired. The methodology of constructing questions to be asked was also refined. We cannot say whether or not this would have brought a satisfactory solution, because – as already mentioned – this form of judgment ceased almost everywhere the same year following the declaration of the state of war in Hungary. Although the question of reactivation arose in the autumn of 1918 and 1919, the government further postponed giving a concrete answer – permanently.

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⁶ It refers to the fact that it was given a kind of priority to the lay men’s inexperience and non-competence instead of the trained knowledge and practise of official judges’ stereotype legal thinking, determined by the professional experiences and the paragraphs of the law, by the French philosophical streams concerning to the natural “society contracts” in the 18th century.

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