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## ***The Divorce Law in the Kingdom of Hungary***

### ***Introduction***

In the Kingdom of Hungary, the rules of canon law applied to marriage since the synod held at Buda in 1279. Before 1279, there was no absolute conformity between the marriage law provisions enacted by the ruling Arpad dynasty and the canon law. The following divorce provision enacted by the first Hungarian king Stephen I (1000—1038) can be used as an illustration:

If the husband fled from his wife because he no longer wanted to be her husband, the wife could enjoy his possession and no one could force her into a new marriage. However, if the wife decided to contract a new marriage, she only kept her dress and gave all the other possession back to her husband and was free to contract this new marriage. Provided that the husband came back and wanted to contract a new marriage, he only could contract it with the Episcopal consent.<sup>1</sup>

Moreover, at the first synod at Esztergom in 1100, it was said that *if the husband sold himself into slavery because he no longer wanted to remain with his wife, he remained a slave and the wife was permitted to contract a new*

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<sup>1</sup> Stephen I/30. In M. Laclavíková, A. Švecová: *Praktikum k dejinám štátu a práva na Slovensku. I zväzok. (Od najstarších čias do roku 1848)*. [History of State and Law on the Territory of Slovakia from Ancient Times till 1848. A Practice Book.] Trnava 2015, p. 36.

*marriage*.<sup>2</sup> Furthermore, even a reference to consensual divorce survived in *Regestrum Varadinense*,<sup>3</sup> a 13th century document preserving the minutes of hundreds of trials by ordeal. Therefore, it is not surprising that in 1231, Pope Gregory IX wrote a letter in which he complained that the practice of the state courts terminating marriages in the Kingdom of Hungary contradicted the Catholic faith.<sup>4</sup> And so, gradually, the marriage matters fell within the Church competence for long centuries. Paulus Khlosz (18th century), an attorney and a University teacher specialising in procedural law, confirmed this state of affairs in 1761, when he wrote that “absolutely all marriage matters were regulated by the canon law rules.”<sup>5</sup> This opinion was also endorsed by Emericius Kelemen (18th—19th century), a University Professor, three times Dean and twice Rector at the Budapest University, who wrote in 1818 that “the Council of Trent teaching was accepted for the whole Kingdom of Hungary at the Trnava synod and this had to be kept as no one taught anything better.”<sup>6</sup>

### ***The Marriage Act (Act XXXI/1894)***

The wind of change was brought into marriage law matters by the Marriage Act, which came into force on the 18th of December 1894. The Marriage Act provided for public regulation of family law matters. It introduced civil marriage contracted before a state officer as the only lawful form of marriage and declared marriages dissolvable. As a consequence, the union between man and woman could no longer be regarded as *matrimonium perpetuum*.<sup>7</sup>

<sup>2</sup> E. Roszner: *Régi magyar házassági jog*. [The Old Hungarian Marriage Law.] Budapest 1887, p. 305.

<sup>3</sup> G. Béli: *Magyar jogtörténet- Az államalapítástól 1848-ig*. [The Hungarian Legal History from the State Foundation till 1848.] Pécs 1995, p. 14; E. Roszner: *Régi magyar házassági jog*. [The Old Hungarian Marriage Law.] Budapest 1887, pp. 302—303.

<sup>4</sup> E. Roszner: *Régi magyar házassági jog*. [The Old Hungarian Marriage Law.] Budapest 1887, p. 307.

<sup>5</sup> P. Khlósz: *Praxis seu forma processualis fori spiritualis in Mariano-apostolico Hungariae regno usu recepta*. Tyrnaviae 1761, p. 228 (trans. Adriana Švecová).

<sup>6</sup> E. Kelemen: *Institutiones Juris Hungarici Privati, Liber I. Budae: Typis regiae scientiarum univ. hungariae*, 1818, p. 342 (trans. Adriana Švecová).

<sup>7</sup> A. Švecová: “Kánonické manželstvo v Uhorsku na prahu modernej doby (všeobecný hmotnoprávny základ).” [Canon Marriage in Hungary at the Outset of the Modern Era (General Substantive Basis).] *Revue církevního práva*, Vol. 62, No. 3 (2015), p. 24. Praha.

## ***Historical background of the Marriage Act adoption***

The new definition and understanding of matrimony as a state matter had political roots.

First of all, in 1867, a new dual union between Austria and Hungary arose from the ashes of the Habsburg monarchy. It was a result of the long Hungarian fight for freedom, initiated in 1848 and initially suppressed by the Habsburgs. Hungarian politicians opposed anything linked to their *Habsburg enemies*, and so an opposition formed against Catholicism and the Austrian Civil Code (ABGB), according to which Catholic marriages could not be dissolved. Moreover, and along the same lines, Hungarian politicians wanted to put an end to the disunity of the Hungarian nation, as before 1894, there were eight main confessions in the Kingdom of Hungary, and so eight different divorce law systems existed.<sup>8</sup> They knew that “unity is strength.” This is confirmed by the words of University Professor Herczegh Mihály, who asserted that “[t]he Hungarians needed this law more than any other European nation did as unity and universality were necessary for people forming one nation but having so many different languages, religions and traditions. He explicitly said that such a law was a guarantee of the Hungarian nation’s revitalisation.”<sup>9</sup> Finally, the decision of Hungarian politicians was in accordance with rationalism, liberalism, nationalism, capitalism, and technical progress which ruled contemporary Europe. These were the main reasons leading to the adoption of Law XXXI/1894, which, however, found no support in the eyes of the Catholic Church...

According to the article about the Hungarian Marriage Act published in 1895 in London’s *The Tablet*,<sup>10</sup> Hungarian bishops unanimously rejected the Marriage Act and denounced it for blasphemy, even in letters written to the king, to the government, and to the pope himself. Their official argument for rejecting the Marriage Act was fear that young religious girls would be deceived by grooms who first promised and then refused to contract a church marriage. As a consequence, these religious girls would be forced to live in blasphemous marriages, and their husbands would enjoy the right to administer their possessions. Maybe also for this reason, there were some Catholic

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<sup>8</sup> A. Nagy: *A házassági jog kodifikációi*. [The Codification of the Marriage Law.] Miskolc 2012, p. 30.

<sup>9</sup> M. Herczegh: *Magyar Házassági Jog*. [The Hungarian Marriage Law.] Budapest 1896, introduction.

<sup>10</sup> “The Civil Marriage Laws in Hungary.” *The Tablet*, Vol. 85, No. 2854 (1895), pp. 102—103. London.

opponents who called the Marriage Act a creation of *Jewish mind and Feminism*.<sup>11</sup>

The attitude of Pope Leo XIII towards the Marriage Act is preserved in his Encyclical called *Constanti Hungarorum*.<sup>12</sup> In the Encyclical, he made the following two references to the imminent legislative change in Hungary:

There are still greater dangers threatening the ancestral faith of the Hungarians. The enemies of the Catholic faith are by no means concealing their intention to strive with all their most harmful weapons to accomplish the daily deterioration of the Church and the Catholic faith. We, therefore, exhort you, more urgently than ever before, to spare neither effort nor labour to ward off such peril from your flock and from your native land. [...]

The laws of Hungary are incompatible with the rights of the Church, restrict its capacity to act, and are detrimental to the profession of the Catholic faith.

The contemporary Minister of Justice D. Szilágyi responded in the following way: “the situation could no longer be perceived as a matter of faith but had to be perceived as a matter of the nation.”<sup>13</sup> The king finally agreed with this opinion, too, as he realised that only Wekerle, whose cabinet had passed the Marriage Law, was able to form the government again.<sup>14</sup>

### ***The definition of marriage according to the Marriage Act***

The Hungarian term for secular marriage was *polgári házasság*. In the commentaries to the Marriage Act and in related specialised literature, the dissolvable civil marriage was claimed to be older than the Catholic Church itself.<sup>15</sup>

<sup>11</sup> E. Heger: “The Introduction of Secular Divorce Law in Hungary, 1895—1918: Social and Legal Consequences for Women.” *Journal on European History of Law*, Vol. 2 (2012), p. 138. London.

<sup>12</sup> Leo XIII: *Constanti Hungarorum*. [cit. 22.12.2016.] Available at: [http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf\\_l-xiii\\_enc\\_02091893\\_constanti-hungarorum.html](http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_02091893_constanti-hungarorum.html)

<sup>13</sup> E. Maliniaková: “Zákon o manželskom práve a parlamentné rozpravy v Uhorsku v roku 1894.” [Matrimonial Law and Parliamentary Discussion in Hungary in the Year 1894.] *Forum Historiae* [online], Vol. 9, No. 1 (2015), p. 102. Bratislava [cit. 23.7.2016.] Available at: <http://forumhistoriae.sk/documents/10180/1017245/maliniakova.pdf>

<sup>14</sup> *Ibid.*, p. 103.

<sup>15</sup> M. Herczegh: *Magyar Házassági Jog...*, pp. 1—6.

Different arguments in favour of the Marriage Act were presented there. Firstly, there was the argument that the innocent party who was not guilty of marital misconduct was not sufficiently protected by separation from bed and board. Secondly, it was claimed that the innocent spouse was often forced to apply *self-defence*, that is, to commit the same offence as the guilty husband or wife had committed. Thirdly, it was observed that for the sake of children's education, the life in a broken family was far worse than divorce.<sup>16</sup>

However, at the same time, lawyers emphasised that despite the contractual freedom at the very beginning of marriage, the marriage itself could not be regarded as a mere civil contract because of its moral dimension.<sup>17</sup> The question we address below is whether the court practice fully respected this attitude.

### ***The marriage termination during the life of the spouses according to the Marriage Act***

The Marriage Act permitted two solutions: separation from bed and board<sup>18</sup> and divorce.

The historical inspiration for the Marriage Act and the divorce grounds it listed was Section 115 of Austrian ABGB, the French Code Civil (Book I, Title VI, Chapter I, Articles 229—233) and the German BGB (Sections 1565—1569). However, in contrast to BGB, Hungarian legislators did not accept mental illness as grounds for divorce because according to them, it contradicted the ethical purpose of marriage. Furthermore, unlike the French Code Civil, they did not accept consensual divorce based on no objective grounds. Last but not

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<sup>16</sup> Ibid., pp. 172—174.

<sup>17</sup> F. Raffay: *A Magyar Házassági Jog-1894. Évi XXXI. Törvényczikk.* [The Marriage Act. n. XXXI/1894.] Budapest 1902, pp. 5—6.

<sup>18</sup> The separation from bed and board meant that marriage ceased to exist factually but not legally. Even though the separation from bed and board was originally an ecclesiastical institution, the legislators kept it in the Marriage Act because they “did not want to discourage the nation from Catholic faith.” However, it is necessary to add that it was neither their intention to encourage people to separate from bed and board. Separation from bed and board could be granted for the same reasons as divorce. Either the innocent party could ask for it, or the judge could grant it upon his discretion in cases specified in Sections 76, 77, 78, and 79, or the judge was obliged to do so if the parties had asked for divorce according to Section 80. Consequently, the spouses lived separately (for a certain period of time or perpetually), or they notified the judge of their marriage restoration, or they asked the judge to turn the decree of separation into the decree of divorce. This means that divorce itself was in most cases preceded by separation from bed and board. See K. Henner: *O uherském právu manželském.* [About the Hungarian Marriage Law.] Praha 1904, p. 96.

least, they did not accept the so-called *insurmountable aversion*, which was the ABGB divorce grounds for non-Catholics. The reason for rejecting consensual divorce and insurmountable aversion was that the legislators did not intend to make the divorce procedure easy. The ideal marriage was still perceived as a non-dissolvable union; however, “an exception could be granted if the necessity to protect the individual human rights prevailed.”<sup>19</sup>

The Marriage Act, which strictly demanded fault for divorce, differentiated between so-called absolute and relative grounds for divorce.<sup>20</sup> In the case of relative grounds, the judge had to consider whether the reason for divorce claimed by the petitioner<sup>21</sup> was serious enough for granting divorce.

Absolute grounds for divorce were: adultery, unnatural offences, and bigamy (Section 76), intentional desertion without a lawful cause for a particular period of time (Section 77), violence endangering life or health of the spouse (Section 78), and sentence of death or imprisonment for at least five years provided the spouse had no knowledge of the committed crime before entering the marriage (Section 79).

Relative grounds for divorce were formulated only in Section 80; however, they encompassed four different wrongdoings, such as intentional commission of a grave matrimonial offence different from the above mentioned ones (Section 80 (a)), instigating children belonging to the family to commit a crime or to conduct an immoral life (Section 80 (b)), leading a licentious life (Section 80 (c)), and sentence to imprisonment for less than five years (Section 80 (d)).

In the following subsections, we provide analyses of all the divorce grounds enumerated in the Marriage Act. We will analyse Section 77 as the last one because of its unique position among the other divorce grounds.

### ***Divorce under Section 76 of the Marriage Act***

Adultery, unnatural offences, and bigamy had to be intentional in order to be grounds for divorce. The most common among them was adultery, which could be regarded as a reason for divorce only if it occurred during marriage (factual and legal), that is, not during separation from bed and board. If it occurred during separation from bed and board, the marriage could be divorced

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<sup>19</sup> K. Henner: *O uherském právu manželském...*, p. 86.

<sup>20</sup> If such grounds existed, the petitioner had to file the petition up till 6 months from when he or she had learnt about the existence of the grounds for divorce or up till 10 years from the occurrence of such grounds. If the spouse agreed to wrongdoing, approved it, or forgave it, the right to file a petition ceased.

<sup>21</sup> Petitioners were usually men. See E. Herger: “The Introduction of Secular Divorce Law in Hungary...” p. 142.

only according to Section 80.<sup>22</sup> It was generally known that adultery could not be understood only in the strict sense; however, the courts often divorced marriages on different divorce grounds even if the wrongdoing was a clear adultery. The reason for this was that the judge had to ban the adulterer from marrying the person with whom he or she had committed adultery and so, actually, to ruin their lives. This practice is exemplified by the following Royal Curia decisions:

*According to the first, even though the witnesses testified about the defendant that he had visited a brothel for multiple times, where he had locked himself in a room with a prostitute, the marriage could not be divorced according to § 76 but could be divorced according to § 80 c).*<sup>23</sup>

*According to the second, the defendant had affairs with different actresses during his marriage, which resulted from documentary evidence. The witnesses testified about his most serious relationship with the actress called T. L., with whom he lived in a common household as if they were married, and they even conceived a child. The decision said that the adultery was not proved sufficiently, and the matrimony was divorced according to § 80 c).*<sup>24</sup>

### ***Divorce under Section 78 of the Marriage Act***

This reason for divorce was introduced as a matter of *public safety*. Violence endangering life or health of the spouse had to be intentional. The intention, however, was not defined in the same way as in criminal law. In family law, it was sufficient that the spouse had such an intention or demonstrated it in any way. It was solely left to the judge's discretion whether a certain wrongdoing was treated as grounds for divorce or not, which, naturally, led to non-uniform court rulings.<sup>25</sup>

<sup>22</sup> The Royal Curia Decision n. 1800. M. 15.088., of 15/09/1897. See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata*. [The Marriage Law and the Court Decisions.] Budapest 1930, p. 106.

<sup>23</sup> The Royal Curia Decision n. 5960/96. M. 15.089., of 26/01/1897. See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata...*, p. 106.

<sup>24</sup> The Royal Curia Decision n. 54541. 1900. M. XII., of 13/03/1901. See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata...*, p. 107.

<sup>25</sup> For instance, in some rulings, it was decided that also intentionally infecting the spouse with a venereal disease was a violent life or health endangering act, but in other rulings, the same act was subsumed under Section 80 (a). Court ruling C. P. V. 1838/1911., Mj. Dt. 118. See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata...*, p. 86. The Royal Curia Decision n. 2008. M. 16, 271, of 26/09/1899. See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata...*, p. 98.

### ***Divorce under Section 79 of the Marriage Act***

The commitment of a crime could constitute a ground for divorce according to Section 79 or according to Section 80.

The commitment of a serious crime was considered to be a danger for the innocent spouse. The innocent spouse could be endangered, for example, by the wrongdoer's violent nature or by isolation due to the wrongdoer's long-term or life-term imprisonment, and so was entitled to seek divorce according to Section 79.

If a married person committed a less serious crime (life imprisonment for less than 5 years), it usually did not endanger the spouse but *only* made the innocent spouse's life more difficult (for instance, the innocent party had to perform more duties in relation to household and family or had to face slander from neighbours). In such a case, the spouses had to be separated from bed and board first, and only later could the innocent spouse seek divorce according to Section 80.

### ***Divorce under Section 80 of the Marriage Act***

Section 80 had a special position among the other divorce grounds. Firstly, its uniqueness lay in so-called relativity. Secondly, it was a broadly formulated divorce ground in comparison to the other ones.

The Marriage Act did not name all the grounds upon which the judge could grant divorce. The legislator wanted to dodge two extreme positions, i.e. an excessive judicial interference into private lives on one side and too abstract provisions leading to causeless divorces on the other side. The same immoral act could, in different cases, have different consequences. Consideration had to be given to the social status of the spouse, their education, sensibility, life experience, etc. So happened that in one case the marriage could be dissolved due to a certain reason, and this very reason formed no ground for marriage dissolution in some other case.<sup>26</sup>

It is no wonder that this divorce ground was criticised mainly by those who opposed the concept of marriage dissolubility.<sup>27</sup>

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<sup>26</sup> M. Herczegh: *Magyar Házassági Jog...*, pp. 195—196.

<sup>27</sup> K. Henner: *O uherském právu manželském...*, 1904, p. 90.

According to judicial decisions, the following acts were regarded as the intentional commission of a grave matrimonial offence (Section 80 (a)); *offending the spouse and using smear-words to address them*,<sup>28</sup> *restraining the child conception and other improper/selfish behaviour*,<sup>29</sup> *spending the wife's dowry and leaving and taking no care for the wife and son*,<sup>30</sup> *giving an expensive jewel to a foreign woman while being separated from bed and board*,<sup>31</sup> etc.

On the other hand, there were decisions where the judge refused to grant divorce according to Section 80 (a). For example, no divorce was granted for *concealing epilepsy*,<sup>32</sup> for *mental illness which occurred after marriage contraction*,<sup>33</sup> for *refusal to support and nurse a spouse during an illness*,<sup>34</sup> for *a mere statement by the husband that his wife did not perform her matrimonial duties*,<sup>35</sup> or for *an announcement by the husband published in a newspaper warning creditors not to extend credit to his wife*,<sup>36</sup> etc.

According to Section 80 (a), the matrimonial offence had to be made intentionally,<sup>37</sup> and it could either be a single act<sup>38</sup> or a long-lasting conduct.<sup>39</sup>

Instigating children belonging to the family to commit crimes or to conduct an immoral life according to Section 80 (b) related to both consanguineous and

<sup>28</sup> The Royal Curia Decision n. 4327/908. sz. a. III. p. t., of 09/02/1909. See M. Lányi, J. Lalloševits: *A Magyar Magánjog Kézikönyve*. [A Manual to the Hungarian Private Law.] Budapest 1913, p. 73.

<sup>29</sup> The Royal Curia Decision n. 4668/910. sz. a. III. p. t., of 21/12/1910. See M. Lányi, J. Lalloševits: *A Magyar Magánjog Kézikönyve...*, p. 74.

<sup>30</sup> The Royal Curia Decision n. 1069. M. XII., of 28/08/1900. See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata...*, p. 93.

<sup>31</sup> The Court Decision P. III. 1756/1912., MD. VIII. 75. See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata...*, pp. 109—110.

<sup>32</sup> The Royal Curia Decision n. 846. M. 16.272, of 31/08/1898. See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata...*, p. 98.

<sup>33</sup> The Royal Curia Decision n. 7234. M. 12647, of 06/11/1895. See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata...*, pp. 102—103.

<sup>34</sup> The Royal Court Decision n. 3618, of 02/11/1899. See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata...*, p. 104.

<sup>35</sup> The Royal Curia Decision n. 3374, of 03/11/1899. See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata...*, p. 98.

<sup>36</sup> The Royal Curia Decision n. 5903/900. M. XII, of 16/01/1901. See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata...*, p. 105.

<sup>37</sup> According to the Royal Curia Decision n. 10.787/906, of 13/11/1907, “*using bad names to address the husband is not a ground for divorce if the wife is impulsive, moody, choleric or unethical.*” See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata...*, p. 95.

<sup>38</sup> For example, according to the Royal Curia Decision n. 8242/900, of 17/02/1904, it was a *deceptive accusation of the husband of committing a crime before a police officer*. See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata...*, p. 96.

<sup>39</sup> For example, according to the Royal Curia Decision n. 1542. M. 16253, of 27/05/1898, it was *teasing the husband before servants and foreigners*. See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata...*, p. 99.

adopted children, and to both mild instigation and instigation that actually led to an unlawful act.

Section 80 (c) was often called a mirror of the *superflua non nocent* principle (Section 80 (c) vs. Section 80 (a)). However, leading a licentious life according to Section 80 (c) usually was of a longer duration than acts falling under Section 80 (a). As such was regarded, for instance, alcoholism, gambling addiction, debauchery, idleness, shopoholism, etc.

Imprisonment according to Section 80 (d) had to ruin the marriage factually and not only prospectively. Crucial was the length of punishment and the type of crime. It was impossible to claim divorce on such grounds as retention or payment of a fine.<sup>40</sup>

### ***Divorce under Section 77 of the Marriage Act***

As we have already mentioned, the consensual divorce (divorce by agreement) was not allowed by the Marriage Act. Very rarely, a judge issued a decree after taking into account the conjoint will of the spouses not to remain in the marriage, but a chance for that was very small.<sup>41</sup> Naturally, this led to attempts to evade the strictness of the law, and Section 77 provided a way to do so.

F. Raffay, Hungarian judge and teacher, commented that Section 77 was *the most specific and the most successful divorce ground, however, also the most amended one*.<sup>42</sup> For a long time, Section 77 was strongly criticised. Some lawyers were dissatisfied with it, claiming that it was not of Hungarian origin, that it lowered the value of the Marriage Act, and that it helped to evade law. They also maintained that it contradicted the intention of legislators because it challenged the moral aspect of marriage and that it clearly substituted the consensual divorce.<sup>43</sup> Dr. Raffay, who wrote a commentary to the Marriage Act, did not support these statements, and it may even appear that he was in favour of the consensual divorce. This can be inferred from the following statement:

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<sup>40</sup> M. Herczegh: *Magyar Házassági Jog...*, p. 200.

<sup>41</sup> For instance, according to the Royal Curia Decision n. 3321. M. 12.661, of 01/09/1896, *both spouses agreed that their marriage broke down 25 years ago. The judge came to a conclusion that 25 years lasting conjoint will of the spouses not to live together was sufficient to dissolve a marriage according to § 80 a*. See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata...*, p. 101.

<sup>42</sup> F. Raffay: *A Hütlen Elhagyás Mint Házasságbontó Ok*. [Intentional Desertion as a Divorce Ground.] Budapest 1901, p. 1.

<sup>43</sup> *Ibid.*, pp. 1—2.

The spouses can often dissolve their marriage by agreement according to § 77 a) and such agreement will not be revealed during the court procedure. They do so mainly when another compromising reason exists and they need to conceal it from the public or when no concrete reason for divorce exists.<sup>44</sup>

Dr. Raffay also cited two important judges. The first, Dr. K. Sztehlo, said that the consensual divorce was left out from the Marriage Act intentionally. However, for consensual divorce supporters, it was not surprising that the courts used Section 77 (a) as a substitution for the consensual divorce. The second, Dr. Jancsó, observed that the strictness of the Marriage Act was reduced by Section 77.<sup>45</sup>

The fact that both spouses and judges referred to this law was a result of a ministry ruling, which urged the judges to consider the divorce reasons *thoroughly, deliberately and strictly* in order to reveal unlawful agreements, and of statistics, according to which most of the divorces were granted pursuant to Section 77.<sup>46</sup>

The reason for divorce according to Section 77 was intentional desertion without a lawful cause for a particular period of time. This intentional desertion could be either a so-called *quasi-desertio* or *desertio*. In the case of *quasi-desertio* (Section 77 (a)), the court was familiar with the whereabouts of a deserter and so, after six months from the date of desertion, delivered a decision which bound the deserter to restore the matrimony within the specified term (usually 15—30 days, maximum 90 days).

In the case of *desertio* (Section 77 (b)), the court was not familiar with the whereabouts of the deserter, and so, after a year from the date of desertion, the deserter was summoned by a public notice to restore the matrimony within one year.

The court could bind the deserter to restore the matrimony only if the abandoned spouse had expressed the will to restore it. Naturally, the abandoned party could not merely refuse to restore the matrimony, but needed a reason for it. An accepted reason was, for instance, the fact that the deserter conducted immoral life during desertion.<sup>47</sup>

The reason for changing the deserter's whereabouts was crucial, too. For instance, if the husband decided to change his domicile without consulting it with his wife and went to live abroad, the wife was not compelled to follow

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<sup>44</sup> Ibid., p. 64.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid., p. 2

<sup>47</sup> The Royal Curia Decision n. G. 527., of 05/02/1904. See A. Meszlényi: *Házassági Jog és a Birói Gyakorlata...*, p. 76.

him and could ask for divorce.<sup>48</sup> Within the country, however, she was obliged to follow him, as the husband was regarded as the *pater familias*.<sup>49</sup>

Interestingly, intentional desertion could occur even if the spouse did not leave the marital house. In order to prove marital breakdown, it was enough for the spouses to live in separate rooms with separate entrances.<sup>50</sup>

The protection of the abandoned spouse was secured in several ways. Firstly, it was not perceived as a marriage restoration if the deserter returned only for one night and in the morning left again.<sup>51</sup> Secondly, the judge often decided to dissolve the marriage according to Section 80 (a) instead of Section 77, or vice versa, that is, did not reject the petition on the grounds that it had been wrongly filed.<sup>52</sup>

## *The Marriage Act in practice*

The statistics from 1898—1906 demonstrate the frequency of particular divorce grounds.<sup>53</sup>

The least marriages (57 divorced marriages) were dissolved pursuant to Section 79 of the Marriage Act (sentence of death or imprisonment for at least five years).

The second least popular divorce ground was violence endangering life or health of the spouse, regulated by Section 78 (72 divorced marriages). The reason why only such a small number of marriages were dissolved pursuant to Section 78 might have been uncertainty whether the disclosure of a mere malicious intent was indeed sufficient for divorce, or whether the other spouse had to be actually injured. Another problem was that the courts qualified *an injury*

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<sup>48</sup> The Royal Curia Decision n. 10.103/905, of 09/05/1906 and The Royal Curia Decision n. 246, of 02/09/1908. See M. Lányi, J. Lalloševits: *A Magyar Magánjog Kézikönyve...*, p. 67.

<sup>49</sup> P. Mosný, M. Laclavíková: *Dejiny štátu a práva na území Slovenska I. (od najstarších čias do roku 1848)*. [History of State and Law on the Territory of Slovakia from Ancient Times till 1848.]. Druhé doplnené a prepracované vydanie. Bratislava 2015, p. 92.

<sup>50</sup> The Royal Curia Decision n. 4332, M. Tára VI. 57, of 1924. See A. Meszlény: *Házassági Jog és a Birói Gyakorlata...*, p. 56.

<sup>51</sup> The Royal Curia Decision n. G. 527, of 05/02/1904. See A. Meszlény: *Házassági Jog és a Birói Gyakorlata...*, p. 76.

<sup>52</sup> The Royal Curia Decision n. 4666. M. 15.049, of 27/10/1897. See A. Meszlény: *Házassági Jog és a Birói Gyakorlata...*, pp. 63—64. The Royal Curia Decision n. 2088. M. 16257, of 07/09/1898. See A. Meszlény: *Házassági Jog és a Birói Gyakorlata...*, p. 89.

<sup>53</sup> Department of Commerce and Labor Bureau of the Census: *Special Reports—Marriage and Divorce 1867—1906*. Washington 1909, p. 413.

non-uniformly. What was regarded as an injury in one case did not have to be regarded as such in another case, mainly due to different regional habits or due to different social status of the wife. There was a court ruling which declared that *dealing the wife harshly and caning her, which, consequently, required eight days of recovery, was adequate to her lower social status*.<sup>54</sup> According to another ruling, *beating the wife was not reason for divorce if the wife did not regard beating as an act of violence but as a common method of handling her*.<sup>55</sup>

A total of 114 marriages were dissolved pursuant to Section 76, which dealt with adultery, unnatural offences, and bigamy. This low number is not surprising, even though the real reason for most of the divorces was a relation outside marriage. However, as the people involved wanted to legitimise their non-marital unions,<sup>56</sup> they had to avoid divorcing according to Section 76 because it involved a sanction, namely, a ban on marrying the person with whom they had committed adultery. The spouses either agreed to present a different divorce ground at the court, or they relied on human feelings of the judges, who often refrained from dissolving the marriage according to Section 76 in order not to ruin the spouses' lives even if they had clearly committed adultery. The judges preferred to dissolve such marriages according to Section 80.

It is clear that most of the marriages were dissolved pursuant to Section 80, regulating different kinds of immoral behaviour (7,150 divorced marriages), and pursuant to Section 77, regulating intentional desertion and substituting the consensual divorce (13,643 divorced marriages according to Section 77 (a), and 979 divorced marriages according to Section 77 (b)).

Obviously, the statistics mirrored only the stated and not the concealed (real) divorce grounds. We have named some of the reasons for concealing the true divorce grounds and have to add one more: various sanctions were imposed on the spouse declared "guilty of divorce" in the divorce decree.

The first sanction was that the guilty wife could not bear the husband's surname after divorce.<sup>57</sup>

The second sanction related to the custody of minor children. Children under seven usually stayed in the custody of the mother; however, after turning seven years old, they were given to the custody of the innocent spouse. In the case of both spouses being declared guilty, daughters usually stayed in the cus-

<sup>54</sup> The Royal Curia Decision n. 603, of 1898. See F. Raffay: *A Magyar Házassági Jog-1894...*, p. 226.

<sup>55</sup> V. Fajnor, A. Zátorecký: *Nástin súkromného práva platného na Slovensku a Podkarpatskej Rusi*. [Outline of the Private Law Applicable in Slovakia and Subcarpathian Rus.] Šamorín 1998, p. 428.

<sup>56</sup> E. Herger: "The Introduction of Secular Divorce Law in Hungary, 1895—1918..." p. 139.

<sup>57</sup> The commentary to the Marriage Act explained that *The society has to protect the family name from the wife who had blackened it*. See M. Herczegh: *Magyar Házassági Jog...*, p. 219.

tody of the guilty wife and sons in the custody of the guilty husband. However, these rules could not apply uniformly in all cases. The best interests of the child were decisive. The best interest of the child prevailed also in the following case: the minor stayed in the custody of a guilty woman even after turning seven years old *because his father had not been visiting him for several years*.<sup>58</sup>

The third sanction related to possessions. The guilty spouse had to give back all the proposal presents and presents received before marriage contraction from the innocent party upon the innocent party's request. Furthermore, the guilty husband had to pay the innocent wife alimony. He had to do so even if their salaries were equal. He had to pay cash, according to his earnings and social status, and he had to do so one month in advance up till the day of the woman's new marriage contraction (or until one of the former spouses died, or until the woman refused to receive alimony, or until they restored the matrimony). Cases of alimony payment towards an innocent husband occurred since the end of the 19th century as well.<sup>59</sup>

If only the woman was declared guilty, she had to give back a special kind of dowry which the husband had given her for their first marriage night as well.<sup>60</sup>

There was a judicial decree regarding the undivided co-ownership of spouses, too. The Royal Curia decided that the undivided co-ownership of spouses ceased to exist on a day when the wife entered into a non-marital union with another man.<sup>61</sup>

Last but not least, there was a sanction in the form of social condemnation of the guilty spouse. As it is generally known, the society has always avoided and denounced wrongdoers. Guilty divorcees were regarded as wrongdoers because all divorce grounds related to criminal or immoral acts (back in those times, even adultery was a crime), which were described in detail in court decisions.<sup>62</sup>

<sup>58</sup> The Royal Curia Decision n. 18, of 13/06/1900. See A. Meszlény: *Házassági Jog és a Bírői Gyakorlata...*, p. 142.

<sup>59</sup> M. Laclavíková: *Formovanie úpravy majetkových vzťahov medzi manželmi (od vzniku uhorského štátu do prvej československej kodifikácie rodinného práva)*. [The Matrimonial Property Law Formation: From the Hungarian State Foundation till the First Czechoslovak Codification of Family Law.] Bratislava 2010, pp. 275—280.

<sup>60</sup> According to the draft of the Hungarian Civil Code (1916), she had to do so in cases of adultery and violence against the life or health of the husband. See M. Laclavíková: *Formovanie úpravy majetkových vzťahov medzi manželmi...*, pp. 142—154.

<sup>61</sup> The Royal Curia Decision n. 6017/1916 and n. 4658/1915. See M. Laclavíková: *Formovanie úpravy majetkových vzťahov medzi manželmi...*, pp. 231—232.

<sup>62</sup> For example, there was a High Court Decision from 1920 describing how a woman danced on a dance floor with a foreigner, went with him to a casino, embraced him in the forest and received three bottles of perfume and some oranges; and during the divorce proceedings, she met different men in a hotel. Cf. The High Court Decision n. Rv. III. 74/20, of

## ***Consequences of the Marriage Act introduction beyond the Hungarian borders***

Some of the consequences following from the introduction of the Marriage Act reverberated beyond the borders of Hungary.

It was on the 11th of March 1883 when a caricature of Johann Strauß was published in a certain Hungarian anti-clerical magazine. The headline was: János Strausz a Magyar ember.<sup>63</sup> Shortly before, some Austrian newspapers had come up with information about Strauß changing his citizenship. His intention was to become a Hungarian citizen and to change his confession from Catholic to Protestant. Both Austrian and Hungarian newspaper-readers were familiar with the true reason that had led Strauß to that very decision. The reason was Adela, whom Strauß, separated from bed and board from his wife Angelika, wanted to marry.<sup>64</sup>

Strauß had to become a Protestant in Hungary and not in Austria because of the provision which entered into force in Austria in 1867. According to it, a Catholic marriage which turned into a mixed marriage because of a spouse's confession change could not be divorced. However, in Hungary, if a Catholic changed his confession and became, for example, a Protestant, the marriage fell under Protestant regulations and as such could be divorced. The same happened even after 1894; however, the change of citizenship and domicile was sufficient for Austrians, as the Marriage Act was not based on confessional differences.

## ***Conclusion***

The Marriage Act was the most radical change concerning divorce law on the Hungarian (Slovak) territory. Taking into account Hungarian history and

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08/10/1920. See V. Fajnor, A. Zátorecký: *Zásadné rozhodnutia Kr. Kúrie a NS ČSR vo veciach občianskych*. [The Fundamental Royal Curia and High Court Decisions in Civil Matters.] Bratislava 1927, p. 709.

<sup>63</sup> Johann Strauß — a Hungarian.

<sup>64</sup> C. Neschwara: "Eherecht und 'Scheinmigration' im 19. Jahrhundert: Siebenbürgische und ungarische, deutsche und Coburger Ehen." [The Marriage Law and Migration in 19th century: Transylvanian, Hungarian, German and Coburg Marriages.] In *Beiträge zur Rechtsgeschichte Österreichs. Eherecht 1811 bis 2011. Historische Entwicklungen und aktuelle Herausforderungen*. Wien 2012, pp. 101—102.

confronting the Austrian and Hungarian marriage law development, it is possible to conclude that the adoption of this law was not spontaneous. It was the result of decades of liberation of the social atmosphere, of challenging political and legal preparations, and, most importantly, of strengthening Hungarian independence. Hungarian politicians opposed Austrian hegemony and, as a consequence, opposed also Catholicism, which was so important for the Habsburgs. As the Protestant faith regarded marriage as dissolvable, it was not difficult to reach a political consensus in this field. It is undeniable that the Marriage Act brought an unseen change, indeed liberal in contrast to some other European countries. After long centuries, not only did the Marriage Act allow marriage dissolution, but it also included very progressive divorce grounds. It was Section 80 that partly removed the boundaries between what could and could not be a reason for divorce and helped to evade some social stigmatisation resulting from divorce. Section 77 was also clearly progressive and acted as a substitution for consensual divorce.

In relation to Slovakia, the Marriage Act was in force till 1949, which, again, proves the modern character of the law adopted in 1894. Today, the divorce law in Slovakia is regulated by Law 36/2005, which allows divorce if the marriage is irretrievably broken. No consensual divorce in the European sense of the word has been introduced yet.

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### **The Divorce Law in the Kingdom of Hungary**

**Keywords:** Kingdom of Hungary; divorce law; the Marriage Act; divorce grounds.

**Summary:** In this article, we present the history of divorce law in the Kingdom of Hungary. The reader is briefly informed about the Hungarian divorce law since the 11th century; however, attention is drawn primarily to Law XXXI/1894. This law, also known as the Marriage Act, was adopted for the Hungarian territory within the Austro-Hungarian Empire, where it allowed dissolubility of Hungarian marriages. We describe the historical background of the adoption of the Marriage Act and the reaction of the Catholic Church to it. Next, there is an analysis of all divorce grounds according to the Marriage Act. A special attention is paid to Section 77, which softened the strictness of divorce law. Finally, an interesting effect of the Marriage Act beyond the borders of Hungary is demonstrated.

Ingrid Lanczová

**Prawo rozwodowe w Królestwie Węgier**

**Słowa kluczowe:** Królestwo Węgier, prawo rozwodowe, węgierskie prawo małżeńskie, przyczyny rozwodu

**Streszczenie:** Artykuł jest poświęcony historii prawa rozwodowego w Królestwie Węgier. Znalazły się w nim informacje dotyczące węgierskiego prawa rozwodowego już od XI w. Autorka skupia się przede wszystkim na normach prawnych z 1894 r. (XXXI/1894) znanych jako węgierskie prawo małżeńskie. Wspomniany akt prawny (XXXI/1894) umożliwił na Węgrzech pełne rozwiązanie małżeństwa i pozwalał na ponowne zawarcie małżeństwa niezależnie od przynależności religijnej małżonków. W artykule zostały opisane: historyczne tło wprowadzania wspomnianego aktu oraz reakcja Kościoła katolickiego na tę zmianę prawną. Szczególną uwagę poświęcono artykułowi 77, który poszerzył listę powodów stanowiących podstawę rozwodów. Jednocześnie tekst pokazuje konsekwencje wprowadzenia tego aktu także poza granicami Królestwa Węgier.