The Traditional Roots of Alimony in the Hungarian Family Law

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Summary
The paper discusses the extent to which the 19th century regulations of alimonies as awarded within the frame of matrimonial relationships had an impact on the formation of claims of alimony as found in the Hungarian Code of Private Law of 1928. The paper discusses the alimony as paid to one of the spouses at the time when the matrimonial tie was still continued but also when the alimony was granted as a temporary device and also when it was awarded after the divorce decree had been granted.
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1. Object and method of the research

The bill having the title *Private Law Code of Hungary* (hereinafter referred to as PLC)\(^1\), presented before the House of Representatives by minister of justice Pál Pesthy on the 1\(^{st}\) of March 1928, took a prominent place in the history of the civil law codification in Hungary. Although the bill has never entered into force it nevertheless was of particular significance since it was applied in practice and functioned as customary law referred to as “uncodified code”. In my paper the institution of alimony will be discussed in a comparative way in the light of the bill in question and its 19\(^{th}\) century antecedents.

The system of marital property law was primarily formed by the judicial practice based on the traditional customary law in Hungary in the 19\(^{th}\) century. This system was modified by denominational legal norms pertaining to the marriage bond in so far as marital property law was the pecuniary consequence of rights and duties of a moral kind between the spouses. The late adoption of civil law codification led to the survival of the plurality of legal sources regulating marital property even after the first Hungarian secularized uniform *Matrimonial Causes Act* (Act 31 of 1894, hereinafter referred to as MA) had come into force as supplement to marriage bond law. This Act regulated only some institutions of property law and as we will see, it did not do it in an exhaustive manner. A legal historian can only try to describe the duality of judicial practice\(^2\) and statutory law – including the first reading of the bill (*General Civil Code*, hereinafter referred to

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as GCC)\(^3\) and resorting to the help of the comprehensive works of civil law scholars\(^4\). Judicial practice concerning temporary and final alimony is described on the basis of my own archival research.

2. The legal effect of marriage on persons

The legal effect of marriage on persons refer to the rights and duties of a moral nature which spouses enjoy and owe to each other and which originate from their valid matrimonial contract. The moral nature of these rights and duties does not terminate their legal nature since these rights and duties entail pecuniary consequences and thus determine matrimonial property and inheritance law. In legal literature\(^5\) it was emphasized that the power of the husband similar to manus in Roman law and the German Munt was unknown in Hungarian law both at the time of Werbőczy and later. But husband was the “head of the family”, which was generally believed to be due to “the nature of marital cohabitation”\(^6\). This position of the husband can explain the fact that alimony – although being an institution of property law – was, in legal literature, dealt with in the area of the legal effects of marriage on persons.

According to the principle established by judicial practice the husband as “the head of the family”\(^7\) fulfills his “spousal (and paternal) obligation”\(^8\) when providing maintenance to his wife and underage children. In respect of maintenance the wife was taken into consideration in the same way as an underage child. Most Hungarian women had no professional educational background and conducted no gainful activity even in the second part of the 19th century, thus alimony continued to be interpreted as the consequence of the factual circumstances of the time\(^9\).

\(^1\) A Magyar Általános Polgári Törvénykönyv tervezete, első szöveg [Bill of General Civil Code of Hungary, first draft], Budapest 1900.

\(^2\) See in the first place I. Frank, A közigazság törvénye Magyarhonban [Law of public justice in Hungary], Buda 1845; B. Grosschmid, A Házasság törvényi (1894. XXXI. t.–ez.) [The Matrimonial Causes Act (Act 31 of 1894)], vol. 1–2, Budapest 1908; M. Herczeg, Magyar családi és örökösödési jog [Matrimonial and inheritance law in Hungary], Budapest 1885; G. Jancsó, A magyar házassági és házastársi örökösödési jog [Matrimonial law and marital inheritance law in Hungary], Budapest 1901; K. Szladits, A magyar magánjog vázlata [The sketch of private law in Hungary], Budapest 1909; G. Zachár, A magyar magánjog alapnál [Fundamental doctrines of Hungarian private law], Budapest 1912; I. Zlinszky, A magyar magánjog mai érvényben különös tekintettel a gyakorlat igényeire [Hungarian private law in force with special regard to the claims of practice], Budapest 1902.


\(^4\) G. Jancsó, A magyar házassági..., p. 575 and I. Zlinszky, A magyar magánjog..., p. 901.

\(^5\) Curia No. 5889/1885, No 9243/1892 and No. 4/1897. When it is not especially denoted see the decisions of the Curia by M. Dezső (ed.): Felsőbírósággaink elvi határozatai. A m. kir. Curia és a kir. táblák elvi jelentőségű döntéseinek rendszeres gyűjtőménye [Principal decisions of our superior courts. Systematical collection of decisions of fundamental importance of the Hungarian Royal Curia and the royal courts of appeal], vol. 2–10, Budapest 1883–1901.

\(^6\) Curia No. 6843/1883, see also G. Jancsó, A magyar házassági..., p. 578.
3. Alimony during marriage with the parties’ cohabitation

During marital cohabitation it was the husband’s obligation – and the wife could not waive it for the benefit of the husband – to provide decent maintenance to the family and cover all expenses connected with the matrimony. This obligation was terminated upon the death of the wife since it was linked to her person. Consequently the wife’s entitlement did not devolve to her heirs or third parties. Maintenance was “decent” if it complied with the financial situation and social status of the husband. In judicial practice and also in the GCC maintenance basically covered accommodation, food, clothing and intellectual needs. Likewise, the husband had to “cover the medical costs of the treatment of the wife”.

The PLC – in a laconic but logical manner – sets out only three components of the “decent” maintenance (financial situation, earning capacity, and social status). In the earlier practice “decent” maintenance provided for the covering of all costs of marriage, too. PLC sets two reasonable limits and § 98 of GCC made it more express: on the one hand wife could act for her husband in the name of her husband, within the limits of his husband’s financial capacity, but this right to represent could be withdrawn wholly or partly for some serious reasons on the other hand.

The husband provided maintenance to the common household in-kind. The wife could – exceptionally – demand the maintenance in money only if the husband refused to provide it in-kind or if his or his relatives’ unbearable conduct made it impossible for her to enjoy this maintenance. The husband could not demand that his wife should contribute to the maintenance of the family from her own property. However, during marriage the husband disposed of and handled her dowry (allatura), which had been given to her by her father, brother or any other person except the husband for lightening the financial burden of the marriage. Thus the dowry (movable and immovable property and property rights) constituted the property of the wife over which the husband exercised his exclusive beneficial rights. In addition, the wife could let her husband administer her own separate property. She could do it either by an express statement of will or tacitly. The husband was not accountable for the decrease in the separate property of his wife unless stipulated otherwise in the contract, and he did not have to refund it. Thus the income from the separate property was used for covering the expenses of the household. If the husband did not provide decent maintenance to his family and his wife had to secure it from her separate property, she did not have the right to demand its reimbursement.

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12 GCC 96 §.
13 Curia No. 3939/1884, No. 1356/1896 and 9243/1892. See the same principle in GCC 96 §.
14 PLC 113 §.
15 PLC 115 §.
16 Curia I. G. No. 198/1899, see in Ügyvédek Lapja 1899/32.
17 Act 7 of 1886 21 §.
18 I. Zlinszky, A magyar magánjog..., p. 899.