



**Hungarian consular activity and jurisdiction under the Austro-Hungarian  
Monarchy: regulation, organization and practice  
(thesis brochure)**

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### **1. Brief summary of the set research task**

The work of consuls as judges over their own subjects and those of foreign states goes back to a history of several centuries. There is no current literature available in Hungarian on the international and Hungarian practice of consular jurisdiction which would process it in terms of the legal history.

Therefore, the choice of the topic was guided by the objective to process a legal institution with international legal aspects, which has been less explored in terms of researches into the Hungarian legal history so far. Based on the author's knowledge of international rules and history of the consular law taught by him, and in the light of his interest in legal history, he has directed the focus of the topic and the research on the regulation of the institution of consular jurisdiction during the period of the Austro-Hungarian Monarchy, a period which has real significance for the Hungarians.

The choice of research topic was influenced by the fact that the author met the late Dr. József Hargitai, who, during the recent period, was one of the most significant researchers of the law of consular relations and the legal historical development of the consular institution. The personal discussions and his essays published on this subject attracted the author's interest to the study of the legal history of the consular organization of the Habsburg Empire and of the regulation of duties carried out by the consuls. Within the consular duties expressing the objectives and functions of the consular institution, the Hungarian regulation of the consular jurisdiction, which no longer exists in today's international practice, following the Austro-Hungarian

Compromise, meant a topic to be explored both in terms of legal history and of international law, and was designated as the focal point of the doctoral research and became its central topic.

The review and processing of the international legal historical antecedents of the selected research topic, the institution's development and history, provided the basis for the analysis of the central topic, with special emphasis on the practice of the Habsburg Monarchy, and placed it into a framework. The study and analysis of the proposals, the parliamentary debates, the regulatory concept of the law regarding the adoption of Act XXXI of 1891 on the Hungarian consular jurisdiction, and of the legislation following the adoption of the law were given special attention and emphasis. It was my intention to make the Hungarian consular court practices after the adoption of the legislative act a subject of the research, however, I had to face the fact that the documents of the foreign affairs during the era of the dualism were, unfortunately, destroyed by fire in the conflicts of the Hungarian revolution of 1956.

## **2. The sources of the conducted research**

The research was clearly aimed at the processing of the primary sources that are available on paper basis in Hungary and the ones available in digital form on the World Wide Web as a positive effect of the modern information society. In addition to the sources in Hungarian language, the author has also processed available primary sources and literature that could be identified in German and English languages, based on the author's knowledge of these languages.

According to the chosen method of the research, in the first phase, the author searched for and got familiar with the sources in Hungarian and the literature connected to the topic in Hungarian, which was published recently or earlier. Based on the exploratory research I have conducted, it can be stated that after the World War I, the Hungarian legal literature did not really deal with the regulation and practice of the consular jurisdiction in the Habsburg Empire, and then in the Austro-Hungarian Monarchy. The Hungarian legal historical researches during the 20th and 21st centuries have not focussed on the consular jurisdiction either. Among the contemporary authors, dr. József Hargitai's work on consular jurisdiction partially presented the formation and the development of consular jurisdiction. Dr. Tamás Antal presented the results of the research on the period, which became the central topic of this doctoral thesis, and the

discussion about Act XXXI of 1891 on the Hungarian consular jurisdiction, as well as the rules of the law in his study published in 2004. Apart from these two works, no publication or literature, relevant to the topic, was published in Hungarian.

However, in the course of the search for Hungarian legal literature before the World War I, the author also found and processed several literary sources for the research topic. In the Hungarian literature he has read, the history of the institution of consular jurisdiction and the most complete processing of the consular legislative service is found in Vilmos Lers' work published in 1904.

During the research, naturally, not only the literature on the topic in Hungarian, but also the ones in German and English were reviewed and processed. The book of reference on the regulation of the consular institution of the Austro-Hungarian Monarchy, including the consular jurisdiction, is the "Handbuch des österreichisch-ungarischen Konsularwesen", a two-volume work by Josef Freiherr von Malfatti di Monte Tretto, which was first published in 1882. Malfatti's work published in 1904 served as a source for this thesis. (Malfatti's detailed and comprehensive analysis also served as a model for the book by the Hungarian Lers). I wish to note that the chapters of Malfatti's work on consular jurisdiction were based on the books by Fedor Martens and Karl Lipmann, which were also used by the author of this dissertation.

Among the other foreign literature, I would like to emphasize the annual publications of the Austrian Haus-Hof- und Staatsarchiv: the "Mitteilungen des Österreichischen Staatsarchivs". The publications contain many valuable publications on the subject, which have been analyzed and studied. The special articles and writings of the professional journals and newspapers of that era, that are relevant to the topic, also formed the topic of the research.

The work was helped by the fact that the Parliamentary Journal and Manuscripts, the Repository of Hungarian Regulations regarding the research era, and the Reichsgesetzblatt became digitally available from 2010, making the direct source analysis easier and simpler.

The complete source material of the public legal debate over the Act on the regulation of consular jurisdiction has been processed comprehensively and in detail. In connection with the legal historic / dogmatic analysis of the law, the connected implementing decrees and the provisions of law that extend the scope of the law were also explored and evaluated.

### **3. The method of processing the research topic and the structure of the dissertation**

While compiling the structure of this doctoral dissertation, the author strived to present the essence and the rules of the consular legislative service activities between the merchant city-states and the Byzantine Empire, and the non-Christian states and state formations, which were formed in the 10th and 11th century in the Levant region, and mean the direct precursor to the development of the consular jurisdiction during the 19th and 20th century. At this stage, the research could rely on the literature of the 19th century and the first decade of the 20th century. These, and in particular, the above-mentioned works of Karl Lipmann, Malfatti di Monte Tretto, Fedor Martens and Leopold Neumann, available in German language, and the work by Vilmos Lers, in Hungarian, which analyses and presents the consular jurisdiction in a comprehensive manner, provided the knowledge base necessary to present the historical developments in the international practice.

The provisions of the Capitulations and of the treaties concluded during the economic and commercial boom of the Mediterranean area were important precursors to the Franco-Ottoman Capitulation of 1535, which served as a model for the treaties that regulated the consular jurisdiction in the Ottoman Empire in the later centuries.

In this dissertation, a separate sub-chapter deals with and examines the Capitulations themselves as provisions that contain legal norms that have a decisive importance for the topic. The system of Capitulations, is a(n) (itemized) system of trade, operation, and residence allowances and benefits (detailed in chapters), established in the Ottoman Empire, which was initially formally laid down in "letters of privilege" that were issued as unilateral statements by the individual sultans. The system of Capitulations (permits) provided a mutually agreed institutional framework for maintaining the proper relations between the Christian community of Europe and the Empire, which also maintained regular commercial and business relations, were however often in conflict, while they also maintained direct contact.

The establishment of contractual frameworks with the various states was provided by the Ottoman state's political, commercial and shipping agreements, which laid down

the scope, the extent and the conditions of the concessions and obligations for both parties. The processing of the regulations governing the consular judicial activities of the Habsburg Monarchy in the Ottoman Empire was prepared through the analysis of the Franco-Turkish Capitulation in 1535 and the Franco-Turkish Convention of 1740. In connection with the central topic of the dissertation, the processing of the development of the consular organization system and the reform(s) of the organizational system established by the Habsburg Monarchy, and the operation of the Consular Academy providing training for the consular officers are presented in detail. The dissertation focuses especially and in detail on the sources and literature on consular jurisdiction from the consular duties, on the basis of which a summary and evaluating presentation of the legal institution of the consular jurisdiction is given, which was first provided for the Habsburg Empire by the Ottoman Empire in the 1718 Peace Treaty of Pozarevac.

The exploration of the decrees and regulations relating to the consular service established as part of the Habsburg Empire's system of administrative organization of foreign affairs, gradually established from the beginning of the 18th century, prior to restoration of the Hungarian public-law independence by the Compromise of 1867, paves the way for the elaboration of the topic, which is in the focus of this research.

Based on Hungarian and foreign literature and sources, the legal dogmatic analysis of Act XXXI of 1891 on Hungarian consular jurisdiction became the central topic of the dissertation, as well as the exploration and analysis of the regulation on consular jurisdiction before the adoption of the law and set forth in the international treaties concluded and published after the law's adoption, which remained effective until their formal abolishment after World War I. During the research, as reflected in the structure of the dissertation, the legislative act XXXI of 1891 adopted during the dualism, regulating the consular jurisdiction, and the discussion and comprehensive presentation of the public debate surrounding its adoption form the most extensive chapter of the dissertation. The next extensive chapter of the dissertation deals with the available literature in detail, and presents the areas and the frameworks of the consular jurisdiction of the Austro-Hungarian Monarchy in other overseas areas, outside the Ottoman Empire. In the closing part of the dissertation, in addition to the evaluation of Hungarian consular jurisdiction, also the relevant provisions of the Peace Treaty of Trianon, which terminated the international treaties that form its legal basis, are analyzed and examined.

#### **4. A brief summary of the scientific results and their potential utilization**

The scientific objective of the research was to write a comprehensive dissertation which

- places the forming of the Hungarian consular jurisdiction into the process of the international legal history of legal institutions
- presents the practice during the centuries preceding the era of dualism, the central period of the study, as antecedents
- analyzes the training and the duties of the Austrian (Hungarian) consuls during the period of the Habsburg and then the Austro-Hungarian Monarchy based on the written sources for the legal institution under investigation
- and extends to the detailed processing of Act XXXI of 1891, as well as the literature and the sources of law connected to the international treaties that are relevant to the topic during this period.

According to the author's position, the doctoral dissertation has achieved and accomplished the above objectives.

As a result, by writing the doctoral dissertation, I have managed to present in a summary manner and analyze a legal institution that has not been studied in terms of the legal history in detail so far, which, however, played an important role not only in terms of the legal history but also in terms of the international law, while we should note that the unequal treaties, often enforced by armed forces, which often formed the basis of the practice of consular jurisdiction, would today be explicitly and manifestly contrary to several basic principles of the current international law. Starting from the basic principles of the protection of the equality of states and their political sovereignty against armed coercion, according to the international legal thinking of our time, the institution of extra-territorial jurisdiction provided by unequal international treaties that violate such principles can no longer be legal. Based on the research, that has been carried out, the author hopes that the background of the literature of the Hungarian legal history will be extended with a work that may become a suitable supplementary material for the education of legal history.

## **5. The list of publications in the topic of the doctoral dissertation**

1. G. Teschmayer (2004): The diplomatic privileges and immunities, Booklets of the Scientific Public Foundation of Szabolcs-Szatmár-Bereg County, Volume 20, pp. 231 – 236
2. G. Teschmayer (2006): The Egyptian International Mixed Court, Forum of doctoral students, Miskolc 2006, pp. 279 – 285
3. G. Teschmayer (2007): Preliminary training necessary to provide consular service during the Austro-Hungarian Monarchy, Forum of doctoral students, Miskolc 2007 pp. 259 – 264
4. G. Teschmayer (2008): The consulates of the Austro-Hungarian Monarchy in the Overseas Territories - From the history of the Austro-Hungarian consulates operated in South Africa and in Zanzibar, Studies of the Doctoral Students of Law of Miskolc, Volume 9, Miskolc 2008, pp. 467 – 476
5. G. Teschmayer (2010): The history of the Habsburg Empire's regulations for the consuls from the Peace Treaty of Pozarevac until the first quarter of the 19th century, Publications of Economic and Social Sciences, Volume II, Issue 2, pp. 177 - 187
6. G. Teschmayer (2010): The system of consular jurisdiction during the Austro-Hungarian Monarchy, Akta Beregszások 2010/3, PoliPrint - Uzhgorod, Ukraine pp. 109 - 120
7. G. Teschmayer (2011): Presentation and comparison of the provisions for the consular duties in the treaties concluded by the Austro-Hungarian Monarchy, Results of the Austro-Hungarian East Asian Expedition 1868-1871, Publications in Economics and Social Sciences, Volume III, Issue I, Nyíregyháza 2011, pp.300 – 308
8. G. Teschmayer (2012): "Real storm or unnecessary generation of waves?" Thoughts about the debate of the House of Representatives over the legislative act XXXI of 1891 on the regulation of consular jurisdiction, Volume 15., Miskolc 2012 – pp. 394-420