

1993

The Role of Lawyers in Social Change: Hungary

Andras Sajo

Follow this and additional works at: <https://scholarlycommons.law.case.edu/jil>



Part of the [International Law Commons](#)

Recommended Citation

Andras Sajo, *The Role of Lawyers in Social Change: Hungary*, 25 Case W. Res. J. Int'l L. 137 (1993)

Available at: <https://scholarlycommons.law.case.edu/jil/vol25/iss2/4>

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Journal of International Law by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

The Role of Lawyers in Social Change: Hungary

*Andras Sajo**

I. HISTORICAL ROLE OF LAWYERS IN SOCIETY

A. *Political and Social Role of Lawyers*

1. Long Term Trends

In order to understand the importance of lawyers in society one must consider both direct and indirect social and political impacts of the profession. Professional organizations, lawyers, and people with law degrees may be involved in politics. Lawyers as a profession function in society as keepers of the law, through courts and/or through avoiding and channeling contracts with law-enforcing mechanisms.

Traditionally, Hungary was a lawyer-dominated society, both in terms of the percentage of lawyers among the intellectual elite and the importance of legal dispute handling. The Central East European region has developed a legalistic approach to modernization in the last century. Germany's etatistic nineteenth century developmental model was also very influential in the East Central European region.¹

Caseloads are influenced or determined by the capabilities of the courts and judicial personnel.² Partly based on different considerations, theories of legal culture emphasize the importance of the number of judges and lawyers employed in the civil justice system. For example, the filter theory³ emphasizes an institutionalized alternative conflict resolution mechanism. All these theories lead to the conclusion that Hungary was a legalistic society until World War II and this tradition is part of

* Professor, Postgraduate Legal Studies, Central European University, Budapest, Hungary.

¹ The specificities of the region are striking if one compares civil litigation rates between France or Belgium and Germany or Austria-Hungary for the last 200 years.

² For a similar theory in criminal law, see H. PONTELL, *A CAPACITY TO PUNISH: THE ECOLOGY OF CRIME AND PUNISHMENT* (1984).

³ E. Blankenburg, *Indikatorenvergleich der Rechtskulturen in der BRD und in der Nederlanden*, *Z.F. RECHTSSOZIOLOGIE* (1985).

the Hungarian cultural heritage,⁴ notwithstanding the lack of legal personnel and well-trained lawyers.

2. Main Trends From 1848 to World War II

The role of lawyers in social change and transformation in Hungary must be perceived in the broader context of the traditional role of the "*intelligentsia*" in Eastern Europe. The *intelligentsia* (elite professionals independent from employment relations or at least appearing independent) played a crucial role in Eastern European social changes, especially as those changes were traditionally related to national independence movements in the last 150-200 years. This role can be attributed to the lack of a strong bourgeoisie, the emergence of industrial property owners and the industrial sector in general, and to the identity-oriented, symbols-related nature of the strong national movements. These movements were emotional and therefore in need of masters of words (professionals in humanities). The overwhelming majority of university graduates prior to World War II were humanities and law students. In 1910 forty-nine percent of all university graduates had law degrees.

Traditional law schools trained members of ruling classes who were willing to work in the public service sector and local self-government. They served upcoming classes as a means of social mobility.

Lawyers, especially private attorneys, played a prominent role in Hungarian history, revolutions, and progressive political movements. The 1848 revolution against the feudal system for national independence primarily originated from a movement of law students. The revolutionary government of the 1848 Parliament was composed of lawyers or degree-holding aristocrats and the percentage of lawyers was higher than in the French revolutionary convent. The same high concentration of lawyers continued after 1867, when a rapid transformation towards industrialization and political modernization was initiated in Hungary.

Lawyers later became instrumental in the formation of the intellectual infrastructure of the developing economy. After 1867, the legal profession allowed new entrants and increasingly served the interests of a growing market economy. On the other hand, until the turn of the century, law was part of the education of the political elites. Even some of the leaders of the 1919 communist revolution were practicing law-

⁴ The opinions about the value of a legalistic culture to serve efficient modernization in an era of rapid technological development are perhaps divided. One special problem is present in Hungary, however. The strong emphasis on the rule of law has recently created the world's most powerful Constitutional Court. As a consequence, fundamental political conflicts are left to be solved by the Constitutional Court. The obvious danger is that the Court will become politicized.

yers.

Until 1944, more legal service was available in Hungary than in countries of comparable legal culture, as well as more lawyers and judges per capita (although the civil litigation rate in Hungary was lower than Austria during the Austro-Hungarian Monarchy.)

NUMBER OF INHABITANTS PER JUDGE

	Germany	Hungary	Austria
1901:	6477	6550	5300
1913:	6219	6560	
1920:		5750	
1929:	6422		
1935:	6406	5170	
1971:	4600		
1985:	3585	7066	

ATTORNEY PRESENCE IN SOCIETY

	Inhabitants/Attorney			Attorneys/million inhabitants
	Hungary	Germany	Austria	Hungary
1875:	4245	6200	235	
1900:	3479	7688	287	
1910:	2693	5280	4558	371 ⁵

⁵ The increase in the number of lawyers after 1890 is not necessarily related to increased litigation. The legal profession was one of the great career opportunities for the upwardly mobile Jewish population. "Between 1890 and 1910, an astonishing eighty-one percent increase in the number of lawyers represented Jewish entrants to the profession." M. KOVÁCS, *THE POLITICS OF THE LEGAL PROFESSION OF INTERWAR HUNGARY* (Institute on East Central Europe, Columbia University 1987).

LAWYERS IN PRIVATE PRACTICE IN SELECTED
EUROPEAN COUNTRIES ca. 1930⁶
(Per 1 million inhabitants)

Austria	497
Czechoslovakia	269
Denmark	429
England	433
Germany	288
Hungary	718
Italy	593
Poland	201

The lasting increase in the Hungarian litigation rate in the Monarchy was not supported by a comparable increase in the number of judges. The number remained fairly constant in relation to the population. However, a significant increase in the number of private attorneys occurred after the turn of the century. Lawyer concentration was higher in Hungary than in Germany though the litigation rate was unchanged before the Great War. The ratio of judges was only slightly higher in Germany, though it was higher in Austria, which had a higher litigation rate in 1913. Notwithstanding the litigation rate differences, Hungary had the greatest presence of lawyers. At the same time, the judiciary in Austria was not supported by a comparable number of lawyers.

The ratio of lawyers rapidly increased in Hungary after litigation rates intensified. For instance, after the litigation boom around 1869, the increase in lawyers exceeded the growth in the litigation rate.

After the collapse of the Austro-Hungarian Monarchy, Hungary was dominated by a semi-totalitarian regime. Lawyers gradually lost their influence, partly due to social origin.

After World War I, there was no considerable change in judge/population ratio as judicial organization had not been altered. The number of lawyers increased considerably both in Hungary and Austria. The change was apparent only in territories which later constituted post-1918 Hungary and Austria. The rate increased in real terms as well, because many moved to the new states. Lawyers constituted an easily available resource during the economic crisis which increased the litigation rate. No considerable increase in the number of judges occurred during the economic crisis of the thirties, and the reaction of the legisla-

⁶ See *Id.* at 23.

ture in matters of procedure was mainly of a restrictive nature (moratoriums), as required by the debtors. This legislative effort was supported by the judiciary in the form of judge-made law.

3. The Legal Profession Under State Socialism

After World War II, the number of lawyers increased tremendously in the West, especially in the last twenty years. In this period, a *numerus clausus* system prevailed in the socialist countries. Bar admission quotas were centrally established and supported by the bar.

The growth in lawyers in some West European countries exceeds the increase in the number of cases (where such an increase exists). In the last twenty years the number of lawyers doubled in West Germany to 776 lawyers per one million inhabitants.⁷ (In Hungary the same rate per million is 180.)

The state socialist system is characterized by extreme stability in Hungary both in the number of judges, lawyers, and cases in a period when procedure has been simplified and access to justice on the level of the procedure codes has become extremely simple. Low litigation costs, informality, orality, and the duty of the judge to help the parties and control procedure have contributed to this simplification. Moreover, this stability was achieved by excluding a great number of disputes from judicial review. Lack of market relations contributed to the low level of disputes. The low level of legal services is reflected in low litigation rates due to legally established barriers and administrative limits to professional entry. This stability was achieved by dynamic changes within the profession. In the late forties, judges were administratively replaced by semi-skilled new "loyal" judges of worker and peasant origin. Many members of the bar (which was already decimated by the Holocaust) left the bar and became in-house counsels of state-owned enterprises or entered another occupation. At the law schools, evening courses trained new lawyers from more trusted social backgrounds. Moreover, in the fifties, admission to law school depended on social background with positive discrimination in favor of working class origin applicants. In the seventies, on the other hand, more judges moved to the bar and in the eighties in-house counsels attempted to become free professionals.

The social transformation under communism was based on strongly anti-formalistic and anti-legalistic tendencies. In the fifties, lawyers dis-

⁷ It is extremely difficult to compare judicial caseloads. See F. Röhl, *Gruende und Urspruenge aktueller Geschaeftsueberlastung der Gerichte aus soziologischer Sicht*, in C.F. MUELLER, *EFFIZIENTE RECHTSVERFOLGUNG* (P. Gilles ed., 1987).

appeared from the ruling elite and previously trained jurists were replaced by untrained but loyal people. The judiciary had been decimated and replaced by trusted people who possessed little legal training. The independence of the bar was curtailed, lawyer numbers were limited, and political criteria were applied to the selection process. In the sixties, formal legal training was fully rehabilitated in terms of prestige, but it followed new standards instead of rule of law concepts, which reflected bureaucratic positivism.

II. THE ROLE OF LAWYERS IN THE TRANSITION TO DEMOCRACY

Notwithstanding the above circumstances, lawyers fully participated in the early months of the transition to democracy. Political resistance to the Kadar regime was rather limited and except for an environmental protest in 1988, no mass movement occurred. Nevertheless, in the last three years of the past regime, a law student college became a stronghold of political resistance.⁸

Lawyers and private attorneys in particular became more involved once the transition began. Though small in number and protected by a limit on new entrants, members of the bar are one of the richest professional groups in the country. Financially independent and unrelated to the regime, some of the lawyers have created the Independent Lawyers' Forum to promote legal reforms. The Forum acted as a catalyst for the Opposition Round Table Talks which resulted in a unified opposition to the communist leadership. Forces represented at those talks became the nucleus of the present political parties in Parliament. The concentration of lawyers and attorneys in the new Parliament is remarkable. For a short period all Parliamentary faction leaders were lawyers and two were private attorneys.

Notwithstanding the spectacular role of lawyers in democratic politics, it would be misleading to believe that the profession is a core force of social change. More functionally, the profession meets the requirements of the transformation process. Currently, the profession is limited in terms of quantity, and more and better trained lawyers are needed. The most ambitious lawyers tend to work in the private sector, and to some extent they serve emerging business interests through drafting partnership agreements and other documents. However, administrative restrictions to bar entry remain and the profession is not interested in accelerating removal of these barriers. The majority of the profession works on the basis of an employment contract as in-house counsel or in

⁸ Members of the group have created a political party, FIDESZ, which now commands eight percent of the seats in Parliament after the free elections.

public administration. (The pre-communist public administration was primarily lawyer-oriented; today few lawyers possess excellent legal jobs in public administration.)

III. SOCIAL BACKGROUND OF LAWYERS

Given the long time span under review, lawyers' social status underwent radical changes, and significant modifications in their social background have occurred. In the pre-1848 period, lawyers generally came from nobility, although those who practiced law were generally of the propertyless nobility. The social background of lawyers has only gradually changed after the recognition of civil rights equality. In the last decade of the nineteenth century, law students were increasingly of non-gentry origin, although the social background of judges and higher civil servants remained overwhelmingly non-bourgeois. The profession continued toward a bourgeoisie concentration after World War I. Anecdotal evidence suggests that sons of judges and attorneys had better opportunities to become lawyers than those from other professional family backgrounds. This appears to have been a widespread trend in the legal profession in other countries as well.

The communist social revolution appears to have reversed this trend. The communists mistrusted lawyers trained under capitalism. As a consequence, there was considerable intra-generational mobility in the profession. For example, practicing lawyers had a different original profession in the fifties. Based on estimates of a Hungarian national survey carried out in 1972-73, nearly half of the lawyers employed at the end of the fifties were active previously as workers and peasants. This trend was supported by law school admission policies. Admissions for candidates with "bourgeois" origin (and persons generally qualified as "bourgeois") were limited. For a short period of time, law acted as a carrier opportunity for centrally planned upward mobility. A dramatic change in the gender composition of the profession occurred, although this was mostly related to inter-generational mobility. The number of women admitted to law school gradually increased from a prewar four percent to sixty-five percent in the late sixties. Presently about fifty-four percent of those admitted are women.

Over time, the extreme intra- and inter-generational mobility of the fifties came to a halt. In the second generation raised under state-socialism, for example, the children of the new emerging elite tended to follow in the footsteps of their parents. In the eighties, less than fifteen percent of the applicants were of working class and farmer origin. The percentage admitted was even lower. Law and professional education in general remained the primary path to social success and the legitimate means to achieving social status. Law school admittance percentages

varied between eleven and fifteen percent in the last decade.

No method currently exists to identify lawyers with any particular party affiliation. The original communist ideology asserted that the legal profession and law are political in their nature. Political loyalty is a *conditio sine qua non* for lawyers. As a reaction to this philosophy, a belief is growing among lawyers that law should remain neutral. In addition, the judiciary endorses the legal rule which makes the political neutrality of judges imperative.

IV. PROFESSIONAL ORGANIZATIONS

Two major organizations of lawyers in Hungary existed during state socialism and both faced a minor legitimacy crisis because their leadership and official position supported the official legal ideology. However, after some changes in leadership, two organizations survive. The Bar Association continues to act as a self-governing organization which protects the interests of attorneys. The Hungarian Lawyer's Union represents all lawyers and sponsors scholarly and other activities. No voice has been raised to create separate associations based on political affiliation. Smaller special professional organizations exist for special law-reform oriented tasks (for example, penal reform).

V. THE LEGAL PROFESSION AND SOCIAL PROBLEMS

The present social and economic transformation period does not favor participation of lawyers in non-job-oriented activities. The voluntarily or professionally organized participation of lawyers in social reform is limited. This is related to the following:

- The economic transition represents a constant menace to legal jobs and the emerging market economy represents great but time-demanding opportunities to the free profession. Great opportunities to become rich quickly make the availability of lawyers in social reform limited.
- Lack of up-to-date, market and rule of law oriented legal knowledge among lawyers represents a further obstacle. One can find a few personally motivated lawyers to give expert opinions in minority issues, but no organized or systematic work, interest in legal service, or efforts to protect the powerless currently exists.

The present situation may appear discomfoting but in the turmoil of transition it would be unrealistic to expect a different one. The greatest contribution of the legal profession is participation in creating a fair market economy by reducing the costs of transactions (through correct contracts, available legal services, etc.). Another major professional contribution is the promotion of the rule of law and other democratic

values in their professional work. Once the professions are strong and economically independent and/or the state is rich enough to support independent, society-oriented activities of the profession, the role of lawyers will increase in solving contemporary social problems. Time is needed to develop institutional forms to accommodate pro bono work in professional activities⁹ (e.g., pro bono work is not considered to be particularly important in building a good resumé). Of course, the legal profession must be aware that prestige will deteriorate if a socially credible effort is not made which proves that the professions are socially sensitive and committed.

VI. SOME PROBLEMS OF THE LEGAL PROFESSION RELATED TO THE SOCIAL TRANSITION

The present economic transition offers unique opportunities to the legal profession. The profession is involved in determining internal professional issues such as self-government and legal conditions of professional work. The profession is currently interested in two draft laws. One is intended to liberalize and legalize private attorney activities. In past practice, attorneys were free in office activities, although they paid a certain percentage of their official income for common costs and were allowed to work and receive clients in the premises of the "work community." According to the draft, lawyers' fees would be determined freely. It is unclear whether limits to bar admission will be maintained.

The second draft concerns the organization of the courts and the administration of justice. The system might become more complicated as a second instance of appeal is institutionalized. The Supreme Court will have only extraordinary review powers.

In both cases, the drafts are to a great extent determined by the existing privileges and hierarchical interest of the professions. To what extent society will accept these privileges is difficult to determine. The consequences will depend on the functioning of the emerging legal profession.

Legal services and adequacy depend on substantive and procedural legal solutions, and on qualitative and quantitative changes within the profession. However, the latter depends on the law schools which have only shown partial adaptation. Only minor changes in the curriculum have occurred. Strictly communist ideology has disappeared and special business law oriented courses are increasingly offered. Some law schools

⁹ The Bar has a statutory duty to provide free defense. It is expected that the new law on lawyers will abolish fixed prices for legal services. This may make the representation of the poor basically impossible.

have responded positively to requests to admit more students. However, vested law school interests resist change. Additionally, the lack of an all-embracing revolution with fundamental personnel and structural changes makes the transition prolonged and contradictory at best.