

THE EVOLUTION OF SUBJECTIVITY IN TERMS OF FINANCIAL LAW

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Abstract in original language

Počas feudalizmu prebiehalo prerozdeľovanie spoločnosťou vyprodukovaných statkov podobným spôsobom, ako dnes. Už od ranného stredoveku môžeme hovoriť o existencii systému vzťahov, ktoré disponovali znakmi finančnoprávneho systému. Za dobové "daňové ráje", by sa dali považovať rôzne šľachtické a cirkevné výsady.

Key words in original language

Feudalizmus; pohanské náboženstvo; finančnoprávny subject.

Abstract

Under feudalism the redistribution of material possessions produced by the society was taking place in a similar way like today. Already since early Middle ages we may speak about the existence of a system of relations having attributes of a financial legal system. Various privileges of the nobility and church could be considered to be the "tax paradise" of the period.

Key words

Feudalism; pagan religion; financial law subject.

1. INTRODUCTION

Since ancient times the perception of money and finance throughout history underwent many changes. When comparing the financial and legal subjectivity or institutes close to financial and legal subjects in various periods we may ascertain that the first big breakthrough in perceiving these institutes happened sometimes between the ancient times and the Middle Ages.

Similarly significant was also the change of the way of perceiving the financial and legal subjectivity in the period when the New Ages and Modern Ages met.

When investigating the development of subjectivity in financial law it is necessary first of all to concentrate on two crucial points in the way of perceiving the subjects and subjectivity in financial law.

Special attention is being paid to materialized changes regarding the financial and legal subjectivity in the geographical region of Upper Old Hungary. The conditions of modern times arranged according to the Old

Hungarian Law were transformed after the first world war following the laws of the first Czechoslovak Republic. Due to the interdisciplinary character of the range of problems as well as due to language prerequisites necessary to an unbiased elaboration of the given range of problems, the mentioned range of problems is rather demanding to process.

The situation is more complicated also by the fact that it is a period that was so far not satisfactorily documented. Among other things the completion of the missing literature in this field is important from the aspect of comprehensive perception of development of our contemporary social system.

2. THE METHOD

In compiling this contribution a combination of historical and comparative method was applied. As for materials, in considerations of philosophical type I was relying on the generally known facts from the history as well as on the works of ancient philosophers from the period of Constantine the Great.

In the part concerning the analysis of the turning point of the New Ages and Modern Times I was using scientific publications regarding the position of nobility on the territory of Upper Old Hungary. In view of the fact that the period of turning point of New Ages and Modern Times in the geographical region of Upper Old Hungary is not satisfactorily processed, the providing of factographic documents for elaborating this range of problems represented the most exacting part of the work as far as time is concerned.

In this context I wish to quote one of the existing publications on this topic that proved to be especially helpful in the process of putting together this contribution. It is the proceedings of the interdisciplinary conference that took place in Martin /Slovakia/ in 2009: „Yeomanship in Slovakia, part I-II.”¹

¹ As for the publication „Yeomanship in Slovakia, part I-II“, it is necessary to mention, namely from the point of view of comprehensibility that in spite of the fact that it is a publication processed on high professional level, it is affected by changing personal names typical for Slovak historical literature. However, it is not the fault of the authors because the Ministry of Culture of the Slovak Republic directly demands that the authors Slovakize the proper names of persons and of geographical names. The mentioned trend is negatively perceived by the professional public in abroad /especially by the German one/. It causes disunity, partial incomprehensibility as well as it makes the incorporation of Slovak publications into international context more difficult. It is appropriate to appreciate the positive effort of the authors to reduce the impact of changes by quoting original names in the name index with reference to the changed form. For example : part I., page 397 : Széchenyi, see Sécéni or part I., page 394 Révay see Révai. The second mentioned example shows clearly that seemingly negligible changes may cause in clarity because in Old Hungary there were both the Révay and Révai family lines.

In the part concerning the legal arrangement of the nobility possessions within the limits of the first Czechoslovak Republic I was primarily proceeding from the laws of the Czechoslovak Republic and public documents from the given time horizon, coming from the collections of land register offices as well as from the collections of the Ministry of the Interior of the Slovak Republic, the State Archive.

3. THE FINANCIAL CONSEQUENCES OF PATRISTICS

„Do not accumulate treasures on the earth, where they are destroyed by moles and rust and where thieves burgle and steal. But accumulate treasures in the heaven where they are not destroyed by moles and rust and where thieves do not burgle and steal. Because where is your treasure, there will be also your heart...“²

In the period when the ancient world was drawing to its end, the people were turning away from their pantheon and thanks to Constantine the Great the new ideology was spreading in the whole empire. Although the assessment of his influence is controversial it cannot be denied that he was a true titan of history. Constantine the Great made the foundations on which the whole system of government was built.

The ancient way of perceiving wealth and the attitude to money was diametrically different from that of the Middle Ages. The mentioned quotation should be understood in the historical context. The ideas expressed by the Apostles especially on gospels represented a novelty because they were in contradiction with the preceding way of perceiving the world.

The above-mentioned jump is closely connected with the ideological changes of the period. The perceiving of material values underwent big changes. It was caused by turbulent historical times. The decomposition of the Roman empire and the beginning of migration of peoples represented the end of an era but simultaneously the beginning of something new.

3.1 FINANCES IN THE SERVICE OF THE LORD

„Nobody can serve two lords because either he will hate the one and love the other or he will hang on one and he will scorn the other. You cannot serve both the God and Mammon.“³

The high degree of corruption was one of the big problems of the decaying Rome. It was not rare that the officials while „serving the Mammon“ were

² Matthew's Gospel, chapter 6, p. 19-21.

³ Matthew's Gospel, chapter 6, p. 24.

neglecting their official duties or even they were improving their financial situation by bribes.

Constantine the Great was concentrating on making the state administration more efficient. He reorganized it, he introduced primogeniture of the highest clerical posts. In this way he wanted to prevent the misappropriation of public finances. Hereditary clerks were esteeming their position more and therefore they were more difficult to be bribed.

He strongly supported the Christian church. Under his rule magnificent palaces were built. Church dignitaries were promoted to high posts.

He gave orders to collect high taxes from artisans and merchants. He imposed a tax also on the population of Rome what was received with considerably negative reaction .

On the other hand, he granted privileges and immunities to church dignitaries. He even exempted the church from paying taxes. He granted a similar position also to his friends whom he granted the prestigious title of patricius. Their position was roughly equal to the position of high nobility under feudalism.

Under his rule there was established an institute similar to serfdom. By his decrees he ordered the sons to continue the craft of their fathers. He prohibited the peasants to quit the cultivated soil hired from large landowners.

3.2 THE PRIVILEGED SUBJECTS IN ANCIENT TIMES

At the first glance it may seem that the demanding social reforms of Constantine the Great were expensive. However, his influence has to be perceived in a wider context.

The aim which Constantine the Great followed by his social reform was namely to provide financial means for running a permanent operational army. The hectic period required frequent deployment of army

Although to some officials he provided tax exemption, it was applied predominantly to the members of the city councils called curials /curiales/. The city councils controlled the functioning of the city, mainly the tax collection. In view of the fact that the city councils were paying considerable finances anyway, the non taxation of its members was rather a rationalization measure than providing a privilege that would burden the Treasury.

In case the state needed extra finances it did not reduce the salary of the curials but gave them orders to collect more taxes.

The exemption of church from taxation may also act as a measure burdening the Treasury. When comparing the „operational costs“ of pagan religions with the Christian church we definitely get a positive balance.

The main reasons of advantageousness of christianity from the point of view of public finances may be summed up followingly.

1. According to Christian mythology there exists only one God, therefore for the church the only God is sufficient.
2. The operation of a Christian temple /church/ is relatively cheap.
3. Unlike with several pagan religions, the performing of sacrificing in christianity is very undemanding and hygienic.
4. The ideological contents of christianity leads people to restrained way of life. The

Christian church was propagating restraint and modesty. In comparison with the ideological contents of some pagan religions, for example of the Dionysius cult it is evident that the influence of the Christian belief on the residue of domestic product must have been positive.

Constantine the Great this way created a model of the system of estates. He was granting privileges to a selected part of population and he was decreasing their tax burden. On the contrary, as for simple peasants and craftsmen he was increasing their tax burden and he was limiting their freedom.

4. PRIVILEGED AND NON - PRIVILEGED SUBJECTS OF FINANCIAL RELATIONS IN THE MIDDLE AGES AND IN THE NEW AGES

The system founded by Constantine the Great remained essentially unchanged up to the end of the New Ages. The increase of numbers of privileged subjects was a continuous trend during the whole period from the beginning of the Middle Ages. In other words it meant the enlargement of the strata of non- payers of taxes.

The serves were the primary subjects of taxes of all kinds. As the lowest stratum of society they had to endure high tax burden. A whole gamut of taxes was collected from them. The tax registers of the period illustrate the complexity of the tax system.

In the tax registers the form of tax payment was determined whether to pay in cash or in kind. In case the taxes were paid in kind it was exactly specified which tax should be paid in kind as well as where and when to hand it in. Also working on the lands of nobles was considered to be a tax.

Merchants and craftsmen living in towns were enduring equally high tax burden.

Although the predominant part of the population /approximately 95%/ belonged to two categories subject to taxation, the remaining part of population not subject to taxation had the biggest income. The same part was entitled to collect taxes from ser- ves as well as from the inhabitants of non- free cities.

At the same time the nobles were disposing of all political rights which in the given period did not belong neither to the sovereign nor to the church. A considerable internal differentiation of this stratum is well illustrated by the enlargement of the stratum of non- payers of taxes.

The authors already enumerated the categories of noblemen on the territory of Upper Old Hungary in the New Ages. The nobles were divided: quot.: „to two basic groups, the higher one /magnates/ and the lower nobility /nobiles/ which were then further on differentiated. At that time also the representatives of the highest clergy belonged to the highest nobility, i.e. prelates, further on counts, barons and all the other proprietors of castle dominions. They were entitled to be addressed „magnificus“.The structure of the nobility on state and local level was dominated by medium level nobles with the title egregius, later on generosus dominus who were financially satisfactorily ensured /bene possessionati/. They had decisive influence in the region. The deputy district governors came most frequently from among them. In the absence of the main district governor they had real power in the region. They stemmed from the most respected aristocratic families. Apart from the economic field they often made career in the military or church domaine.The small curial nobles /nobiles unius sessiones, curialistae/ constituted the most numerous part of the nobility. They were owning lands in the size of a big homestead. Due to the fact that they were subject to taxation by the military tax, they were also called nobiles taxati. Due to their poverty they were called also poor nobles /nobiles pauperes/. In the intitulation they had the title nobilis /noble, distinguished”⁴

4.1 THE SUMMARIZATION OF THE DEVELOPMENT

The big number and internal differentiation of privileged subjects on the territory of Upper Old Hungary in the New Ages is in sharp contrast with the clearly arranged number of privileged subjects under the rule of Constantine the Great. Whereas in ancient times the granting of privileges

⁴ Yeomanry in Slovakia, part 1, p. 3(Zemianstvo na Slovensku, časť1, str. 3)

had a rather rationalizational character, in the New Ages nothing similar existed.

It was also the consequence of the fact that the nobles were unscrupulously exerting their political rights in order to exercise their will in the society.

In order to gain bigger privileges, they were exerting their influence upon the king. On the other hand, they were often properly not fulfilling their duties, mainly in the military field.

Merely theoretically, they were supposed to pay taxes for their privileges „by own blood“. In other words, in case of menacing danger they were obliged to mobilize on the command of the king.

Nevertheless, history showed that armies created by insurrection roughly speaking by calling the nobles to arms was not sufficient for defending the country. Maroš Mačúch, a historian specializing in the historical phenomenon of insurrection and cavalry army, described the strength of the army created this way followingly: *„The fighting value of the military units comprising predominantly people accustomed to settled life was low. The cavalry system was obsolete already under the rule of king Sigismund and in the first phases of the war was often ineffective. Already under the rule of Hapsburg Albrecht and Ladislao Jagello there were attempts to form a mercenary army and not to rely on the insufficiently armed and slowly mobilizing provincial army.“*⁵

From the aspect of positive law the power position of the nobility was not justified. The cavalry units were able just to suppress serves rebellions.

The consequences of failure of the cavalry army were devastating for the whole population. Most significantly it was manifested at the intrusion of Tartars /1241-1242/ and by the battle at Mohács as well as in the following long presence of Turkish occupants /1526-1699/. The disciplined professional armies destroyed the cavalry army already in the phase of its mobilization.

5. THE EXTINGUISHMENT OF THE PRIVILEGES

Already before the first world war it was evident that the privileges of nobility became archaism. The majority of them was abolished already after the revolution and fight for freedom in the 1848-1849 years.

⁵ Mačúch M., Branná povinnosť šľachty v novoveku na príklade Turčianskej stolice p. 2

The so called family tutelage was a special institute which survived. It represented a property destined to maintain a certain living standard of noble families.

This institute started to develop in our country in the beginning of the 17th century as a privilege of the high nobility. The inventory of property belonging to the tutelage must have been deposited with the court. Actually it was a sort of shared ownership typical for the feudal period.

The tutelage was established by the high nobility with its family property. Such property was not subject to heritage. This institute prevented splitting up, stealing and burdening of the tutelage property.

In other words, it was a privilege that survived the longest time, up to the twenties of the 20th century.

5.1 THE TERMINATION OF TUTELAGE IN THE FIRST CZECHOSLOVAK REPUBLIC

The legal regime of abolishment of tutelage was stipulated by Act No. 179/1924 about the abolishment of tutelage. According to paragraph 2, section 1 of the Act, quot.: „ *The holder of tutelage, persons in waiting and the guardian of the descendants - it is up to them to arrange the relations of the vacated tutelage property by agreement.*“

The legal adjustment exactly stipulated who is considered to be a person in waiting and to be holder or guardian of the tutelage. In paragraph 2, section 1 of the Act No. 179/1924 we may read quot.: „ *The persons in waiting are those who on the day when the act comes into force are called to succession in tutelage according to the founding document and are already alive or at least are considered to be born (§ 22 of the Civil Code). However, the limitations of the founding documents which contradict the legal order established after October 28 1918 by abolishing nobility (due to unequal marriage, insufficiency of noblesse or a certain number of noble ancestors) are not taken into account.*“

In paragraph 2, section 1 of the Act No. 179/1924 there is provided the circle of persons which had to participate in the mentioned agreement in order to make it valid quot.: „ *It is sufficient that there is the consent of the holder of the tutelage and of three closest persons in waiting. If they do not exist it is the guardian of the tutelage descendants. If the tutelage is vacated by the death of the holder, it is sufficient to have the consent of the successor called by the founding document and of two closest persons in waiting as far as the guardian of the descendant is concerned. The direct descendants of these persons in waiting are not taken into account.*“

The Act on abolishment of tutelage further on stipulated the duties of the subsequent approval of the agreement by the respective court. According to

paragraph 2, Act No. 179/1924, quot.: „ *The agreement must be achieved up to six months from the day when this Act comes into force, it must be submitted to the respective tutelage court, it must not contradict the purpose of this Act and it requires approval by the respective tutelage court § 16. The court will hear the participating persons, namely the persons in waiting mentioned in section 2 provided their signature is not verified on the document as well as the tutelage guardian. Apart from that it will inform the persons in waiting who are staying on the territory of the Czechoslovak Republic and made an appeal on the court board by a notice and also in an official letter and alternatively also in other letters the persons in waiting whose stay is not known or they are in abroad as well as those who according to the founding document could make claim on succession in tutelage. They have to express their attitude before the court in the determined time limit . This time limit will be determined by the court to thirty days from the day when the notice will be published in an official letter. In the information and in the notice the substantial data of the agreement must be mentioned together with a warning that it is supposed the consent with the agreement and those who will not appear on invitation and will not express their opinion.*“

The consequence of the mentioned complicated procedure was that the subsequently issued documents are trustworthy and may be used as a proof by proving the original ownership of lands and real estates.

6. SUMMARY

By not paying taxes the nobles ruined the feudal system. Despite the fact they were using the common wealth and consuming a large portion of the domestic product, they were unwilling to contribute to this system.

Today's international bank corporations show many in common with the nobles back then by behavior.

Also institutions existing within the gaps of the state organization that have common marks with the nobles are local governments and other organizations using also public finance. In this relation I would like to tie up to a publication from “Dny prava 2009”, where the point of the observation is the issue of liability while managing public finance quot: “*As the entrepreneur operates with the goal of achieving profit, is highly motivated to observe the economical profitability of his actions. In the worst case he could bankrupt and would be eliminated from the competition as a direct result of his actions... ...If somebody is managing public finance uneconomically, he is not only jeopardizes public interest, but he is in fact not endangered by any penalty. We may say that the provisions of inner state character in case of Slovakia and partially of the Czech Republic are*

not sufficient to motivate the officers towards real economic management of public finance.”⁶

Also I would like to compare the medieval privileges to the abuse of tax heavens, as in both cases organizations which should pay the highest taxes are actually trying to bypass taxation as such.

The most interesting results come by comprehension of the privileged subjects of the middle ages and the international bank organisations. Practically they are collecting tax from everyone, who is citizen in a country, which owns money to some of the organizations.

If we look closer at the IMF and the World Bank, it becomes clear, that the interventions of both organisations are mostly not welcomed, by the citizens of the given state. Although both organisations like to position themselves in the view of the public, as a humanitarian helpers, who are lending money to those, who are in need.

But, they undertaken effort mostly resolves in highering the interest rate of the depth of the given country.

For example in Hungary, the IMF "helped" to solve to country's heavy economical problems resulting partially from the bad social-democratic goverment, but primarily resulting out of the high interest rates, which are slowli drowning the economy of hungary.

The IMF lent money to the hungarian state, so they could pay of the interest rates of their international depth. The problem is, that the state of hungary is paying the biggest ammount of the interest rates yearly directly to the IMF. They practically helped to solve a problem, which without their former actions, probably would not even appear!

The activities of both organisations, in the end, always result in more depth. By these actions, they are not producing anything of value.

Is the globalized world on the same path, as the feudal system on the beginning of the modern ages ?

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⁶ Hulkó T., Malý J. *Osobitné črty zodpovednosti vo finančnoprávných vzťahov, (Specific features of responsibility in financial law)* p. 8

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