REMARKS ON ISTVÁN SZÁSZY (1899-1976), ON THE GENERAL PART OF HUNGARIAN CIVIL LAW AND THE ROLE OF THE COMPARATIVE METHOD IN PRIVATE LAW

*Prof. Dr. habil. Emőd Veress**

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István Szászy was one of the most versatile creators of Hungarian legal thinking. We remember him primarily as a scholar of international private law, but he also published many high-quality private law works before 1949. In 1949, István Szászy's career as a private lawyer was interrupted for political reasons in the context of Soviet-type dictatorship. His person has been partially ignored by history, while his work as a private lawyer has been disregarded altogether. Therefore, it is worth examining the reasons for the disregard he has been shown and determining whether the oeuvre's private law program is worth re-acknowledging, rehabilitating, and completing. In order to do so, we must discuss the general part of Hungarian civil law and the comparative method's incidence, as the importance of this issue extends beyond Szászy's work.

Keywords: István Szászy; Hungarian civil law; general part of civil law; comparative law; Soviet law

* Emőd Veress, Ph. D., Professor, Sapientia Hungarian University of Transylvania, str. Matei Corvin nr. 4, 400112 Cluj-Napoca, Romania; Head of the Department of Private Law Research, Mádl Ferenc Institute of Comparative Law, Alkotás Street 55-61, 1123 Budapest, Hungary; emod.veress@icloud.com;
ORCID ID: orcid.org/0000-0003-2769-5343

I. 1949: A TURNING POINT[1]

István Szászy's two-volume book entitled *A magyar magánjog általános része* (The General Part of Hungarian Civil Law)[2] was published in 1947-48, while an abbreviated version was published in 1949 as a university coursebook entitled *A magánjog alapintézményei* (Fundamental Institutions of Civil Law).[3] These books were based on university lectures he had given in Cluj (Kolozsvár) and in Budapest.[4] The volume entitled *The General Part of Hungarian Civil Law* is the most detailed analysis of the topic seen in Hungarian legal science to date and it received an award from the Hungarian Academy of Sciences.[5] Szászy's approach was indeed novel at the time, and remains so today. Szászy himself said that he had 'poured the new wine of the new age into new wineskins' when he self-consciously presented himself to the 'Hungarian scientific world'.[6] He dedicated his first two-volume book to his former professor Károly Szladits[7] with a student's gratitude; this dedication also serves as a sign of continuity.

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1 This article is an edited and expanded version of the lecture given by the author at the István Szászy Memorial Conference organized by the Hungarian Academy of Sciences and the Ferenc Mádl Institute of Comparative Law on September 16, 2020, in Budapest.

2 Szászy, I., *A magyar magánjog általános része különös tekintettel a külföldi magánjogi rendszerekre* [The General Part of Hungarian Civil Law with Special Regard to Foreign Civil Law Systems], Vol. I-II, Egyetemi Nyomda, Budapest, 1947-48.

3 Szászy, I., *A magánjog alapintézményei* [Fundamental Institutions of Civil Law], Magyar Egyetemisták és Főiskolások Szövetsége (MEFESZ) Jogász Kör, Budapest, 1949. On István Szászy see Burián, L.: *Szászy István* (1899-1976), in: Hamza, G. (ed.), *Magyar jogtudósok* [Hungarian Legal Scholars], Vol. II, Professzorok Háza, Budapest, 2001, pp. 147 – 168, as well as Vékás, L., *Szászy István törvénytervezete a nemzetközi magánjog kodifikációjának történeti tükrében* [István Szászy's Draft Law in the Light of Codification of International Private Law], Jogtudományi Közlöny, no. 5, 2020, pp. 185 – 190.

4 Between 1942 and 1945, István Szászy was a professor at the University of Cluj, and between 1945 and his forced retirement in 1950, at the University of Budapest. Cluj (Kolozsvár in Hungarian, Klausenburg in German) before 1920 and between 1940-1944 was part of Hungary, now is part of Romania. For details see Veress, E., *Integration of Transylvania into Romania from the Perspective of Private Law (1918–1945)*, Acta Universitatis Sapientiae. Legal Studies, no. 2, 2020, pp. 347 – 361.

5 Cf. *Szabad Nép*. May 29, 1949, p. 15. Szászy István became a corresponding member of the Hungarian Academy of Sciences in 1945.

6 Szászy, *op. cit.* (Note 2). Volume I. Foreword (part without page numbering).

7 Károly Szladits (1871-1956) was one of the most recognized professors of civil law in interwar Hungary.

In the following year of 1950, at the age of 50 and at the heights of his creativity, Szászy was forced to retire. In the forthcoming period, his works came to be considered those of 'our former teacher' and were subjected to erosive, destructive criticism by the young Gyula Eörsi.[8]

István Szászy's career as a civil lawyer was shattered and his oeuvre was completed in other fields of law (mainly in the more politically neutral field of international private law). Nowadays, modern civil law is generally considered to be a much less politicised discipline than constitutional law or administrative law. However, in 1949, it was not seen as such: at that time everything had political significance.

The question of whether the criticism Szászy received was well-founded or not arises. The essence of my answer to this question and of my hypothesis is that the criticism Szászy received was founded, but only in the given political-ideological context (the consolidation of the Soviet-type dictatorship) and is by no means founded from a professional point of view. I hypothesise that fear of Szászy's bourgeois legal thinking was well founded in 1949: they did not want him to teach ('to infect' students with his bourgeois approach) and they did not want his works to have an impact. Therefore, his book on the general part of Hungarian civil law had to be withdrawn from intellectual circulation. Obviously, this hypothesis must be proven, and the thoughts which follow aim to do just that.

The problem Szászy's work presented in 1949 stemmed from the fact that his scientific, systematic, context-seeking approach that rejected artificial simplification and used private law and comparative legal methods offered attentive readers a reality contrary to the official Soviet ideology. It would have been too easy for such readers to conclude that the ideological principles of the Soviet-type dictatorship were erroneous, and thus, Szászy came to be known as a dangerous private lawyer.

The ideology of that age placed the Soviet, socialist legal system on a pedestal as 'an example for all who believe in socialism throughout the world'.[9] In contrast, Szászy's systemic approach did not support this highlighting and admiration of Soviet law. He was reproached for describing socialist Soviet law as a part of the Slavic area of law, following the analysis of Germanic-Scandi-

[8] Gyula Eörsi (1922-1992) leading scholar of civil law in Hungary after 1949. His outstanding talent is indisputable, but he also served the Soviet-type dictatorship.

[9] Eörsi, G., *A magánjog alapintézményei c. egyetemi tantárgyról* [On the Course Entitled Fundamental Institutions of Civil Law], Jogtudományi Közlöny, no. 23 – 24, 1949, p. 535.

navian law and before the Muslim area of law.[10] Soviet law took sixth place in his analysis, following five other groups of law. According to the perceptions of that time, Soviet law taking sixth place indicated a ranking rather than a rational organisational principle. In short, Szászy's main offence was found in his logic. The recognition of the superior nature of Soviet law was incompatible with his genuinely scientific approach.

However, Szászy was very much interested in Soviet law; as early as 1945, he published a book entitled *A Szovjetunió magánjogának alapelvei* (Principles of the Private Law of the Soviet Union) in Cluj. Szászy's interest in Soviet law was not the result of an opportunistic and novel approach but of a real scientific passion. This volume, published in 1945, was based on the lectures he had been giving at the University of Cluj since 1942. Within the context of the volume's 'communist' interpretation, one reviewer wrote: 'it took a lot of human and scientific courage to teach students the legal system of the "enemy" during a war'.[11] However, this volume does not include any political standpoints; it only provides a schematic description of Soviet private law.

Yet, I found evidence to suggest that his interest in Soviet law began even earlier in his career. István Szászy published an article in the *Budapesti Hírlap* newspaper in 1932 entitled *Szovjet-Oroszország jogrendszere* (The Legal System of Soviet Russia).[12] In this article he explains that the country of the red tsars, the Soviet Union, did have private law and a Civil Code, and that the state had thus moved away from the communist principles first expressed by Marx and Lenin. Logically, the following of communist principles would result in the communist state transforming all private law into administrative law. According to Marx and Lenin, a communist state should not maintain a system of private law based on the principles of private property and freedom of contract.[13]

[10] Szászy, *op. cit.* (Note 2), Vol. I, pp. 46 – 54.

[11] Névai, L., *A Szovjetunió magánjogának alapelvei. Szászy István monográfiája* [Principles of the private law of the Soviet Union. István Szászy's monography], Jogtudományi Közlöny, vol. 5-6, 1946, p. 100.

[12] Cf. Budapesti Hírlap, January 17, 1932, p. 11.

[13] In his letter to Kursky, the People's Commissar for Justice, Lenin stated that 'we do not recognize anything "private", and regard everything in the economic sphere as falling under public and not private law. (...) Hence, the task is to extend the application of state intervention in "private legal" relations; to extend the right of the state to annul 'private' contracts; to apply to 'civil legal relations' not the corpus juris romani but our revolutionary concept of law; to show systematically, persistently, with determination, through a series of model trials, how this should be done wisely and vigorously; to brand through the Party and expel those members of revolutionary tribunals and people's judges who fail to learn this or refuse

In contrast, according to Szászy, the Soviet legal system was also familiar with the greatest enemy of the communist worldview – private property – albeit to a limited extent.

Szászy's volume on the principles of Soviet private law was already in print in June 1945 when he was approached by one of his former students.[14] His former student was working for the Social-Democratic newspaper *Erdély* in Cluj and wanted to talk about Soviet property rights. Szászy revealed that he had been drawn to studying Soviet law because of his scientific interest in the topic. In the interview, he pointed out that the fundamental difference between Soviet property rights and Hungarian law is that, firstly, 'property rights refer only to a social function, belonging to the owner only in order to develop the productive forces of the public, of the country'.[15] In 1946, *The Legal System of Soviet Russia* received praise: 'it is typical that the Hungarian professors of the University of Cluj were the first to recognize the task assigned to them in the field of describing Soviet law'.[16]

Szászy also faced criticism. Some objected that his conception of private law stemmed from the world of abstract logic. That is, that he isolated himself

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to understand it'. Cf. *Lenin összes művei* [The Complete Works of Lenin], Vol. 36, Kossuth, Budapest, 1972, p. 574.

[14] The former student, Lóránd Gy. Mezey, greeted professor István Szászy with great enthusiasm ('how wonderful fate was to have sent such a well-prepared man to us in Transylvania to educate the youth in the most beautiful science...'). However, István Szászy had to leave Transylvania, and from the autumn of 1945, continued teaching in Budapest. He became the head of the Department of Comparative Private Law and International Private Law. In 1947 he took over Bálint Kolosváry's Department of Hungarian Private Law no 1. For details and the relevant archival sources see Schweitzer, G., *A „Pázmány"-tól az „Eötvös"-ig. Adalékok a budapesti jogi fakultás történetéhez* [From the Pázmány to the Eötvös. Additions to the History of the Budapest Faculty of Law], Múltunk, no. 4, 2011, p. 32. The former student who took the interview, Lóránd Mezey Gy. (1920-1985) also moved to Hungary and worked as a reformed pastor.

[15] Cf. *Szászy professzor, a közismert nemzetközi magánjogász beszél a szovjet tulajdonjogról. Érdekes eltérések és hasonlatosságok a szovjet és a nyugati jogrendszerekben* [Professor Szászy, the well-known international private lawyer talks about Soviet property law. Interesting differences and similarities between the Soviet and the Western legal systems], Erdély, June 3, 1945, p. 4. See also *A Szovjetunióban magánjogi szerződés a házasság. Szászy István egyetemi tanár előadása a szovjet családi és örökösödési jog köréből* [In the Soviet Union, marriage is a private contract. Lecture by university professor István Szászy on Soviet family and inheritance law], Erdély, June 2, 1945, p. 4.

[16] Cf. Névai, L., *A házassági jog legújabb fejlődése a Szovjetunióban* [Recent Developments in Matrimonial Law in the Soviet Union], Jogtudományi Közlöny, no. 3-4, 1946, p. 51.

from the world of social phenomena, the reason being an erroneous theoretical position, and the method resulting from connecting the schools of Jurisprudence of Interests (*Interessenjurisprudenz*) and Jurisprudence of Concepts (*Begriffsjurisprudenz*), which Szászy followed. According to the critics, the 'bourgeois schools of conceptual and interest jurisprudence are not "modern" legal trends; "modern" jurisprudence is a Marxist-Leninist jurisprudence that examines positive law in the context of socio-economic life and not in a floating, logical bubble isolated from the world; its task is to build the legal system of popular democracy and then socialism'.[17]

The biggest problem with this objection is that neither the Jurisprudence of Interests nor the Jurisprudence of Concepts were formed with the intention of taking the law out of its socio-economic context. They simply dealt with issues of law enforcement, case law techniques, and legal interpretation.[18] Moreover, in an article published in 1948 in the journal *Jogtudományi Közlöny*, one author stated that:

> 'one of the strongest assurances of the methodological approach postulated by correctly applied Jurisprudence of Interests is to help the creation of new legal principles that are in line with the changes in the social and economic order regarding the judicial application of law even during the formal existence of the many laws and regulations that have been preserved from the past... The judge does not apply the paragraphs mechanically, but is a defender and protector of the current government, of the social and economic order, and cannot disregard the great shifts in state power when assessing a situation and giving a judgment...'[19]

This means that the author cited here, supporting the Soviet-style transformation, considered the application of the Jurisprudence of Interests to be a method that, with the help of which the bourgeois laws still in force, could be used within the context of a people's democracy (i.e. by turning the original meaning of these norms inside out, the Soviet-type dictatorship could well be served).

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[17] Eörsi, *op. cit.* (Note 9), p. 535.

[18] For details, see Nizsalovszky's excellent study. Cf. Nizsalovszky, E., *A fogalomkutató és az érdekkutató jogtudomány* [Jurisprudence of Concepts and Jurisprudence of Interests], Debreceni Szemle, no. 9, 1933, pp. 341 – 345.

[19] Túry, S. K., *Az érdekkutató jogtudomány mai jelentőségéről és szerepéről* [On the Present-day Importance and Role of the Jurisprudence of Interests], Jogtudományi Közlöny, no. 23, 1948, p. 452.

In fact, Szászy tried to interpret and systematise the transformation of private law, not in isolation but in a broader context. Therefore, he argued, among other things, that the approach of lawyers in the Soviet Union was based on the teachings of the French jurist Léon Duguit (1859–1928).[20] According to Szászy, private law and economic order, especially since World War II,

> 'is undergoing a major transformation in Hungary. This is mainly reflected in the fact that our private institutions are increasingly interwoven with elements of public law, which in turn is a consequence of the fact that our social economy is changing: state intervention is increasingly pushing the freedom of individual initiative into the background. Individual freedom is slowly transformed into "social function" (Duguit)'.[21]

These propositions could also be interpreted as a critique of the transformations that were taking place in Hungary at the time, as its governance changed to that of a Soviet-type dictatorship. Szászy claimed that state intervention increasingly pushed the freedom of individual initiatives into the background. He saw individual freedom as something which slowly transforms into a social function under a Soviet-type dictatorship. This is undoubtedly a common feature of totalitarian regimes. Reflecting on Szászy's approach, Gyula Eörsi stated that 'in a final analysis, this approach also leads to the logical conclusion that our popular democracy is a continuation of Fascism, going even beyond it'.[22] What Eörsi formulated as a critique, unfortunately, does not refute István Szászy's proposition, nor does it annul Szászy's statement. However, according to today's understanding, it is a logical conclusion.

In 1945, public law elements had penetrated private law and their importance had increased. Szászy was criticised because he did not make a distinction between wrong, imperialist state intervention and good, socialist state intervention. On a formal basis, Szászy considered imperialist state intervention to represent the same phenomenon as that seen when the state "of the working people" took over the organisation of economic life, abolished private property and transformed it into social ownership, and took control of the means of production.[23]

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[20] Szászy, *op. cit.* (Note 2), Vol. I, p. 9.

[21] Szászy, *op. cit.* (Note 2), Vol. I, p. 17.

[22] Eörsi, G., *Hozzászólás*. [Discussion], A Magyar Tudományos Akadémia Társadalomi-Történeti Tudományok Osztályának Közleményei, Vol. II, no. 3-4, 1952, p. 279. Here we also need to mention Attila József's poem *Világosítsd föl* [Enlighten your child] written in 1936, and censored during the Soviet-type dictatorship: „Talán dünnyögj egy új mesét, / fasiszta kommunizmusét…[Perhaps mutter a brand new tale / that of Fascist Communism].

[23] Eörsi, *op. cit.* (Note 9), p. 535.

According to his critics, the fact that Szászy paralleled the penetration of private law by public law under Soviet-style law with similar historical processes indicated that he did not realise that a completely new, qualitatively different, and entirely positive political process began in Hungary in 1945.

In contrast to popular belief, Szászy observed the legal reality of the Soviet Union and deduced that private law would persist because the state cannot take responsibility for all tasks previously carried out by individuals.[24] Szászy's belief in the survival and indestructibility of private law was a radical and extremely dangerous view to have at the time: if private law is indestructible, then communism is a utopia. The above-mentioned attentive reader would have been able to realise when reading István Szászy's text on the general part of private law that the main guiding principle of civilian legal thought at that time was somewhat opaque, lacking both logic and a solid foundation. Reading Szászy, it might become obvious that the socialist civil law that was replacing private law could not ensure the individual fulfilment it so loudly proclaimed because the essence of socialist civil law was not the individual but the social class. For any judicious thinker, Szászy's oeuvre was an indirect but consequential critique of the political regime.

Therefore, private lawyers like Szászy were not needed in Hungary in 1949 nor in the following years. In this period, not only István Szászy but an entire generation of academics were pushed out of the field of legal academia and the organic development of Hungarian law and jurisprudence was interrupted.

II. THE RELEVANCE OF ISTVÁN SZÁSZY AS A PRIVATE LAWYER

We have already discussed the ways in which István Szászy's books analysing the general part of Hungarian private law failed to stand the test of time. This failure was not a reflection of the quality of his work, but rather a testament to their scientific excellence. Times were changing, and Szászy was unable to adopt the research approach these new times required: an approach which prioritised ideology over scientific method. He was not stuck at the level of 'bourgeois vestiges' as his critics claimed. In fact, he followed every change closely. The fundamental problem with these volumes was that they did not include a sufficient level of Marxist-Leninist jurisprudence.[25]

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[24] *Ibid*.

[25] *Ibid*., p. 534.

These scientific and educational works could not proceed after their publication for ideological reasons, and thus, the question of whether Szászy's approach to the general part of Hungarian civil law is relevant today arises. Is István Szászy, a private lawyer, of any scientific significance today? In my opinion, the answer is yes. It is worthwhile to attempt to identify Szászy's relevance to the present moment and to determine his work's contemporary applications.

One critique of Szászy's work that was not influenced by ideology must also be considered: the critique that 'regardless of the scientific value of the work, being part of the university curriculum, it is debatable whether such a method can be used at any given time... by the law student, whether it is suitable to raise interest and love in a first-year student for private law'.[26] The two-volume, detailed edition of *The General Part of Hungarian Civil Law* is logically structured and easy to follow. Distinct from the main text, the parts that provide additional information are provided in smaller lettering. Thus, it was possible for students to prepare for the exam without reading these parts. This visual separation meant that someone who was 'only' interested in Hungarian positive law could skip these otherwise fascinating supplementary analyses. Indeed, there are many comparative elements in Szászy's work; this is a conscious commitment of the volume, part of his methodological goal. The volume's subtitle itself ("with special regards to foreign legal systems") indicates such an approach (I discuss this further in Part III of the present article).

The scientific content of the volumes also needs to be addressed. In my opinion, Szászy's works discussing the general part of private law contain the highest quality analysis that exists on the topic in Hungarian jurisprudence. These books were not permitted to 'run their normal course' only because they were born at the wrong time.

Of all the systematic issues pertaining to the regulation and science of civil law, the problem of the general part is undoubtedly the most complex. Civil law was almost organically divided into the law of persons, real rights, obligations, and inheritance law, however, these divisions are not exempt from criticism. Gusztáv Szászy-Schwartz described the divisions of civil law at the beginning of the 20th century as 'cracked'. He believed that we classified people in the following way: blondes, brunettes, men, rich. This is because inheritance law and family law consist of either real rights or obligations.[27] Szászy-Schwartz also states that:

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26 *Ibid*.

27 Schwartz, G., *Új irányok a magánjogban* [New Directions in Private Law], Athenaeum, Budapest, 1911, pp. 206 – 207. István Szászy also accepted this argument with

> 'the system within the division between real rights and obligations is no less illogical. Within real rights, we distinguish between individual rights according to their content: the content of property rights is different from rights on somebody else's property, and the content of each of the latter is different again. However, within the law of obligations, the different obligations are grouped not according to their content, but according to the factual basis of their creation, we talk about obligations arising from contracts, of delicts or obligations with other origins...'[28]

Nevertheless, the divisions of civil law are historical and fundamentally functional, even if lacking the precision of mathematical logic. Some may question whether the hypothec should be included in the book on real rights, categorised as a real right and taught in the context of the corresponding course, or whether the place of the hypothec, as a form of credit security, belongs more to the law of obligations. There are arguments in favour of both approaches, and whichever wins, the hypothec will remain fully functional. In addition, as regards the law of persons, real rights, the law of obligations, and inheritance law, a determined field of civil law and a university course can be matched with the corresponding books of the Civil Code.

In sharp contrast to these aspects of civil law, the general part is disputed in all respects. Does the Civil Code have a general part? If so, is it necessary that it has one? If not, is it missing, since most civil codes do not have a comprehensive general part in comparative law? What is dealt with in the general part when it is used as a discipline or as a university subject?

István Szászy had answers of practical significance to these questions; answers that must be considered today. Szászy's innovative conception of the system of private law could not be moulded to fit into the conception of socialist civil law. However, his analyses regained their relevance when the regime changed in Hungary.

The current Hungarian Civil Code (Act No. V in 2013) did not contain a general part. However, it includes short introductory provisions consisting of six paragraphs. Does this mean that the general part of civil law deals with these six paragraphs?

minimal modifications. He agreed that this type of classification is as if we grouped people in the following way: some of them have black skin, others are tall, the third group has blue eyes, and the fourth group wears glasses. Cf. Szászy, *op. cit.* (Note 2), Vol. I, p. 13.

[28] Schwartz, *op. cit.* (Note 27), p. 207.

In this context, we must make a clear distinction between the general part of civil codes and the general part of civil law. Civil codes do not necessarily have a general part. Moreover, as I have already mentioned, we encounter merely a brief introduction in the case of most civil codes, as in the case of the Hungarian Code.

The question may also arise as to whether the science of civil law has a general part in the case of states whose civil codes do not contain a detailed general part. The answer is positive. The existence of a general part of civil law does not presuppose direct correspondence in civil codes.

Therefore, we must ask: what is the content of the general part?

The general part of civil law is by no means an abbreviated summary of civil law as a whole. It would be pointless to briefly describe what other sub-areas have elaborated upon in detail. The 'bird's eye view' is essential in civil law, and the general part should also provide a top-down, comprehensive view of civil law. Nevertheless, this is not a sketchy, abbreviated, necessarily superficial analysis of other areas of civil law.

The simplest way is to approach this question on an exclusionary basis: what does not belong to the general part? As I mentioned earlier, the generally accepted sub-areas of civil law are the law of persons, real rights, the law of obligations (contract law and tort law), inheritance law, and as the later addition of family law. What is it that unites these extremely diverse issues, appears in each of the sub-areas, and is the common element that brings together this incredibly diverse body of law into the unified branch of civil law? In answering this question, we identify the general part of civil law as a result.

According to Szászy, two basic issues and their branches undoubtedly belong in the general part. The first is the legal norm. The norms of civil law govern all of the areas mentioned above, and thus we need to summarise our knowledge of their rules (in other words, the theory of civil law norms) in a comprehensive way that covers all areas of civil law. A topical question that may arise here is whether this theory of civil law norms falls within the general part of civil law. I agree with Szászy, finding that it clearly does. The sources of civil law, the mandatory or default nature of certain norms, the codification of civil law, private intertemporal law, and the relationship between general and special norms in private law are by no means questions of constitutional law. They are questions of civil law. It is also worth mentioning Béni Grosschmid's[29] monumental work on

[29] Béni Grosschmid (1852-1938), legal scholar, prominent Hungarian private law thinker.

the theory of civil law norms, which, incidentally, is entitled *Magánjogi előadások* [Lectures on Private Law] showing that civil law has its own theory of norms.

According to Szászy, the second subject wherein we can examine the general part of private law is in the study of legal relationships, seen as the unity of the right and the corresponding compulsion. Legal relationships also cover all areas of civil law.

István Szászy's position in relation to these two topics is that both the legal norm and the legal relationship have a static and dynamic state and both states make it possible to enforce fundamentally different approaches. In his view, the statics of private law norms are represented by the typology and logical structure of such a rule, and its dynamics are the creation, application, and termination of those norms. The statics of the legal relationship are represented by the elements of the legal relationship (content, subjects, object) and the dynamics are represented by their creation, modification, and termination (due to contracts, unilateral acts, or illegal behaviours).

This remains a precise, accurate, and legitimate approach to the general part of Hungarian civil law. Szászy summed up his position as follows: 'the general part contains those norms that can usually be found in the rules of conduct of the special part'.[30]

Szászy's innovative approach was best captured in the way he structured private (civil) law (the special part). This topic also needs to be addressed, given that, in my view, the reception of these divisions has not been fulfilled. It is indeed an original and unique intellectual achievement, yet its chances of being misunderstood are too great.

According to Szászy, the special part of Hungarian civil law can be divided into the following four main parts:

1. *Right of private law:* the right holder may claim certain conduct from another person and the other person is obliged to behave in the way the right holder claims (–claim-compulsion).
2. *Potestative rights*: the right holder may himself/herself behave in a certain way with another person and the other person has no choice but to be exposed to the behaviour of the entitled person (power-vulnerability).
3. *Right of exemptions under private law*: the right holder may prevent another person from acting toward him and the other person cannot act toward the entitled person (–exemption-inertness).

30 Szászy, *op. cit.* (Note 2), Vol. I, p. 13.

4. *Of private law debtors' rights*: the right holder can avert the behaviour demanded from him by the other person and the other person cannot claim any behaviour from him (debtors' right-inexistence of claim).

When the parties in a legal relationship are defined, it is referred to as a bipolarity or a polarised legal relationship, while legal relationships involving absolute rights such as property are referred to as unipolar, non-polarised legal relationships. The legal relationship between claim-compulsion and power-vulnerability can be bipolar or unipolar; it is the latter when the right holder is opposed by anyone against whom such a right can be exercised at all. Consequently, the law of private claims includes both real rights and the law of obligations.

> 'On the side of the legally bound person, non-polarized, unipolar rights of claim protect the already existing statuses and the already acquired life situations, therefore the norms on these are regulators of the statics of life. On the other hand, the polarised, bipolar rights of claim, on the side of the legally bound person, serve for the acquisition of these life situations and the circulation and movement of goods, and they represent the legal rules of changes, and thus are the norms of the dynamics of life'.[31]

The right of exemptions and debtors' rights can be traced back to two primary, basic situations: the right of claim and power. These rights are merely used to express an action against the right to claim or potestative rights. The law of exemptions includes matters such as the right to provide guarantees against the right of retention, whereas debtors' rights include, for example, objections to compensation and limitation, as well as benefit of excuse.[32]

All four of the above-mentioned rights have their respective statuses in expectation and possession, which Szászy says should also be studied. The summary I have provided here is extremely sketchy, but it elucidates some of the ways in which Szászy outlined a new framework for the private law system.

Szászy stated that inheritance law does not appear in this classification. This is because the right of inheritance is not a separate subjective or primary right, but rather a transfer of property; a factual change that provides rights, but from which no special subjective right of inheritance other than that of the transferred rights arises. Therefore, the inheritance law belongs to the general part of private law and rests within the scope of the dynamics of the legal relationship. Nevertheless, Szászy does not include inheritance law in his discussion of the general part because doing so would have made his work too

[31] Szászy, *op. cit.* (Note 2), Vol. I, p. 15.

[32] This is an exception of the surety, demanding that creditor first execute the assets of the principal debtor rather than those of the surety.

extensive.[33] He also acknowledges that according to this classification family law is divided into several parts, and therefore, family law is only a thematic and not a logical unity in civil law.

The division presented by Szászy has been criticised as one of the most instructive attempts to classify legislation based on uniform logic, yet also an attempt that was aborted. The impossibility of such a division based on uniform logic is justified precisely by Szászy's experiment.

> 'The unified logical division constructed by Szászy does not follow any previous traditions, and as such, it has broken the most important backbone of private law, the relations of thought that have been generated over the centuries. This also shows that law is not merely a mathematically ordered set by the formal logic of rules created'.[34]

The above approach is undoubtedly worth considering, but the word 'aborted' may be exaggerated. At least three factors must be considered to understand the nuances of this approach.

1. First, the novelty of the approach is undoubtedly alarming compared to usual, routine thought patterns. However, my opinion is that István Szászy was not given the opportunity to develop a special part of private law on the basis of this division because this could have provided evidence to support the private law system approach he applied. Although the inaccuracies of this approach are generally acknowledged, it is possible that the approach could be revolutionised, renewed, and given a functional alternative. The failure of this approach has not yet been proven.
2. Second, I firmly disagree with the notion that Szászy wanted to abolish the classical division in general. His theory might be understood and treated as a system that exists in parallel with the traditional approach and as one that could be even further developed and shaped. Undoubtedly, this systemic approach has its advantages, as it integrates an infinite variety of legal relations into one system.
3. Third, this theory composes only a fraction of the two volumes of *The General Part of Hungarian Civil Law*. Of the 636 pages comprising the two volumes, it is only the last part (page 600 and beyond) that discusses these divisions in detail. In fact, while it is the most innovative part, it is only a sub-section of a much larger book. Other sections in the volume are much more in line with the classical approach. Therefore, it is unnec-

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33 Szászy, *op. cit.* (Note 2), Vol. I, p. 16.

34 See Csehi, Z., *Van-e általános része a magyar magánjognak?* [Does a General Part of Hungarian Private Law Exist?], Polgári Jogi Kodifikáció, no. 1, 2000, p. 24.

> essary to set this book aside because of this aspect of theory; those who object to this method of systematisation do not have to object the whole of the work on this basis.

We must also consider how the general part of civil law is structured as a university subject. One of two approaches are typically taken. First, the aim of this subject may be to give law students a general, concise introduction to civil law, one which will act as a foundation for further development in later subjects. Second, its aim might be an attempt to synthesise the common rules by analysing the normative materials of specific areas of civil law. In this case, it almost loses its introductory nature, becoming an independent subject.

Gyula Eörsi stated that 'it is unnecessary to present our substantive private law as a concise introduction' to the law students, and that 'it cannot be a task to teach something which will be taught in detail in a year or two in a short, concise, and sometimes more difficult form'.[35] As a teacher, Szászy was also in support of the second concept, agreeing with Eörsi. There is no doubt that the teaching of the general part of civil law is a grave challenge; its high degree of abstraction makes it one of the most challenging parts of civil law.[36] Nevertheless, I believe that a teaching method that makes good use of practical examples and the processes of legal cases that also arise in comparative law could turn the subject into a success. Here, I would like to turn reflect upon István Szászy as a comparative lawyer. The comparative method was a constitutive part of his legal thinking.

III. SZÁSZY'S RELEVANCE AS A COMPARATIVE LAWYER

We cannot overlook the comparative legal approach that accompanied István Szászy throughout his career and which is certainly emphasised in *The General Part of Hungarian Civil Law*. The subtitle of the volume indicates the role his identity as a comparative lawyer plays, reading: 'With special regard to foreign civil law systems'.

The essence of this approach is that, in his volumes discussing the general part, comparative law does not play an ancillary, supplementary, or explanatory role. Rather, it is presented as a technique organically connected to Hungarian

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35 Eörsi, *op. cit.* (Note 9), pp. 533 – 534.

36 According to Zoltán Csehi, "there are views – so far formulated only orally – according to which there is no need for a general part, especially in university education, or, somewhat modifying this standpoint, if there is need, then it should be taught at the end of university studies..." Csehi, *op. cit.* (Note 34), p. 23.

private law; one through which our image of Hungarian private law is sharpened through understanding of the similarities and differences it has to other legal regimes. Acknowledging such similarities and differences deepens the reader's knowledge of Hungarian legal solutions. Additionally, the outline of possible regulatory and interpretative alternatives helps the reader to recognise the advantages of each solution in relation to their place, time, or legal culture.

In one of his later writings, Szászy once again stressed his faith in comparative law. He stated that

> 'comparative jurisprudence has so far enjoyed little popularity in Hungary. The main reason for this is that under the influence of Grosschmid, Hungarian private law was discussed mainly on a historical basis, and our jurists fought hard to reduce the influence of the foreign, especially Austrian and German, legal systems on Hungarian legal development. However, our recent monograph literature recognised the great importance of the comparative method, and even Grosschmid himself enriched our comparative legal literature at the end of his life with his work *Werbőczy*[37] *és az angol jog* (Werbőczy and the English Law).'[38]

Szászy's comparative legal approach has lost nothing of its freshness and relevance. The fact that he is in favour of a comparative legal method is also relevant. One of the biggest flaws in Hungarian private law jurisprudence is that it was almost exclusively under the influence of Austrian and, in tandem, German jurisprudence. This resulted in it becoming one-sided and losing contact with the legal systems of the rest of the world. The 'competition' and organic integration of innovative legal solutions is an essential tool for the development of law. The comparative legal method is a suitable means of 'filtering' foreign legal effects: it can legitimise some effects while reasonably rejecting others when the existing or Hungarian legal solutions better serve the private law values to be implemented.

The relevance of the comparative legal approach is further supported by contemporary considerations. In the process of European legal harmonisation and unification, comparative legal studies can provide information that can help us to make the right decisions on what should be unified or harmonised and

[37] Stephen Werbőczy (1458-1541) was a Hungarian jurist, legal scholar, and statesman, author of the Tripartitum (Hungarian Customary Law).

[38] Szászy, I., *A „Dokumentációs Szemle" és az összehasonlító jogtudomány* [The journal *Documentation Review* and Comparative Jurisprudence], Állam- és Igazgatás, no. 12, 1967, p. 1143.

what should not.[39] The emphasis often falls on the 'not' in this scenario because civil law is a cultural achievement, the dissolution of which in some uniform, compromised common regulation is unlikely to result in the most effective nor the highest quality law.[40]

In the case of European directives, it may be useful to examine the different approaches taken in the transposition of such a directive, and the experience of some EU member states can also provide lessons. This body of legal norms transposing directives in different national legal systems has become a new domain of comparative law, which also examines, where appropriate, the disparate judicial interpretations of EU law in the member states and compares the European 'case law' (created through the preliminary rulings procedure) with the interpretation taken by each member state.

The codification of the current Hungarian Civil Code shows us that it is possible to successfully enforce Hungarian civil law traditions while considering innovative foreign solutions. The methodological reform indicated and expected by Szászy, that is, the application of comparative law to cultivate and develop Hungarian law, poses one of the most interesting and important legal challenges made to jurisprudence in the 21st century. Its significance has only increased since the time at which Szászy first proposed it. The refinement of comparative law is not merely an end in itself. This is indicated by the fact that comparative law is currently becoming an everyday 'working tool' used in the development of law.

[39] For current problems of EU law, see for example Blutman, L., *Red Signal from Karlsruhe: Towards a New Equilibrium or New Level of Conflict?*, Central European Journal of Comparative Law, no. 2, 2020, pp. 33 – 48.

[40] On the topic see Veress, E., *A közös európai adásvételi jog megalkotásának kudarca (2011-2015)* [The Failure to Create a Common European Sales Law (2011-2015)], Korunk, no. 3, 2020, pp. 59 – 66.

Sažetak

Emőd Veress*

RAZMATRANJA O ISTVÁNU SZÁSZYJU (1899. – 1976.), OPĆEM DIJELU MAĐARSKOG GRAĐANSKOG PRAVA I ULOZI POREDBENOPRAVNE METODE U PRIVATNOM PRAVU

István Szászy bio je jedan od najsvestranijih tvoraca mađarske pravne misli. Pamti ga se u prvom redu kao znanstvenika u području međunarodnog privatnog prava, međutim, on je do 1949. napisao i niz djela koja općenito pripadaju materiji privatnog prava. Naime, zbog političkih razloga u kontekstu komunističke diktature sovjetskoga tipa 1949. godine njegova je karijera na polju privatnog prava prekinuta. U razdoblju koje je uslijedilo bio je ignoriran kao osoba, a njegova su djela bila u potpunosti zanemarena. Stoga se čini važnim preispitati razloge njegova zanemarivanja te analizirati u kojoj mjeri Szászyjeva djela i njegov pristup privatnom pravu zaslužuju priznanje, rehabilitaciju te dovršetak. U vezi sa Szászyjevim djelom u radu se također raspravlja o općem dijelu mađarskog građanskog prava te ulozi poredbenopravne metode kao širim temama.

Ključne riječi: István Szászy, mađarsko građansko pravo, opći dio građanskog prava, poredbeno pravo, sovjetsko pravo

* Dr. sc. Emőd Veress, profesor Mađarskog sveučilišta Transilvanije Sapientia, str. Matei Corvin nr. 4, 400112 Cluj-Napoca, Rumunjska; voditelj Odsjeka za istraživanje privatnog prava, Mádl Ferenc Institute of Comparative Law, Alkotás Street 55-61, 1123 Budimpešta, Mađarska; emod.veress@icloud.com;
ORCID ID: orcid.org/0000-0003-2769-5343