



BENEDEK VARGA  
 <https://orcid.org/0000-0003-1008-7314>  
University of Szeged

## *The First Roots of the Economic Criminal Law in Hungary: Overpricing Misdemeanors\**

### Abstract

During the First World War, a criminalization process started in Hungary and economic crimes began to be regulated. Due to the financial crisis and the economic recession, the function of criminal law changed because it had to protect the national economy and its main institutions, which led to the adoption of Act IX of 1916 on overpricing misdemeanors. After analyzing the relevant legal literature and the parliamentary debates from the Hungarian Parliamentary Collection, I draw the conclusion that the act was intended to stop the increase of the prices of convenience goods and illegal chain trade. After a dogmatic analysis, I examined the decisions of the Royal Regional Court of Budapest in the Budapest City Archives and reached the conclusion that the courts used a teleological interpretation regarding the definitional elements unknown in the criminal law before 1916.

**Keywords:** overpricing misdemeanors, economic criminal law, Great War

## 1. Economic and Historical Background

After the outbreak of the Great War the agricultural sector gradually lost its labor force through the continuous conscription of workers, resulting in labor shortage in the sector. The government attempted to help by employing prisoners of war, but this was only a symptomatic treatment and did not solve the problem, leading to a permanent decline in productivity.<sup>1</sup> This tendency was also observed in Western European countries, but they were able to make up for the loss of production caused by wartime conscription by importing goods from their colonial territories, while Hungary was unable to do the same.<sup>1</sup>

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<sup>1</sup> Kaposi, *Magyarország gazdaságtörténete 1700–2000*, 263–4.

As a result of the conscription, there was a drastic reduction in agricultural production and in basic foodstuffs such as grain or corn.<sup>2</sup> Moreover the decline of the agricultural sector also had a negative impact on industry. Because of the decrease in supplies and the increase in prices, the traders cancelled their orders with factories and this led to massive redundancies.<sup>3</sup> As a consequence of the economic recession, a new economic policy appeared which was the economic model of state intervention.<sup>4</sup> The essence of this economy policy can be summarized in the following way: the state has intervened to the economy with legal instruments in order to protect higher economic interests, e.g. the stability of the currency and the normal prices for public necessities.<sup>5</sup>

## 2. The Purpose of the Legislator and the Structure of Act IX of 1916

In January 1916, in response to the economic problems described, the National Assembly created the Act IX of 1916, which first regulated the overpricing misdemeanors. What was the purpose of the criminalization? After analyzing the parliamentary debates from the Hungarian Parliamentary Collection, it can be reasonably declared that the act was intended to stop the increase of the prices of convenience goods. Indirectly, the legislator wanted to ensure that citizens could buy convenience goods for normal prices and to protect the public welfare.<sup>6</sup> Elemér Balás, one of the most outstanding scholars of civil law, emphasized that as a matter of fact, the legislator criminalized certain contracts, because the legislator created definitional elements which restricted the freedom of contract in the material sense.<sup>7</sup> For example, according to Act IX of 1916, stock hoarding was a delict, which was committed by anyone who acquired convenience goods exceeding his own domestic, economic or business needs, with the exception of professional traders or those who had an official authorization from the competent authority.<sup>8</sup> The perpetration activity was obtaining the possession of convenience goods. The acquisition assumed the conclusion of a contract of which objects were convenience goods. Therefore, after Act IX of 1916 entered into force, these contracts were lawful only if the contracting party was a professional trader or they had an official authorization from the competent authority.

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<sup>2</sup> Eckhart, *A magyar közgazdaság száz éve 1841–1941*, 184.

<sup>3</sup> *Ibid.*, 189.

<sup>4</sup> The new economic policy determined the legislative processes in different legal territories (civil law, bankruptcy law, civil procedure law, etc.) during the Great War and the inter-war period. More on this topic: Meszlény, “Kötelmi jogunk és a háború”, 305–7; Pétervári, “Changes in the Hungarian Insolvency Law”, 227–44; Szivós, “The Changes in the Right of Novelty”, 245–59; Varga, “Introduction to the Hungarian Cartel Regulation”, 215–26; Varga, “Between Public and Private Law”, 65–71.

<sup>5</sup> Túry, *Gazdasági szemlélet és büntetőjog*, 11.

<sup>6</sup> Az 1910. évi június hó 21.-ére hirdetett Országgyűlés Képviselőházának naplója. XXVII. kötet, 554–82.

<sup>7</sup> Balás, *Az árdrágító visszaélésekről szóló törvény*, 5–6.

<sup>8</sup> 1916. évi IX. törvények az árdrágító visszaélésekről, section 1.

Regarding the structure of the regulation concerned, the legislator did not amend the Hungarian Penal Code (Act V of 1878), also known as Code Csemegi, but created another separate law. This was the legislative tendency in the whole interwar period: the economic crimes were regulated in separate laws, e.g. fraudulent bankruptcy or tax fraud.<sup>9</sup> It was explained by the fact that these delicts had special dogmatic characters compared to the crimes regulated in Code Csemegi. Going into the analysis of the structure of the act, we can see that there were five distinct forms of perpetration: (1) stock hoarding; (2) overpricing chain trade; (3) unlawful usage and destruction of convenience goods; (4) unlawful retention of convenience goods or unlawful stoppage of those factories which produce convenience goods; (5) participating in a “criminal association” to commit any form of overpricing misdemeanors.<sup>10</sup> This paper focuses on the dogmatic and practical analysis of stock hoarding. All forms of the crime were punishable if the perpetrator performed the factum of the crime during wartime.<sup>11</sup> According to the 20<sup>th</sup> century dogmatics, overpricing was a crime of endangerment,<sup>12</sup> because all the crimes regulated by the act only endangered the price formation process,<sup>13</sup> the damaging outcome was not part of the factum of the crime.

### 3. The Legal Matter of the Overpricing Misdemeanor

Having identified the legislative purpose, the legal matter of the overpricing misdemeanors is clearly defined. Generally, the legal matter is the individual or collective interest or value, which is protected by the criminal law.<sup>14</sup> According to one of the most prominent criminal lawyers of the interwar period, Pál Angyal, the legal matter of overpricing is the “interest in the normal course of honest commercial transactions,” including the social interest ensuring that everyone has access to sufficient quantities of convenience goods for affordable market prices.<sup>15</sup> Angyal was one of those jurists who, in the early 1940s, began to apply the concept of economic criminal law, distinguishing between crimes that harm the economic interests of the individuals (e.g., theft and embezzlement) and delicts that harm the economic interests of society, i.e., economic crimes in the modern sense. In Angyal’s opinion, the overpricing misdemeanor belonged to the category of crimes that harm collective economic interests.<sup>16</sup> Ferenc Finkey, who was the Chief Crown Prosecutor of Hungary between 1935 and 1940, took a similar view of the legal

<sup>9</sup> Angyal, *A hadviselés érdekei ellen elkövetett bűncselekmények*, 5.

<sup>10</sup> Finkey, “Az árrágító visszaélésekről szóló 1916: IX törvény cikk”, 156–7.

<sup>11</sup> See more about the extraordinary power: Kelemen, *A magyar kivételes hatalmi struktúra kialakulása*, 4–35; Mezey, “A kivételes hatalom joga Magyarországon”, 16–29; Pétervári, “A kivételes hatalom magánjogi viszonyokra gyakorolt hatása és a csődönkívüli kényszeregyezség bevezetése Magyarországon”, 83–149; Pétervári, “A kivételes hatalomról rendelkező törvény alapján elrendelt moratóriumok hatása a csőd eljárásokra”, 25–39.

<sup>12</sup> Degré, *Háborús büntetőjog*, 28.

<sup>13</sup> Tarnai, “A közszükségleti cikk fogalmáról”, 305–9.

<sup>14</sup> Nagy, *Anyagi büntetőjog – Általános rész I*, 152–3.

<sup>15</sup> Angyal, *A hadviselés érdekei ellen elkövetett bűncselekmények*, 63.

<sup>16</sup> Angyal, “A gazdasági bűncselekmények az olasz és a magyar büntetőjogban”, 42–7.

matter of the offense, since, in his view, making overpricing an offense ensured the welfare of a large part of society.<sup>17</sup> Balás also adopted the legal position that “[...] the legal matter of overpricing misdemeanor is the public interest concerning the uninterrupted supply of the population with convenience goods.”<sup>18</sup> Sándor Túry, who authored the first Hungarian economic criminal law monography, held a similar opinion as the scholars mentioned above. He emphasized that the illegal or not economically justified sale of convenience goods can threaten the public welfare and the competitiveness of domestic prices.<sup>19</sup>

## 4. The Stock Hoarding

Stock hoarding was committed by anyone who acquired convenience goods exceeding his own domestic, economic or business needs, with the exception of professional traders or those who had an official authorization from the competent authority.<sup>20</sup> The object of the perpetration was the convenience good; the criminal conduct was the acquisition. The question may arise: why was this potentially harmful to the society? The dangerousness was explained by the fact that there was an extreme shortage in connection of certain goods on the market during the Great War. Consequently, if someone hoarded these products without any economic or legal reason, they could artificially raise prices according to the logic of supply and demand.<sup>21</sup> The legislator therefore only punished the activity of abusive people seeking unlawful gain from the wartime circumstance. The status of trader and the official license were considered reason for excluding liability to punishment.<sup>22</sup> With the codification of these factum of crimes the legislator wanted to ensure that criminalization was not an obstacle to fair trade.

## 5. The Object of the Criminal Offense: Convenience Goods

In connection with the dogmatic analysis, I first had to answer the question what the term “convenience goods” mean. This definition was unknown in criminal law before 1916. The act did not contain a legal definition, consequently the legal experts and the courts developed the legal content of this term. The famous criminal lawyer Béla Vadász justified this by saying that the definition of convenience goods was a flexible concept, its criminal law definition varied depending on how much was available on the mar-

<sup>17</sup> Finkey, “Az árdrágító visszaélésekről szóló 1916: IX törvénycikk”, 155.

<sup>18</sup> Balás, *Az árdrágító visszaélésekről szóló törvény (1916.: IX. tc.) a gyakorlatban*, 67.

<sup>19</sup> Túry, *Gazdasági szemlélet és büntetőjog*, 46.

<sup>20</sup> 1916. évi IX. törvénycikk az árdrágító visszaélésekről, section 1.

<sup>21</sup> Balás, *Az árdrágító visszaélésekről szóló törvény*, 10–3; Heller, “A háború és a közgazdaságtan elmélete”, 18; Heller, “Áralakulás és nemzeti jólét”, 327.

<sup>22</sup> Isaák, “Jogi kérdések az árdrágító visszaélésekről szóló törvényben”, 374.

ket.<sup>23</sup> Other goods were considered public necessities in peacetime, and other goods were considered public necessities in wartime. The prominent criminal lawyer and royal prosecutor of city of Eger, Gyula Isaák, said that those goods were public needs which were objects of mass consumption in other words, those commodities which were bought by the mayor part of the society.<sup>24</sup> According to Zoltán Halász's interpretation, who was the judge in Fiume, those goods were the object of the crime which were used for the production of public necessities.<sup>25</sup> Let's see an example from the practice of the Royal Regional Court of Budapest. In Béla Szegedi's case, the perpetrator acquired 25 quintal of blue vitriol.<sup>26</sup> There was no doubt that this amount exceeded his domestic and economic needs. The main question was whether the blue vitriol could be evaluated as a type of convenience good. Blue vitriol is a common name for copper sulfate, a chemical material which is used as a fungicide to treat mold that attacks grapes. It is evident that the grape is a convenience good, therefore it can be concluded that the uninterrupted production of the grapes was not possible without the blue vitriol.<sup>27</sup> As a consequence the blue vitriol was considered convenience good.<sup>28</sup> In Henrik Zweigenthal's case the Royal Regional Court had to decide whether the rubber band could be defined as a convenience good. The court did not accept the expert opinion of Budapest Chamber of Commerce and Industry which said that the rubber band was not a convenience good because it was used for the production of garter rubber at the time of the adjudication, and the garter rubber was not a convenience good.<sup>29</sup> According to the Regional Court's opinion the rubber band could be considered a convenience good, because of the higher level of demand on market at the time of the adjudication, therefore only the bigger economic demand for a certain article could establish the good as a convenience. As mentioned above, the legislator deliberately did not create the legal definition, which was intended to broaden the scope of criminal liability by giving greater discretion to judicial interpretation. Consequently, the broad interpretation of the convenience goods harmonized with the purpose of the legislator, therefore the teleological interpretation can be detected.

## 6. The Professional Trader Quality, as Reason for Excluding Liability to Punishment

Based on the parliamentary debate and the relevant criminal and commercial law literature, I draw the conclusion that the legislator did not want to obstruct the fair trade with the criminalization, so they codified definitional elements which excluded criminal

<sup>23</sup> Vadász, *Az árdrágító visszaélésekről szóló 1916. évi IX. tc.-ről*, 13.

<sup>24</sup> Isaák, "Jogi kérdések az árdrágító visszaélésekről szóló törvényben", 388.

<sup>25</sup> Halász, "A közszükségleti cikkek fogalmához", 5.

<sup>26</sup> BFL, VII.5.c. 11869–1918.

<sup>27</sup> The Royal Regional Court of Appeal of Szeged made almost the same decision in connection with blue vitriol in 1942. In: Varga, *A kartellfelügyelet bevezetése Magyarországon*, 29–33.

<sup>28</sup> *Ibid.*; Jenő Fodor's case is also a good example for this interpretation, when the soda was considered convenience good by the court, arguing that the soda is indispensable element of the soap production. BFL, VII.5.c. 10962–1918.

<sup>29</sup> BFL, VII.5.c. 10606–1918.

liability: the first was the professional trader quality or, in other words, professionalism and the other was the official authorization. The professionalism was a commercial law definition which, according to Ferenc Nagy, meant that someone was engaging in commercial activity as a career in a permanent way.<sup>30</sup> At this point, I would like to present how the court interpreted the definition of professional trader. The case of Izidor Weinberger serves as a good example. Weinberger bought more than ten tons of cabbage in Budapest in the second year of the war and he sold it with an extra profit.<sup>31</sup> First, the court examined that the accused was engaging in commercial activity before the act entered into force.<sup>32</sup> The court found that the accused had a grocery store in city of Debrecen before the war, but in 1916 he moved to Budapest where he started to work as a real estate agent when he concluded the contract concerned.<sup>33</sup> So in the second phase, the court examined that the perpetrator engaged in the same or similar commercial activity after the act entered into force. There was no doubt that running a grocery store and being a real estate agent were not similar occupations, therefore the professional trader quality was not established, consequently the court found him guilty.<sup>34</sup> Why was this interpretation the closest to teleological interpretation? Because it could make a difference between those people who were engaged in permanent, continuous commercial activity before and after the war and those who only wanted to speculate upon the war-time economy. As I have mentioned previously, the key concept of professional trade was permanence. Károly Lantos's case illustrates how a commercial activity that started later disrupted the previous one.<sup>35</sup> According to the facts, Lantos was employed by the Hungarian Trust Bank between 1912 and 1916, but left his bank job in April 1916 to sell handicrafts and sold large quantities of thread.<sup>36</sup> He defended himself by claiming that he had been a craftsman since 1889. This was proved, but the court ruled that this activity had been discontinued, since "the accused had worked as a bank official for four years, so he has given up his previous career."<sup>37</sup>

## 7. The Method of the Perpetration: Exceeding the Perpetrator's Needs

The realization of stock hoarding depended on the amount of the convenience goods. It established criminal liability only if the amount of the acquired goods exceeded the

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<sup>30</sup> Nagy, *A magyar kereskedelmi jog kézikönyve*, 63. More on this topic see Mutschenbacher, Mártonffy, "Kereskedő", 684–90; Timkó, "Jegyzetek az árdragító törvény 1. §-ához", 244–6.

<sup>31</sup> BFL, VII.5.c. 2554–1918.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> The Royal Regional Court of Budapest interpreted the professionalism in the same way in the case of Vilmos, Emődi, Salamon Haim Asaria, Ármin Zweigenthal. BFL, VII.5.c. 7503–1917; BFL, VII.5.c. 11171–1918; BFL, VII.5.c. 10606–1918.

<sup>36</sup> BFL, VII.5.c. 11773–1918.

<sup>37</sup> *Ibid.*

perpetrator's economic or domestic needs. In order to decide it, the court had to compare the perpetrator's actual need with the acquired quantity.<sup>38</sup> Andor Stern's case illustrates it well. Stern had a grocery store in the village of Kisköre since 1910 and started to sell crops and fodder in 1915.<sup>39</sup> In 1916, the accused went to Budapest and through the intermediary contribution of the Budapest Commercial Bank, bought 4,850 kg of soap, which he did not deliver to his shop, but began to sell them in newspapers. In this case, it must be taken into account that the village where the accused had his shop had a total population of 4,000 inhabitants, therefore the number of customers could not have been so high that he needed more than 4 tons of soap. This is also supported by the fact that there were several shops in the village, so the defendant did not have to supply the whole village with soap on his own. On the basis of the defendant's testimony and the expert opinion, it was established that the soap requirement of the grocery store was at most 400–500 kg. Overall, the acquired quantity highly exceeded his actual needs, as a result he engaged in stock hoarding.<sup>40</sup>

## 8. Summary

Based on the parliamentary materials and the legal literature, it can be concluded that the legislator wanted to protect the public services, specifically the prices of public necessities by criminalizing the overpricing activities. But the legislator did not want to obstruct the fair trading, therefore it was important to codify reasons which excluded criminal liability. Secondly, it can be said that the criminalization of overpricing misdemeanors was one of the most important milestones in the development of modern economic crime in Hungary. The Act IX of 1916 and its re-enactment in 1920 marked the beginning of a process of criminalization which led to the first historical roots of economic crimes in Hungary, which are still in force today. After analyzing the decisions, I drew the conclusion that the court had to interpret such statutory elements which had not existed in the field of criminal law before, so it used a teleological interpretation to define the precise meaning of these definitions, such as “professional trader” or “convenience goods.” In summary, the legislature created the overpricing misdemeanors in response to the war economy in 1916, but this crime survived not only the war but the entire 20<sup>th</sup> century. The idea of the recriminalization of the overpricing occurred in the modern criminal law literature,<sup>41</sup> so my research can contribute to the development of criminal law in the 21<sup>st</sup> century.

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<sup>38</sup> 1916. évi IX. törvénycikk indokolása az árdrágító visszaélésekről; Finkey, “Az árdrágító visszaélésekről szóló 1916: IX törvénycikk”, 158.

<sup>39</sup> BFL, VII.5.c. 3391–1917.

<sup>40</sup> *Ibid.*

<sup>41</sup> Ambrus, *A COVID-19 és büntetőjog*, 26; Gál, “A spanyolnátha, a koronavírus, és a büntetőjog”, 57–64.



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