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*Adoption (Successful Unification of Adoption Law in Interwar Czechoslovakia)**

Abstract

The study analyses the Hungarian and Austrian adoption laws that inspired lawmakers of the Czechoslovak Act No. 56 of 1928 Coll. As the Hungarian and Austrian laws, the Czechoslovak Act of 1928 on Adoption recognised adoption as a contract to ensure an heir. It advocated compliance with the principle *adoptio naturam imitatur*. Therefore, it helped to improve the social and legal position of abandoned and neglected children. For lawmakers, the primary inspiration source was the Austrian General Civil Code (ABGB). Nonetheless, several provisions of the ABGB were identical with the Hungarian customary law, court practice, and office practice. Adopters had to be childless, older than forty years of age, and a minimum of eighteen years older than the adoptees. Married persons could adopt only with the consent of their spouses (in this, the influence of the ABGB was the strongest). Contrary to ABGB, but under the Hungarian court practice, was the possibility for a man to adopt his illegitimate biological child. It was possible to adopt minors as a limitation to the principle *adoptio naturam imitatur*. Adoption was a contractual relationship. It established a relation only between the adopter and adoptee, while the relationships of the adoptee with the birth family continued. For instance, if the adopter failed in his duty to alimant the adoptee, the biological father had a supportive legal obligation to pay alimony. The main goal of the adoption process was to produce an heir. For this reason, we can conclude that the interests of adopters prevailed over the interests of adoptees. It changed radically after 1949, and the most important in the adoption process has become the best interest of the child.

Keywords: adoption, adoption contract, interwar Czechoslovakia, unification, legal dualism

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The legal order in Czechoslovakia, as in several other states after World War I, was dualist. The Hungarian legal system remained effective for Slovakia and Subcarpathian Ruthenia and the Austrian legal order for Bohemia, Moravia, and Silesia. This material and formal legal dualism had a very adverse effect on Czechoslovak citizens as it caused legal insecurity.¹ In the newly established state, the most problematic was the dualism of the civil (substantive) law. The Austrian General Civil Code (ABGB) remained in effect in the Czech countries. In Slovakia and Ruthenia, fundamental was following sources of law: legal customs, landmark court decisions and landmark decisions of the Curia Regia, legal acts (usually partial codifications), and the Ministry regulations and practice (that often substituted the non-existent legal rules). All of them regulated adoptions, indeed.

In this study, we examine the Austrian and Hungarian law, the codification and unification process greatly influenced by the ABGB, and the Czechoslovak Act No. 56 of 1928 Coll. on Adoption, which recognised adoption as a contract to ensure an heir.

1. Legal Regulation of Adoption before the Establishment of Czechoslovakia

1.1. Slovakia and Subcarpathian Ruthenia (Hungarian Law)

Various sources of law regulated adoptions in Slovakia and Subcarpathian Ruthenia: legal customs (the collection and authoritative source of valid Hungarian customary law – *Opus Tripartitum*, completed in 1514),² case-law, partial legal acts (such as Act No. XX of 1877 on Guardianship and Curatorship), and regulations and office practice of the Ministry of Justice.

The main goal of the adoption process was to produce an heir by contract.³ The property benefits were of the highest priority.⁴ The legal representative of the minor (usually father or mother in the role of a guardian) or the adult adoptee entered into the contract with the adopter or adopters related by marriage. The adoption contract had to be approved by the Ministry of Justice. The adopter took the adoptee into permanent legal custody, and the adoptee (the legal representative of the adoptee) consented to become the adopter's family and heir. To educate and aliment well the adoptee was not a priority at the turn of the 19th and 20th centuries. Sociological and legal studies suggest that the best interest of the child became prioritised only since the 1930s. However, this interest continued to be secondary to the interest of the childless spouses to procure an heir.

¹ Criticism of legal dualism, criticism of vagueness of the Czechoslovak Reception Act (Act No. 11 of 1918 Coll. on Establishment of the Independent Czechoslovak State) and the demands of accelerated unification process were a frequent part of professional legal journal studies (*Právny obzor*, *Právnik*) and publications. The criticism includes, in particular, a vague concept of unification, the slowness and fragmentation of the unification process and, on the part of Slovak lawyers, the failure to take into account the adopted Hungarian law. Laclavíková, *Slovensko v Československu (1918–1938)*, 199.

² *Opus Tripartitum* I/8, I/66, Articles 2–4.

³ Fajnor, Záturecký, *Nástin súkromného práva*, 449; Luby, *Základy všeobecného súkromného práva*, 226.

⁴ It was typical for the Hungarian law to prioritise the property interests in the adoption process.

In the late 19th and early 20th centuries, the fundamental principle in the adoption process was (or was supposed to be) *adoptio naturam imitatur*.⁵ The adopter had to have a full legal capacity and intention to adopt the person. Contrary to Article 179 of the ABGB, the adopters could have legitimate biological children. However, causing damages to legitimate children due to adopting someone else was strictly forbidden (Regulation of Ministry of Justice No. 20.307 of 1887). Again, contrary to the ABGB, there was no minimum age requirement for the adopters. There was the requirement to keep sixteen years difference between the adopter and the adoptee, though it was not strictly followed (see Regulation of Ministry of Justice No. 15.889 of 1890).⁶ Adopting a first-degree or concubinage relative⁷ was forbidden (see Regulation of Ministry of Justice No. 26.877 of 1891, Regulation of Ministry of Justice No. 15.839 of 1890, Regulation of Ministry of Justice No. 19.405 of 1887). However, the Ministry of Justice and the guardianship offices allowed grandfathers to adopt their grandsons⁸ and made it possible to adopt one's sister and her husband. Under Hungarian law, adoption of both minors and adults was allowed. Spouses could adopt an adoptee together. However, it was also possible to adopt the adoptee without the spouse's consent or the spouse without the other spouse's approval (again, contrary to the ABGB).⁹ The unmarried adopters could not adopt an adoptee together. While the Austrian ABGB did not allow the adoption of an illegitimate child, the Hungarian law did not directly forbid it. As Vladimír Fajnor and Adolf Zátarecký, the experts on Hungarian law, said

It happens that the father adopts his illegitimate child because of the unsuccessful legitimation process. The Hungarian law does not forbid it. However, the Ministry of Justice usually approves such a contract only if it does not directly stipulate that the adopter is the adoptee's father.¹⁰

To sum up, officially, it was not possible to adopt one's biological child, but in reality, it happened often.

It was mandatory to conclude a written adoption contract (see Regulation of Ministry of Justice No. 3091 of 1872 and Regulation No. 3546 of 1884). In the adoption contract, the adopter declared to adopt the adoptee (accept the adoptee as one's own, i.e. make the adoptee part of the family) for no time limitation. The contract highlighted the inheritance rights of the adoptee towards the adopter. The signing of the adoption contract, in three original copies, had to be done at the (orphans') guardianship office or the public notary. If the underage adoptee was older than 14 years, the orphans' office summoned the adoptee and asked for an opinion at the hearing. For adopting a minor, it was neces-

⁵ Šošková, "Osvojenie v Československu", 142.

⁶ The Explanatory Report to the Government Draft reported that the Ministry of Justice and the guardianship offices in Slovakia and Ruthenia did not always follow the sixteen-year requirement, especially in stepparent adoptions. "Vládný návrh zákona o osvojení."

⁷ Similar to the Austrian ABGB, the promise of celibacy impeded adoption.

⁸ It was quite frequent in Slovakia and Ruthenia, and the Czechoslovak Supreme Administrative Court tried to bring this practice to an end. See the Ruling of the Czechoslovak Supreme Administrative Court No. 6822 of 1927 criticising the official practice in Slovakia and Subcarpathian Ruthenia on this issue as unstable and contradictory. Similarly: Ruling of the Czechoslovak Supreme Administrative Court No. 2720 of 1923 and Ruling of the Czechoslovak Supreme Administrative Court No. 8903 of 1930.

⁹ "The spouse can become an adopter or an adoptee without the consent of the other spouse." See the Ruling of the Hungarian Curia Regia No. 5327 of 1905.

¹⁰ Fajnor, Zátarecký, *Nástin súkromného práva*, 413.

sary to get the consent of the guardianship office, father, mother, and, if the adoptee was older than 14 years of the adoptee, too (see Article 20 and Article 113 of the Act No. XX of 1877 and Regulation of the Ministry of Justice No. 3546 of 1884).¹¹ Consequently, the guardianship (orphans') office and the Ministry of Justice had to approve the adoption of minors. For adopting majors with full legal capacity, the approval from the Ministry of Justice was sufficient (see Regulation of Ministry of Justice No. 3091 of 1871). The signing of the contract had to happen at the public notary. Hence, the father and the guardianship office did not have to give consent.¹² After establishing Czechoslovakia, the Czechoslovak Ministry of Justice in Prague approved the Slovak and Ruthenian adoption contracts. In Czechoslovakia, the Ministry of Justice did not transfer the right to approve these contracts to the specific Slovak Ministry, called the Ministry with Full Power to Administer Slovakia.¹³ Contrary to the Austrian model, adoption contracts were approved in the administrative and not judicial process.

It was possible to terminate the contract upon agreement of the parties to the contract¹⁴ or by a court ruling. The equal reasons justified adoption termination as the disinheritance procedure. Termination of adoption applied to offspring of the adoptee, too.¹⁵

The adoption contract created the same family relation between an adopter and an adoptee as between a parent and child. According to the Marriage Act No. XXXI of 1894, adoption was a marriage impediment. The adoptee became the adopter's relative. However, the adoptee did not become the relative of the adopter's family (there was no relation between the adoptee and the legitimate children or other relatives of the adopter).¹⁶ Relationships of the adoptee with the birth family continued. Adoptions affected the father's power over the adoptee and the alimony and inheritance rights of the adoptee.

Adoptions affected:

(1) Property rights

- The underage adoptees and the adoptees unable to take care of themselves were entitled to claim permanent alimony from the adopters. However, the biological parents were legally obliged to give financial support, too.¹⁷
- The adoptees were entitled to inherit the estates of the adopters. It was a unilateral right, i. e. the adopters could not inherit the estates of the adoptees. The inheritance rights of the adoptees were equal to the inheritance rights of the legitimate

¹¹ Rouček, Sedláček, *Komentář k Československému obecnému zákoníku občanskému*, 909–10.

¹² *Ibid.*, 910.

¹³ See Regulation of the Ministry with Full Power to Administer Slovakia No. 56 of 1921 of 14 January 1921.

¹⁴ The legal theorists did not share the same opinion on the necessity to approve the termination of the contract. In practice, the Ministry only acknowledged the contract termination.

¹⁵ Rouček, Sedláček, *Komentář k Československému obecnému zákoníku občanskému*, 911.

¹⁶ The Ruling of the Hungarian Curia Regia No. P 2074 of 10 October 1893, "The adoptee will have inheritance rights towards the adopters, i.e. towards their estates. However, the adoptee is not entitled to inherit the estates of the adopter's relatives". Fajnor, Záturecký, *Zásadné rozhodnutia*, 828–9.

¹⁷ Fajnor, Záturecký, *Nástin súkromného práva*, 414–5.

children, and the adoption contracts always emphasised it. Furthermore, the adoptees were entitled to inheritance from their biological families, too.¹⁸

- The adoptees and legitimate children of the adopters did not become brothers and sisters and had no mutual inheritance rights.

(2) Private rights

- The adopter had the father's power over the underage adoptee unless otherwise agreed in the adoption contract.¹⁹ Therefore, the biological father could keep the *patria potestas*, and the birth mother could be the legal guardian.
- If a woman adopted a minor, she became the adoptee's guardian. However, there was an exception to this rule if the biological father continued to exercise his *patria potestas* or if the birth mother became a guardian.²⁰
- Contrary to the Austrian ABGB, the surname of the adoptee changed to the adopters' surname only if agreed in the adoption contract. Besides the adopter's surname, the adoptee could use the birth surname if agreed in the adoption contract (see Regulation of the Ministry of Justice No. 5250 of 1891). If the adopter was a woman, the adoptee's surname changed to her maiden surname. Only if the husband expressly consented, the adoptee's surname changed to his surname.

1.2. Bohemia, Moravia, Silesia (Austrian Law)

Articles 179–185 and Article 755 of the Austrian ABGB regulated the adoption matters in Bohemia, Moravia, and Silesia. An adopter could be a man or woman above 40 years of age²¹ who did not give a **voluntary vow of sexual abstinence due to religious purposes and was childless**. Under Hungarian law, there was neither such an age requirement nor the requirement to be childless. Under Article 180 of ABGB, the age difference between adopter and adoptee was at least 18 years. In Hungarian law, this age difference was at least 16 years. The spouse could adopt the adoptee only if the other spouse consented.²² This consent was not required if the spouse was mentally ill, had an unknown residence, or if the spouses divorced. Under Article 181 of ABGB, it was possible to adopt both a minor and a full-aged adoptee. Adoption of an underage adoptee required the father's consent (or mother's if the father was not alive). Furthermore, the approval of the guardian and the judge could not lack either. Unlike under Hungarian law, even if the adoptee was an adult, the father's consent was required. However, the father was not required to consent if his child was illegitimate.

Under Article 182 of ABGB, the surname of the adoptee changed to the adopter's surname, or, if the adopter was a woman, to her maiden surname. If agreed in the contract, the adoptee could use the birth surname besides the adopter's surname.

¹⁸ Pap, "Vetragsselemente im ungarischen sekularisierten Eherecht", 437. Also, see Kolosváry, *A magyar magánjog tankönyve*, 429.

¹⁹ Act No. XX of 1877 on Guardianship and Curatorship, Article 15.

²⁰ *Ibid.*, Articles 15 and 16.

²¹ Before, the requirement was 50 years of age. After the amendment of the ABGB through Act No. 276 of 1914, the age limit became 40 years of age.

²² It was introduced through Act No. 276 of 1914.

The adoption established the family relation between an adopter and an adoptee as of a parent and child (see Article 183 of ABGB), whilst the relationships of the adoptee with the birth family continued. The adoptee did not become the relative of the adopter's family.²³ The male adopter exercised *patria potestas* over the adoptee.

Similar to Hungarian law, it was necessary to sign the adoption contract.²⁴ If the adoptee was underage or lacked full legal capacity, the adoption contract necessitated approval from the guardianship court. If the adoptee was an adult, the district court had to approve the adoption contract. It was possible to terminate the adoption contract with the consent of legal representatives of the underage adoptee and through the ruling of the court. It meant that the biological father began to exercise his *patria potestas* over his legitimate child again.

The Austrian ABGB was rather brief about adoption matters.²⁵ Nonetheless, the case law suggests that property rights were the priority in the adoption process.²⁶

The principle *adoptio naturam imitatur* applied differently in the Hungarian and Austrian legal systems, both effective in Czechoslovakia. In Slovakia and Subcarpathian Ruthenia, "also people who had their legitimate biological children could become adopters. The court practice allowed the parents to adopt their illegitimate biological children, too. It was also possible to adopt a sister or a grandchild".²⁷ Another difference was that Hungarian law required no minimum age limit for the adopter. The legal regulation of adoption was disunited both in content²⁸ and form.²⁹ The approval process of adoption contracts in Slovakia was, compared to Bohemia, different, too. Naturally, this led to the application of different procedural rules. In Slovakia and Subcarpathian Ruthenia, the adoption matters belonged under the guardianship (orphans') offices, not under courts. In Slovakia, the highest instance was the Ministry of Justice. In Bohemia, Moravia, and Silesia, the adoption procedure was an uncontested court procedure.³⁰ In fact, the conflicting Hungarian and Austrian rules caused many legal problems in the adoption matters.³¹

²³ Under Hungarian law, relationships with the biological family continued, too. The adoptee became a relative of the adopter, not the relative of the adopter's family.

²⁴ Šošková, "Osvojenie v Československu", 148.

²⁵ Articles 257–262 regulated the procedural aspects (see Act No. 208 of 1854 on Uncontested Procedures).

²⁶ Radvanová, Millerová, "Fenomén osvojení", 531.

²⁷ Šošková, "Osvojenie v Československu", 140.

²⁸ Conflict law rules and case law regulated the differences between Austrian and Hungarian law in Czechoslovakia. For example, if the adopter concluded the adoption contract in Slovakia but his residence was in Bohemia, the ABGB applied to the age requirements. For more, see the Decision of the Czechoslovak Supreme Administrative Court No. 14.448 of 16 September 1930. *Sbírka nálezů Nejvyššího správního soudu* 12, 956–8.

²⁹ Gerlich, *Rozvod, rozluka, alimenty*, 68.

³⁰ The adoption matters no longer belonged under guardianship (orphans') offices in Slovakia since 1 November 1931. The adoption procedures became uncontested court procedures following Act No. 100 of 1931 Coll.

³¹ As Šošková concluded, "Ultimately, the only mutual trait of Hungarian law (in effect for Slovakia) and Austrian law (in effect for Bohemia, Moravia, Silesia) was that adoption was a private contract which established a relation between the adopter and the adoptee". Šošková, "Osvojenie v Československu", 142.

2. Act No. 56 of 1928 Coll. on Adoption – the Measure to Achieve Unification and Codification

Act No. 56 of 1928 Coll. on Adoption (hereinafter referred to as Act on Adoption) was a long-awaited and necessitated measure to unify rules on adoption matters in Czechoslovakia.³² The intention of lawmakers was clear: to introduce legal certainty, to solve legal and competence conflicts, to unify rules on adoption, and to codify rules in Slovakia and Subcarpathian Ruthenia. Furthermore, the intention was to solve the bad social situation of abandoned and neglected children indeed. To achieve this, the foster parents often encountered requests to adopt the children in foster care.³³

The unification works began in the early 1920s. At the same time, the lawyers worked on the codification of the Czechoslovak Civil Code. The Government produced the Draft Bill on Adoption in 1922 (see Print No. 1494 of the Senate of 23 November 1922). The inspiration source for both the Draft Bill on Adoption and the Civil Code Draft was mainly the Austrian ABGB.³⁴ The interdepartmental stipulation procedure lasted for five years, during which the Czechoslovak Supreme Court, the Ministry of Unification and the Ministry with Full Power to Administer Slovakia suggested fundamental changes.³⁵

The Act on Adoption of 28 March 1928 came into effect on 16 May 1928. It was divided into six sections and consisted of fourteen articles.³⁶ The Ministry of Justice issued a related Regulation No. 16.424 of 18 April 1928. Fundamental was the principle *adoptio naturam imitatur*.³⁷ It was possible to adopt both underage and people who reached their majority (as recognised by the old Hungarian and Austrian law). To produce an heir was still the primary function of the adoption process. As Jiří Klabouch said, “through adoption, childless families could keep their assets”.³⁸ Adoption created a relation between the adopter and adoptee (and offspring of adoptee born after the successful adoption procedure) equal to that between the parents and their legitimate children (see Act on Adoption, Article 4). The adoptee was not related to the other family members of the adopter. Hence, the adoptee had no property right towards those family

³² Temporarily, the old Hungarian and Austrian rules were in effect together with the new Czechoslovak ones. Under Article 13, the Act on Adoption did not apply to adoption contracts that had been concluded and approved by the court or guardianship office before this Act came into effect.

³³ Hatalová, “Výchova domáca”, 168–73. For more information on public care for the children and youth in the interwar Czechoslovakia see Laclavíková, Švecová, *Dieťa medzivojnového Slovenska*, 213–20.

³⁴ “Vládný návrh zákona o osvojení”. This fact has been emphasised several times in the codification work. It was about limiting the unification process to one legal culture.

³⁵ “The remarks of the Supreme Court and the Ministry with Full Power to Administer Slovakia led to several changes in the draft to reflect the newest trends. It was necessary to follow the rigid General Civil Code that recognised the rule *adoptio naturam imitatur* (adoption imitates nature). It was necessary to make this a principal rule because what was contrary to nature could not be enforced by law”. “Vládný návrh zákona o osvojení”.

³⁶ Chapter I (Adoption Conditions – §§ 1–2), Chapter II (Legal Effects of Adoption – §§ 3–6), Chapter III (Termination of Adoption – § 7), Chapter IV (Adoption Contract – § 8), Chapter V (Relevant Court/Office for Contract Approval and Relevant Rules – §§ 9–12), Chapter VI (Final Provisions – §§ 13–14).

³⁷ “This principle is stricter in the ABGB”. We find this statement in the explanatory report of the Czechoslovak government draft on Adoption. “Vládný návrh zákona o osvojení”.

³⁸ The adopter had to be childless, i.e. without legitimate children. Klabouch, *Manželství a rodina*, 234.

members. Equally, the adopter had no property rights towards the adoptee (neither alimony nor inheritance rights).³⁹

Under Article 1 of the Act on Adoption, adopters could neither have biological legitimate children nor children legitimised, adopted, or (if mother was the adopter) illegitimate children.⁴⁰ Confirmation from the local registry was required to prove that the adopter had no legitimate (or legally equal) children.⁴¹ The age difference between the adopter and the adoptee had to be no less than eighteen years. Indeed, these requirements prove the strong influence of the Austrian ABGB.⁴² The birth certificate or baptism certificate proved the age of adopters and adoptees, and they had to submit it before requesting the approval of the adoption contract.

If two adopters wanted to adopt a child, they had to be married (Article 1 § 5). If one spouse wanted to adopt the adoptee, the other spouse had to consent. If the adopter wished to adopt a married adoptee, the other spouse had to agree, too. Again, the strong influence of the ABGB is visible. If the spouse was under guardianship due to feeble-mindedness or mental illness, or the spouse's residence was unknown, the guardian was the one to give consent. Besides this consent, the guardianship office or court had to give approval. Article 8 § 3 introduced a control mechanism for adoption not to be a threat to marriage. Before approving the adoption contract, the court could investigate the relations between the spouses: whether the spouse did not force the other spouse to agree, whether one spouse did not fake the consent, or whether the marriage would not irretrievably break down. For these reasons, the court could deny the approval of the adoption contract. The protection of marriage was more important than adoptions.⁴³

If one wanted to adopt the illegitimate biological child, it was necessary to prove the origin of this child by the birth or baptism certificates or court-ordered paternity ruling. We see it as the reminiscence of Hungarian law. Neither the declaration of the adopter nor the declaration of the illegitimate child's mother was sufficient.⁴⁴ There was a presumption that the adopter's age and the age difference between the adopter and the adoptee were adequate. As the Explanatory Report specified, it was a step towards improving the legal position of illegitimate children.⁴⁵ Adoption could not impose a threat

³⁹ Decision of the Czechoslovak Supreme Court No. Rv IV 230/29 of 29 March 1930 (Office Book for Slovakia and Subcarpathian Ruthenia No. 412): "Law of succession does not recognise any rights of the adopter towards the adoptee. Hence, the assets of the adoptee cannot be passed down to the relatives of the adopter". *Úradná sbierka rozhodnutí* 2, 166–7.

⁴⁰ The lawmakers took into account the remarks of the Supreme Court and the Ministry of Unification: "The Ministry was correct when it pointed out that Article 179 of the ABGB excluded children born out of wedlock and later legitimised. Disputes can arise if the child was born in marriage, but the father did not legitimise it". "Vládny návrh zákona o osvojení".

⁴¹ Regulation of Ministry of Justice No. 16.424 of 18 April 1928.

⁴² The Ministry with Full Power to Administer Slovakia criticised the prescribed age limit for adopters and the minimum age difference between adopters and adoptees. It contradicted the Hungarian law, as Ministry specified. "Vládny návrh zákona o osvojení".

⁴³ Šošková, "Osvojenie v Československu", 144.

⁴⁴ Gerlich, *Rozvod, rozluka, alimenty*, 89.

⁴⁵ The Supreme Court suggested that adoption should not be allowed for women with illegitimate biological children. However, judges recommended allowing fathers to adopt their illegitimate biological children to protect and safeguard the best interest of the children born out of wedlock. "Vládny návrh zákona o osvojení".

to marriage. Hence, it was always required to ask for the other spouse's opinion. To be childless was not a requirement (the adopting father could have legitimate offspring).

It was possible to adopt more people simultaneously⁴⁶ if they were siblings or similarly related. Contrary to this, it was forbidden to adopt a father together with his children or both spouses.⁴⁷ To adopt an already adopted person was possible only for the adopter's spouse. Article 1 § 5, listed persons who could not be adopted. Nobody could adopt their spouse, sibling, and blood relatives.⁴⁸

Articles 8–12, inspired by Austrian and Hungarian law, set a framework for adoption contracts and adoption processes. Formally, the adoption contract and all the approvals had to be in writing. Adoption of an adult person with a full legal capacity⁴⁹ required the consent of the adoptee's parents,⁵⁰ the court,⁵¹ and the adoptee's offspring. If the adoptee's father was not alive, the mother, the guardian, and the court had to consent.⁵² Adopting a person with limited legal capacity necessitated the consent of the adoptee's parents or legal representative and the guardianship office or court. The guardianship office or the guardianship court expressed assent through the formal approval of the contract to simplify and quicken the adoption procedure. The right to consent was personal, i.e. it was not possible to consent on behalf of these subjects.⁵³ If one or both parents dissented without relevant reason, the court could allow adoption anyway. If one or both parents were not alive, had no full legal capacity or their residence was unknown, the consent of the guardian and the judge was sufficient. It was mandatory to include the new surname of the adoptee in the adoption contract. Other elements were optional but could not be conditioned or time-limited (see Article 8 of Act on Adoption). Under Articles 8 and 9, the adoption contract came into effect after approval by the guardianship office or court. The office or the court could disapprove of the adoption contract, either if it lacked the required elements or was not in the adoptee's best interest (e.g. if the adoptee lacked legal capacity) or if the adoption of the illegitimate child could lead to marriage breakdown. Termination of adoption contract was possible if:

- Both parties consented.⁵⁴ If the parties lacked legal capacity, it was necessary to obtain the consent of their legal representative and the guardianship office/court.

⁴⁶ It was a legal exception as, generally, one adopter could adopt only one adoptee.

⁴⁷ Regulation of Ministry of Justice No. 16.424 of 18 April 1928.

⁴⁸ It was supposed to contribute to the consolidation of the office practice in Slovakia and Subcarpathian Ruthenia, as said explanatory report of the Czechoslovak government draft on Adoption. "Vládny návrh zákona o osvojení".

⁴⁹ Under Act No. 447 of 1919 Coll., men and women attained full personal rights (majority) at 21 years of age. For women who got married, it was possible even earlier, at 16 years of age. See Šošková, "Plnoletost ako predpoklad", 94.

⁵⁰ The Ministry with Full Capacity to Administer Slovakia criticised the requirement to claim consent of the parents of the full-age adoptee with full legal capacity as it was not in conformity with Hungarian law. "Vládny návrh zákona o osvojení".

⁵¹ Competent to approve the adoption of the adoptee with full legal capacity was the circuit court.

⁵² Regulation of Ministry of Justice No. 16.424 of 18 April 1928.

⁵³ Gerlich, *Rozvod, rozluka, alimenty*, 92.

⁵⁴ Act on Adoption was not clear on whether the termination of the adoption contract by mutual consent necessitated court approval. Legal theorists had various opinions, too. "If the court approval was necessary for the effectiveness of the adoption contract, it was required for its termination, too. After all, termination of the adoption contract changed the status of the person". Šošková, "Osvojenie v Československu", 148.

- The court issued a ruling based on severe grounds that generally led to unworthiness to inherit or disinheritance.

Termination of the adoption contract led to the termination of all legal effects of adoption. The former adoptee changed back the name and surname, and the biological father or guardian started to exercise the *patria potestas* over the minor former adoptee.

It could happen that legal effects of adoption ceased only for some parties to contract. For instance, the termination could concern only the adoptee or one or several offspring of the adoptee.⁵⁵

The adoptee's relationships towards the birth family continued. As in Hungarian and Austrian legal systems, the adoptee was bound with family, exercised inheritance rights towards the family members, and was entitled to alimony. If the adopter was unable to alimment the adoptee, it was the duty of the biological father to provide the necessary support.⁵⁶ The judges supported the legal obligation of the birth families to pay alimony. If the adopter did not alimment the adoptee or alimmented the adoptee insufficiently, the adoptee (the illegitimate child) was entitled to receive the alimony from the birth mother or the biological father.⁵⁷

The adoptee acquired the surname (the family name) of the male or female adopter. If the adopter was female, the adoptee's surname changed to her maiden name.⁵⁸ If she was married, the adoptee's surname changed to her husband's surname only if the husband expressly consented. A married female adoptee was obliged to add the name acquired through adoption to her name. Other adoptees were obliged to do so only if expressly agreed in the contract.

To sum up, the legal effects of adoption under Articles 3–6 were:

- Right to acquire the surname or family name of the adopter (mandatory).
- *Patria potestas* of the adopter over the underage adoptee.
- Status equal to that of legitimate children of the adopter (personal and property rights towards the adopter, not towards the relatives of the adopter).

⁵⁵ Fajnor, Záturecký, *Nástin súkromného práva*, 450–1.

⁵⁶ Obiter Dictum of the Czechoslovak Supreme Court Ruling No. Rv IV 486/34 (Office Book for Slovakia and Subcarpathian Ruthenia No. 1835) of 11 October 1934: "The adoptee is entitled to alimony of the birth family (even if the child is illegitimate) if the adopter does not alimment the child properly. The law is clear – it all depends on whether the adopter sufficiently alimments the child or not". *Úradná sbierka rozhodnutí* 6, 370–1.

⁵⁷ The Czechoslovak courts refused to free the biological fathers of the illegitimate adopted children of their legal obligation to pay alimony. "Adoption of an illegitimate child does not liberate the biological father to pay alimony." See the Decision of the Czechoslovak Supreme Court No. R II 44/30 of 22 February 1930. *Rozhodnutí Nejvyššího soudu* 12, 298–300 (no. 9683). However, the courts supported the subsidiary character of the legal obligation of the biological parents to pay alimony: "An illegitimate child can claim alimony from the adopter(s). If they fail to alimment the child, it can seek support from the birth family, even from the father or mother who did not legitimise it. This right is of a subsidiary nature." See the Decision of the Czechoslovak Supreme Court No. Rv II 725/31 of 21 April 1933. *Rozhodnutí Nejvyššího soudu* 15, 514–5 (no. 12538). Also, see the Decision of the Czechoslovak Supreme Court No. Rv IV 486/34 (Office Book for Slovakia and Subcarpathian Ruthenia No. 1835) of 11 October 1934: "Adopted illegitimate child is entitled to full or partial alimony from the birth mother or the biological father if the adopter does not alimment the child or alimments it insufficiently." *Úradná sbierka rozhodnutí* 6, 370–1.

⁵⁸ The Ministry with Full Capacity to Administer Slovakia criticised the mandatory character as non-conform to the Hungarian law. "Vládny návrh zákona o osvojení".

- Right to alimony (besides the supportive legal obligation of the birth family to pay financial support).
- Right to inheritance (unilateral right of the adoptee, not of the adopter).⁵⁹

Concerning the importance of this legal regulation, the Act on Adoption No. 56 of 1928 Coll. was a cardinal Czechoslovak legal act. Interestingly, the Ministry of Justice prepared the draft in the mid-1920s despite the ongoing codification works on the Civil Code. The National Assembly approved the draft in 1928. This Act was supposed to become part of the successful Czechoslovak civil law codification, which, however, until 1938 did not happen.⁶⁰ The Act on Adoption was the successful partial unification of civil law according to jurisprudence.⁶¹ The Act was important even from the political point of view as it declared the divorce with the past and proved the possibility to overcome the legal dualism and to unify the Czechoslovak law.⁶² The Act built upon both the Austrian ABGB and the Hungarian law. Its content, though, was not a shift towards modernity – it rather conserved the status quo. Those who advocated for better social care for the children and youth called for a more philanthropy-oriented legal regulation of adoption. It was because the aftermath of the war brought up uneasy social issues such as the care for orphans, half-orphans, and socially excluded children. However, the Act of 1928 could not respond to those.⁶³ It solved the practical problems – the unification of law and the elimination of legal dualism within substantive civil law. In the early 1930s, the procedure was unified, too, as the guardianship offices ceased to exist, and the general courts became competent instead. The explanatory report stated that the Act was about to contribute to solving the Slovak problem:

In Czechoslovakia generally, the adoptions are rare. However, in Slovakia and Subcarpathian Ruthenia, people file many adoption claims. Yearly, the Ministry of Justice receives more than three hundred requests to approve adoption contracts. It gives work to one ministry worker per year.⁶⁴

The problem, though, was not the number of the adoption requests but unfamiliarity with the overtaken Hungarian legal regulation and, hence, related application problems by the Ministries.⁶⁵

⁵⁹ Act on Adoption, Article 6: “Adopters cannot make property claims towards the adoptees or the adoptees’ offspring.”

⁶⁰ The codification was based on a slight revision of the ABGB provisions. Gábriš, *Právo a dejiny*, 235.

⁶¹ Vojáček, Kolárik, Gábriš, *Československé právní dejiny*, 33. Similarly: Malý *et al.*, *Dějiny českého*, 359.

⁶² The interwar legal experts (František Rouček, Vladimír Fajnor, Adolf Záturecký, Jaromír Sedláček, Štefan Luby) considered it a codification and unification success. The unchanged (non-amended) Act on Adoption was in effect during the interwar period. The contemporary experts on legal history (Karel Malý, Ladislav Vojáček, Tomáš Gábriš) likewise value how it contributed to overcoming of legal dualism and to the unification of law.

⁶³ As Senta Radvanová and Markéta Millerová said, “In the 19th and early 20th centuries, the natality in the Czech countries was high. To be childless was rare and, therefore, the interest in child adoption was low. Furthermore, over adoption, people preferred foster care. Generally speaking, adoption was among the last options taken into account in the care for minors. Back in those days, the international treaties did not regulate this issue sufficiently, either”. Radvanová, Millerová, “Fenomén osvojení”, 532.

⁶⁴ “Vládny návrh zákona o osvojení”.

⁶⁵ The second congress of the Slovak lawyers (Bratislava, 30–31 October 1920) already warned about the general unfamiliarity with the Hungarian law and the non-existence of the Slovak legal terminology. The materials got published under the title “The Second Congress of the Slovak Lawyers”. “Druhý zjazd slovenských právnikov”, 70.

Nowadays, we can observe a renaissance of the issues taken into account by the interwar regulation of adoption. The ongoing recodification of the Slovak civil law opens the discussions on “old topics” – such as the adoption of full-age persons. This issue has not been solved in Slovakia, unlike the Czech Republic, where it is possible according to Act No. 89 of 2012 Coll. (Civil Code, Article 796 § 2). The Czech lawmakers got obviously inspired by the Czechoslovak Act on Adoption and the Czechoslovak Civil Code Draft. The authors aimed to emphasise this peculiarity, to introduce the readers to the interwar legal dualism, the ways of overrunning it, the political background, and, last but not least, the Hungarian and Austrian inspiration sources of the Czechoslovak Act.

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