Krakowskie Studia z Historii Państwa i Prawa
2019; 12 (3), s. 361–374
doi:10.4467/20844131KS.19.012.10933
www.ejournals.eu/Krakowskie-Studia-z-Historii-Panstwa-i-Prawa

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The Lawsuit of Public Interest in Cartel Law: Case Law of the Cartel Court in Hungary

Abstract

The lawsuit of public interest was introduced by the 20th Act of 1931 after the economic crisis in the interwar period special attention to the regulation of cartels in Europe. This Act regulated the unfair economic agreements in Hungary. The Hungarian Cartel Law regulated the supreme organs related to the cartels. In my paper I would like to examine the cases of the Cartel Court and its jurisdiction. By examining the cases, it can be stated that the role of the Cartel Court was strongly administrational in connection to lawsuits of public interest. The Cartel Court and the Cartel Committee become one of the most decisive legal institutions in the Hungarian Economic life up until the middle of the 20th Century. The state intervention appeared in the Hungarian Private Law special attention to the cartel regulation.

Keywords: cartel law, Cartel Court, case law, procedural law, cartel agreement

Słowa kluczowe: prawo kartelowe, Sąd Kartelowy, prawo precedensowe, prawo procesowe, porozumienie kartelowe

Due to the shifts in economic and political circumstances in the 20th century, the necessity to legally arrange cartels seemed inevitable; therefore, as a result, the Cartel Court was established in 1931.[1] The Cartel Procedure Law (20th Act of 1931) regulated the

[1] Supported by János Bolyai Research Scholarship (BO/00198/18/9). Structure of the Cartel Court: *A karteljavaslat* [The Bill of the Cartel Law], "Magyar Gyáripar" 1930, no 12, p. 11–13; *Zsitvay karteltörvényjavaslatának szövege* [The Text of the Zsivay's Cartel Law Bill)], "Budapesti Hírlap" 1930, 9 July, no 153, p. 13; *A karteltörvény tervezete* [The Draft Text of the Cartel Law], "Gyáripar" 1930, no 7–8, p. 3–4; L. Nádas, *A karteltörvénytervezet* [The Draft Proposal of the Cartel Law], "Jogtudományi Közlöny" 1930, vol. 65, no 21, p. 90–191; *Kartelek* [Cartels], "Ügyvédi Kamarai Közlöny" 1931, vol. 28, no 1–2, p. 78; Gy. Kovács, *A kartellkérdés és –szabályozás gazdaságelméleti és gazdaságpolitikai háttere a két világháború közötti magyar közgondolkodásban* [The Background of Economic Theory and Economic Politics of the Cartel Question and Regulation in the Hungarian Public Thinking in the Interwar Period], "Versenytükör" 2016, special issue, vol. 12, p. 14–38; K. Gombos, *A Kartelbíróság és a Kartelbizottság tagjainak élete* [The Members of the Cartel Court and Cartel Committee], "Versenytükör" 2016, special issue, vol. 12, p. 96–105, N. Varga, *Kartelleljárásjog szabályozása és gyakorlata különös tekintettel a Kartelbíróság működésére*

realization of national supervision, and as such, the lawsuits of public interest that this law introduced had the same function. The Cartel Procedure Law did not touch upon the private law regulations of cartel contracts, the general principles of private law were still in effect in those cases, and because of this, reaching a verdict in private lawsuits still fell under the authority of civil courts and courts of arbitration.[2]

I wish to discuss the extent of jurisdiction of the Cartel Court in this study, and elaborate upon the guidelines of legal unitization of the court through the remaining leading cases.

The Cartel Procedure Law differentiated three legal cases of lawsuits of public interest. The lawsuits of public interest were one of the most significant tools of state intervention. The sixth item of the Cartel Procedure Law states that the secretary of economy possesses the right that by his initiative, the legal director of the treasury will put a lawsuit of public interest into action. In this case, the secretary wished to achieve the dissolution of the cartel, or the implementation of cartel regulations and the termination of the continuation of certain actions. In this sense, dissolution was considered more like an administrative or, to be more exact, an action of administrative nature. "Therefore, the cartel court takes on a public administrative function amongst judicial forms during a lawsuit of public interest".[3] Károly Dobrovics also elaborated upon the fact that the court performs public law tasks, and he deemed important that the authority of judicial sovereignty should not be diminished, for the law did not allow any interference in dealing with arguments within the field of private law.[4]

The Cartel Procedure Law also defined the conditions of state interference. The stepping stone was the endangerment of public interests and economic conditions. In Paragraph No. 7, the law stated the possibilities of instituting a lawsuit of public interest.[5] A lawsuit of public interest could be brought against a cartel if the operation of the cartel was against the law, common morals or public order, especially if it violated the interests of economic conditions and public interests.

The question of what defines breaking the law arises. This matter is all the more significant by examining the 5th Act of 1923 on unfair competition. According to the aforementioned section of the Cartel Procedure Law, the question of whether legal action can be instituted against a cartel for breaking competition law without endangering the economic conditions and public interests arises.

However, in order to answer this question, the concept of public interests must be defined.[6] Due to their monopolistic nature, cartels could become so dangerous that even

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[The Regulation of the Cartel Procedural Law Special Attention to the Operation of the Cartel Court], "Versenytükör" 2016, special issue, vol. 12, p. 84–95.

[2] N. Ranschburg, *A Kartelbíróság hatásköre és viszonya a rendes és választott bíróságokhoz* [The Jurisdiction of the Cartel Court and Its Relation to the General Courts and Arbitral Tribunal], "Karteljog Tára" 1932, no 1, p. 1.

[3] *Ibidem*, p. 2; *A karteltörvény alkalmazása, Kartelszerződés fogalma* [The Enforcement of Cartel Law, The Concept of the Cartel], "Közgazdasági Értesítő" 1937, 25. September, p. 7–8.

[4] K. Dobrovics, *A karteljogi hatóságok ellentétes döntései* [The Contrary Decisions of the Cartel Authorities], "Közgazdasági Értesítő" 1933, vol. 28, no 37, p. 3.

[5] *Ibidem*, p. 4.

[6] M. Kornfeld, *Törvény a kartelekről* [The Act about the Cartels], "Magyar Szemle" 1927, no 9–12, p. 167–168; I. Szabó, *A kartellfelügyelet szervezete és hatásköre az 1931. XX. törvénycikk nyomában* [The

private law malfeasances could be considered to be interfering with public order. This was especially visible with methods used against individuals outside the cartel (for example, boycott), which could result in the cartels reaching monopolistic positions and limitations in free competition, for "rise in the monopolistic power of a cartel and any and all limitations of free competition are against public interests in themselves, so in cases like these lawsuits of public interest cannot be separated from the private interest ones".[7] Despite all this, it is important to draw attention to the following standpoints. Legal actions in connection to fair competition are generally a public interest part of business turnovers, and only marginally touch upon public interests. One can only mention the actual endangerment of public interests if a case directly harmed public interests. According to Nándor Ranschburg, "we can generally state that if a case only has a direct effect on certain individuals – it's of private interest; yet such cases that affects greater populations and/or interferes with the machinations of production, or has a significant effect on public consumption, it is of public interest".[8]

In general, the Cartel Procedure Law did not view cartels harmful to public interest. In a cartel law sense, the concept of public interests coincided with the concepts of economy and public well-being. According to Ranschburg, "the concept of economy covers the entire apparatus of national production; - the concept of public well-being includes every universal interest of economic life; therefore, the two of these combined encompass the public interest the protection of which is the task of the Cartel Procedure Law".[9] From this, it can be deduced that in most cases, the violation of the regulation of the Competition Act did not mean the violation of public interests. Harming public interests was an essential condition to institute a lawsuit of public interest. It was unimaginable that the legal director of the treasury would institute a legal action of private interest without any harm done to public interests. Such lawsuits could only be instituted in cases when public interests were directly in danger. As a consequence, the legal director could only establish a lawsuit of public interest on the violation of economy and public interests. To sum it all up, the violation of the regulations of the act on unfair competition did not provide an adequate ground of appeal to institute a lawsuit of public interest.

During the trial, the Cartel Court could only examine whether the approach of the cartel did or did not violate the interests of economic conditions and public well-being in connection to the given case. Analysing if the actions of the cartel violated the regulations of any given act, for example, the one on unfair competition, was not allowed. In this case, the violation of public interests stood against fair business practices. The boycott only violated the regulations of the act on unfair competition if it harmed business integrity according to common business perceptions and the views of the contemporary industrialist world. Not to mention that the aforementioned actions only endangered the economy if it had a negative effect on national production or consumption. "The com-

Structure and Jurisdiction of the Supervision of Cartels based on 20th Act of 1931], "Versenytükör" 2016, special issue, 2016, vol. 12, p. 75–76; I. Stipta, *A gazdasági versenyt szabályzó megállapodásokról szóló 1931. évi XX. tc. hazai előzményei* [The National Antecedents of the Agreements of Economic Competition Act], "Versenytükör" 2016, special issue, vol. 12, p. 61–62.

[7] N. Ranschburg, *A Kartelbíróság…*, 1932, p. 3.

[8] *Ibidem*, p. 4; K. Dobrovics, *Kartelmegállapodás és kartelmüködés* [Cartel Agreement and Procedural], "Közgazdasági Értesítő" 1933, évf. 28, no 40, p. 16.

[9] N. Ranschburg, *A Kartelbíróság…*, 1932, p. 4.

mittee is always obligated to judge a matter according to the common business understanding, yet the cartel court has nothing to do with business understandings. This is the reason why it would be a mistake for the cartel court to establish a verdict on the basis of the violation of the competition act".[10] Initiating a lawsuit of public interest could only be established upon the protection of economic conditions and public well-being; therefore, reaching a decision in any and all other matters fell under the jurisdiction of civil courts and courts of arbitration. In lawsuits of public interests, the Cartel Court did not decide "over the foundations that are the legal relationships of private law", according to which an exact line could be drawn between the jurisdiction of the Cartel Court and the ordinary courts.[11]

The second case of a lawsuit of public interest was the following. Paragraph No. 12 of the Cartel Procedure Law regulated that if the endangerment of public interests arose in front of an ordinary court or a court of arbitration, then the secretary of economy had to be notified who had 30 days to assert whether or not the case should be transferred to the Cartel Court.[12] In these cases, ordinary courts or courts of arbitration could not declare a verdict. This regulation was included in the act with the purpose of not allowing private parties to decide in cases that endangered public interests. The Cartel Procedure Law ensured a special right to the secretary, which allowed the office-holder to take away a certain legal action, and allocate the task of ascertaining a debatable matter to the Cartel Court. After this, he stated the decision, the assessing verdict of the Cartel Court to the ordinary court. In all cases, the secretary could only take away a case from its judge if it endangered economic conditions and public well-being, and the Cartel Court could only examine the endangerment of economic conditions and of public well-being. With such an act, the secretary almost violated the judicial sovereignty established in the 4th Act of 1869, for the secretary took away a legal action in progress from its orderly judge. "However, this is the only method with which the constitutional concerns could be resolved, the cartel court does not take the evaluation of the private law matter away from the orderly judge, but only those aspects of the decidable matter that are important in an administrative sense, however, the private law aspects of the case – for example, the question of the presence of unfair competition – are given back to its ordinary judge".[13]

The last cases of a lawsuit of public interest are the legal actions of courts of arbitration, regulated in Paragraph No. 13 of the Cartel Procedure Law, according to which in cases listed in the 1st Act of 1911 (Paragraph No. 784), the verdict of a court of arbitration could be debated with the basis that it violated the regulation of the Cartel Procedure Law. In such cases, the Cartel Court could nullify the verdict of the court of arbitration. According to Paragraph No. 2 of said act, it could overrule any verdict based on cartel contracts not presented to the secretary of economy. Any legal action with the purpose to nullify a verdict of a court of arbitration was also considered a lawsuit of public interest,

[10] *Ibidem*, p. 6. B; Krusóczki, *A tisztességtelen verseny a Szegedi Királyi Ítélőtábla joggyakorlatában* [Unfair Competition Based on the Case Law of the Royal Court of Appeal of Szeged], "FORVM Publicationes Discipulorum Iurisprudentiae" 2018, vol. 1, no 1, p. 253–254.

[11] K. Dobrovics, *A közérdekü per* [The Public Lawsuit], "Közgazdasági Értesítő" 1932, vol. 27, no 23. p. 14.

[12] Gy. Márkus, *A kartelek törvényes szabályozásáról* [The Regulation of the Cartels], "Budapesti Szemle" 1929, vol. 213, p. 426; K. Dobrovics, *A karteljogi hatóságok…*, p. 9.

[13] N. Ranschburg, *A Kartelbíróság…*, 1932, p. 7.

"for this legal action could also only be started by the secretary of economy, and plaintiff rights are also practiced by the legal directorate of the Treasury".[14] The secretary of economy could only live with his special rights in order to ensure the protection of economic conditions and public well-being in this legal action, as well, for in any other case, his actions would have been disquieting in the sense of constitutional law. The secretary "considers nullification a tool only to be used in exceptional cases, only resorting to it for commanding public interest – in any other case, respects the inviolacy of the reached judicial verdict".[15] The only purpose of a nullification lawsuit was to ascertain whether the operation of a cartel endangered the interests of economic conditions or public well--being, and also whether the court of arbitration adequately considered the excuses based on this foundation. The Cartel Court could not examine any other material infringement of law.

In the following case, legal action was taken in front of the Cartel Court due to the cartel contract and the included judicial contract's invalidation, not to mention because the contract's presentation to the secretary was omitted. The agreement including the contract of the court of arbitration established commitments that limited commercial competition in connection to the turnover and price formation of the goods; therefore, it fell under the effect of Paragraph No. 1 and 2 of the 20th Act of 1931. Commercial associations also participated in the conclusion of the agreement which, according to the Carter Procedure Law, had to be put down in writing and presented to the currently authorized secretary for registration. Presentation was regulated by specific rules, for the contract in question was written down before the Cartel Procedure Law came into effect (15th October, 1931); therefore, according to Paragraph No. 16 of the Cartel Procedure Act, its presentation should have been performed within 45 days after it came into effect, namely until 29th November, 1931.[16]

The Cartel Court assessed that the presentation did not happen. Due to the omission of the presentation, the agreement was invalidated according to Paragraph No. 2 of the Cartel Procedure Law, and the court of arbitration contract included within, "as an additional part of accessorial nature of the main agreement, sharing the fate of the main agreement, also became invalidated; therefore, the court of arbitration that gathered on

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[14] *Ibidem*, p. 7. See: S. Kelemen, *Perlési jogot a kartelbíróság előtt* [The Right of Action in front of the Cartel Court], "Pesti Napló" 1936, 5 May, p. 4–5.

[15] N. Ranschburg, *A Kartelbíróság…*, 1932, p. 8. See more: E. Kőházi, *Karteljogi birói gyakorlat* [Case Law in Cartel Law], "Közgazdasági Értesítő" 1934, vol. 29, no 12, p. 19; *A Kartelbíróság megsemmisitette a be nem mutatott kartelszerződés alapján hozott választottbirósági ítéletet* [The Cartel Court Annulated the Decision of Tribunal based on the Not Introduced Agreements], "Budapesti Hírlap" 1932, 25 Jun, vol. 52, no 140, p. 10; *Kartelügyben hozott választottbírósági ítélet érvénytelenítése* [The Annulment of the Decision of Tribunal in the Cartel Cases], "Közgazdasági Értesítő" 1938, vol. 33, no 3, p. 65–66; M. Homoki-Nagy, *Kartellszerződések a gyakorlatban* [The Cartel Agreements in Practice], "Versenytükör" 2017, special issue VI, vol. 13, p. 12.

[16] *A kartelltörvény hatálybaléptetésről* [The Enforcement of Cartel Act]: 5381/1931. M. E. decree. P. IV. 3013/1932. In: *Grill-féle Uj Döntvénytár* [The Grill's New Case-book] (hereinafter: GDt.), eds. E. Nizsalovszky, Z. Petrovay, B. Térfy, L. Zehery Lajos, vol. XXV, 1931–1932, Budapest 1933, Grill Károly Könyvkiadóvállalata, p. 577.

the 9th of February in the year 1932 based on this invalidated contract could not have been instituted in a legal sense".[17]

Enforcing obligations based on invalid agreements by means of a decree from a court of arbitration is unquestionably against the law, and due to this fact, the legal directorate of the Treasury, acting upon the order of the secretary, could ask for the invalidation of the verdict of the court of arbitration based on Paragraph No. 13 of the Cartel Procedure Law. The co-defendant's reasoning that the claim in question falls under the jurisdiction of an ordinary court instead of the Cartel Court had no merit, for according to the second article of Paragraph No. 13, the legal action could have been submitted to the Cartel Court. By referring to the aforementioned reasons, the Cartel Court pronounced the verdict of the court of arbitration to be null and void.

The Cartel Court reached a similar verdict in the following case, in which due to the omission of the presentation, the court contract included within the agreement "sharing the fate of the main agreement, also became invalidated".[18] The Cartel Court stated that the Cartel Procedure Law has no decree according to which a secretarial decision was necessary during any legal action instituted due to the omission of a presentation.

In the case in point, the co-defendants of the second and third degrees formed an agreement on 28th December, 1928 and 1st January, 1929, according to which from the 1st day of January, 1929 all the way to the 30th day of January, 1932, establishing regulations binding all parties in connection to the acquisition of firewood, coal, coke and smithy coal, and also the sale in and around the town of P. (Pápa), determining the sales prices and sales conditions of the products, and also in connection to the methodical turnover and payoff of the commerce, and mutual customer protection. This agreement of the co-defendants of the second and third degrees did not refer to the opportune arrangement of the transactions, but rather to determine the actions of the participants for a longer period of time. The obvious purpose of the mutual commitments the participants undertook in the agreement was to regulate economic competition in connection to said products in connection to turnover and price formation. In its decision, the Cartel Court stated that "such an agreement, without taking its personal, economic or geographical measure into account, falls under Paragraph No. 1 of the 20th Act of 1931".[19] Commercial associations also participated in the establishment of the agreement; therefore, according to the reasons listed in connection to the aforementioned case, it should have been presented to the secretary, but this was also omitted. According to Paragraph No. 2 of the Cartel Procedure Law, the agreement had lapsed, and even the fact that after a secretarial summons, the secondary co-defendant fulfilled the presentational obligation on

[17] *A kartelltörvény hatálybaléptetésről* [The Enforcement of Cartel Act]: 5381/1931. M. E. decree. P. IV. 3013/1932. GDt. vol. XXV, p. 577.

[18] P. IV. 5261/1932. GDt. vol. XXVI, p. 740-741. *Egy elvi jelentőségű ítélet* [The Principled Decision], "Pesti Napló" 1932, 18 August, p. 7.

[19] P. IV. 5261/1932. GDt. vol. XXVI, p. 740–741; *A szénkartel vesszőfutása a kartelbíróság előtt* [The Ordeal of the Coal Cartel in Front of the Cartel Court], "Pesti Napló" 1932, 21 December, p. 6; E. Kőházi, *Karteljogi bírói gyakorlat* [The Leading Cases of the Cartel Law], "Közgazdasági Értesítő" 1934, vol. 29, no 15, p. 8–9.

1st September, 1932. "For a belated presentation does not validate a case invalidated due to the failure to adhere to the legally pre-established deadline".[20]

The defence of the defendant and the secondary co-defendant was also not thorough, for it was made the case that the force and extent of the contract of the court of arbitration does not necessarily coincide with the force and extent of the basic contract, "because the public interest nature and special (administrative) characteristics of the legal relationship under discussion, and also the purpose behind the establishment of the 20th Act of 1931 warrants equal evaluation of the extents of material law and procedural law of the cartel agreement".[21]

Even in this case, the clause on the court of arbitration incorporated into the agreement was invalidated after the deadline passed; therefore, according to the invalidated court of arbitration stipulation the court of arbitration could not even be formed legally, and because of this, the court of arbitration could not even reach a verdict that affected the rights and commitments from the previous (valid) existence of the cartel agreement. The Cartel Court stated that "both the strictly connecting regulations of the main agreement and also the "inseparable additions" […] that were the amendments create a unified legal transaction, without any clauses that could stand on their own, without the (cartel) agreement described in Paragraph no. 1 of the 20th Act of the year 1931: even the defendant's argument on the court of arbitration allowably adjudicating according to Paragraph No. 11 of the act […] on such claims rooting in the contract that remain within their jurisdiction despite the fact that the cartel agreement was invalidated is without merit".[22] Based on all of these, the Cartel Court dismissed the verdict of the court of arbitration.

In the next legal case, joining to a cartel contract came into view also due to the presentational obligation. In its regulation, the Cartel Court stated that "if another contracting party subsequently joins to any legal transaction that requires a written document to be considered valid, the written proof mandatory for the new participant was not only established by putting down the whole contract in writing or summarizing its most substantial contents for the new participant, not to mention by signing the legal document containing the contract, but also if there exist a written manifesto from which one can determine the new contracting party's addition to the contract without any doubt".[23] The agreement had to contain the participants' agreement in connection to the main points of the contract.

In this given case, the cartel contract signed by the parties on 14th July, 1930 contained the whole agreement. According to the Cartel Court, the reasoning of the court of appeal was correct, according to which the defendant stated his assent to the contract several times. The court did not find the reasoning that the defendant was not aware of the contents of the cartel agreement at the time of the engrossment of the statement relevant. According to the court of appeal, this was not relevant because after the cartel

[20] The Cartel Court quoted the following case: P. IV. 3013/1932. In: P. IV. 5261/1932. GDt. vol. XXVI, p. 740–741.

[21] P. IV. 5261/1932. GDt. vol. XXVI, p 741.

[22] P. IV. 5261/1932. GDt. vol. XXVI, p. 741.

[23] P. IV. 4642/1933. In: *Grill-féle Uj Döntvénytár* [The Grill's New Case-book], eds. B. Kocsóh, E. Nizsalovszky, Z. Petrovay, B. Térfy, vol. XXVI, 1933–1934, Budapest 1935, Grill Károly Könyvkiadóvállalata, p. 681–682.

contract was announced in its entirety, the defendant made definite written statements which prove the acceptance of the contract without a doubt. Therefore, the defendant's argument on written consent not being sufficient had no merit, for "even during the meeting conducted on 20th of the month of March in the year 1931, and even directly before the presentational deadline of the cartel contract determined by Paragraph No. 2 of the 20th Act of 1931, they wished for the defendant to sign the contract; to sum it all up, by these aforementioned actions, the participants defined the validity of the contract according to its establishment in its specified form. For it is indisputable that by signing the contract, the sole purpose of the plaintiff was to prove the approval of the defendant in writing, and not to specify any defined form apart from writing. Therefore, the claim that the signing did not happen, or was denied later does not have any significance apart from the specified ones".[24]

The Cartel Court stated that the court of appeal correctly determined that according to Paragraphs No. 1 and 16 of the 20th Act of 1931, the obligatory committing to paper is a condition of a valid cartel contract that determined rights and obligations towards the defendant. According to the standard judicial practice, the validity or effectiveness of the court of arbitration contract did not necessarily coincide with the effectiveness of the basic contract. "Therefore, the question of what effect does the lack of signature on a contract and a replacement court of arbitration contract written down by the plaintiff have on the validity of the court of arbitration contract included in the cartel contract does not influence the validity of the basic contract".[25]

The Cartel Court attempted to define the concept of cartel contract in connection to the following specific case. According to the agreement dated 9th April, 1927, the defendant obligated himself not to produce or circulate toilet-soaps under the Sz. brand described during the trial, or any other brand, as was his practice in the past, except for the Sz. almond soap, the Sz. glycerine soap and the Sz. bath soap, for the embargo of production and circulation was not present in the case of these products.[26] In case the defendant would have wanted to either produce or circulate toilet-soaps of the Sz. or any other brand, then he would have had to purchase the finished soaps from the plaintiff. In case of a breach in contract, the defendant had to pay a penalty to the plaintiff. On the other hand, the plaintiff was obligated to annul the lawsuit currently in progress with the ministry of commerce on the topic of the deletion of the Sz. trademarks registered in the trademark records of trademarks at the Budapest Chamber of Commerce and Industry, and make a statement that he approved deleting his own former Sz. trademark from the records, and obligated himself not to circulate or allow anybody else to circulate soaps with the Sz. word or trademark with or without registration. According to the assessment of the Cartel Court, the announced contents of the agreement did not shed any light on whether or not the participants wanted to enter into a cartel contract.

After the examination of the mutually undertook obligations, it became evident that the defendant in exchange for the plaintiff to call off his legal action instituted in order

[24] P. IV. 4642/1933. In: GDt. vol. XXVI, p. 682.

[25] P. IV. 4642/1933. In: GDt. vol. XXVI, p. 682.

[26] P. VII. 3616/1935. In: *Grill-féle Uj Döntvénytár* [The Grill's New Case-book], eds. E. Nizsalovszky, Z. Petrovay, B. Térfy, F. Bacsó, L. Zehery, vol. XXIX, 1935–1936. Grill Károly Könyvkiadóvállalata, Budapest, 1937, p. 657.

to delete the trademark, agreeing to delete his own former Sz. trademark and calling off the production and circulation of toilet-soaps, obligated himself that if he would ever wanted to engage in the circulation of toilet-soaps, then he would have had to purchase the finished soaps from the plaintiff.

The Cartel Court determined that "these are mutual obligations in connection to the topics of production, circulation and wholesale price formation, and do not introduce any methods limiting economic competition or regulating competition, but these are simple non-compete obligations with the purpose of allowing certain financial advantages for a predetermined amount of time to the plaintiff in exchange for him giving up his trademark. Therefore, since the purpose or the result of the agreement was not to establish any sort of arrangement to regulate production, circulation or price formation, not to mention economic competition, and the participants did not enter into any agreement to do so, the described agreement cannot fall under the concept of cartel contract regulated by Paragraph No. 1 of the 20th Act of 1931".[27]

The correctness of this understanding was validated by Paragraph No. 2 of the M. E. edict 5381/1931, according to which those agreements fell under the effect of the law which "form obligations in connection to determining production, and also the size of the factory, using regional or any other determining way of sharing production, acquisition or circulation, and also determining, demanding, loaning, paying or collecting sales, purchases, acquisition, delivery and sales price, all in all, forming obligations in connection to the products by view of stating or using business conditions".[28] The agreement the two participants entered into did not contain any of the presuppositions.

The Cartel Court interpreted the concept of cartel contract even further according to the purpose and function of the agreement. If the topic of the contract is not a commodity, yet it can still be stated that the main purpose of the contract is to limit or regulate economic competition via price formation in connection to a certain commodity, and the whole agreement was written down with this sole specific purpose, then the deciding factor was not the specific topic of the contract, but rather the discount that the contract was aimed at. Not to mention that if it can be stated that the purpose and function fell under the conceptual group defined by Paragraph No. 1 of the 20th Act of 1931, then the mandates of the 20th Act of 1931 had to be applied to the contract; to sum it all up, it was considered a cartel contract. On the topic of nullifying a cartel contract, the Cartel Court stated that "according to our financial law, a non-compete obligation is valid in a sense if the limitation is necessary to protect the other party's rightful interests, does not put an overwhelming pressure on the obligated party, and even if the contract would put an overwhelming pressure on the obligated party, this would not make the non-compete obligation completely null and void, for the law does not refuse effectiveness from that smaller extent of the contract which is still capable of fulfilling the participants' interests towards the contract according to the intent of the parties. However, if stipulating a non--compete obligation not in order to protect the rightful interests of the rightful party, but to establish an obligation with the purpose of limiting economic competition via price formation or regulating competition in any other way, then stipulating such a non-

[27] P. VII. 3616/1935. In: GDt. vol. XXIX, p. 657.
[28] P. VII. 3616/1935. In: GDt. vol. XXIX. p. 657–658.

-compete obligation falls under the mandates of the 20th Act of 1931".[29] In case of partial nullification, the whole legal statement fell through, except if the person making the statement would have formed the contract without stipulating the nullified part.

According to the Cartel Court, the court of appeal could ex officio examine the validity of a contract. In his defence, the defendant argued whether the contract's nature is against public order and public morals; therefore, making the auditing request of the plaintiff unfounded, namely that the court of appeal impinged by examining whether or not the 20th Act of 1931 on agreements regulating economic competition is valid to the agreement that serves as the basis of the lawsuit.

According to the contents of the contract established by the parties to a dispute on 24th October, 1934, defendants Sámuel K. and the Á. And H. Public Limited Company gave an option to purchase the clear estates of the plaintiff with all of their superstructures and accessories for 90 000 Pengos, and also gave an option to purchase the equipment for the price of 55 000 Pengos. The purchase of the estate and the equipment were inseparable. According to the option, the plaintiff could practice his purchase rights through his own company or by referring to the natural persons or legal bodies he selected with the method that the defendant is obligated to sign the documents necessary for the transcription. In connection to the transcription, the defendant and Sámuel K. took upon themselves that the contingent claims that belong to the defendant rightfully belong to the companies or legal bodies that purchased the estate. The defendant had to terminate its activities of buying and selling poultry, eggs and game. Sámuel K. accepted the obligation that if the purchase was finalized, he would not pursue any activities of purchasing poultry, eggs and game neither directly or indirectly in the territory of Hungary. The expiration date of the option was 28th February, 1935. If for any reason he could not validate this right, then the defendant undertook to resign his estates for three years for 20 000 Pengos according to the commission contract written out on 24th October, 1934. In this case, the period of use would have begun on 1st October, 1935 and would have lasted until 1st October, 1938. The validation of the three year long right of common was the exclusive right of the plaintiff. If the plaintiff does not use his option rights until 28th February, 1935, then they would have had to pay 3 000 Pengos to Sámuel K. The only content of this contract that the participants debated was that according to the defendant, he could desist from the option, while the plaintiff stated that the defendant was not entitled to such withdrawal rights.

At the same time of this agreement, and also on 24th October, 1934, the participants entered into an additional agreement, according to which the plaintiff processes the amount of poultry, eggs and game purchased at the nearby markets at the defendant's estate, and for this purpose, the defendant puts his estates at the disposal of the plaintiff. This agreement was in effect from 1st November, 1934 until 30th September, 1935. The price to be paid was 35 000 Pengos. According to the contents of the contract, as well, the plaintiff is obligated to enter the contingent and discounts to the plaintiff's account during the period of the contract, apart from the exceptions listed in the contract. The defendant also undertook that neither him, his directors, nor Sámuel K. and Jenő K., nor their ancestors and descendants does not purchase poultry, game, domestic guineafowl

[29] P. VII. 3616/1935. In: GDt. vol. XXIX, p. 659.

and eggs directly or indirectly around Hungary during the period of the contract. The foundation of the plaintiff's legal action was that the defendant accepted the option rights during the contractually allotted time period and wanted to pay the purchase price in parts, however, the defendant denied the exercising of option rights, and asked for the assessment of the ownership rights of the estates and assets specified in the contract.

The Cartel Court determined that any and all agreements or decrees that states any obligation that limits economic competition or regulates the competition any other way in connection to the production, circulation or price formation of commodities fall under the effect of the regulations of the 20th Act of 1931 on agreements regulating economic competition. "Although the contractual location that serves as the foundation of the plaintiff's legal action is based on the purchase price of estates and adherent equipment; therefore, the topic of the contract is not an actual commodity, yet if it can be determined that the main purpose of establishing this purchase right is to limit or regulate economic competition via the price formation of a certain commodity, and this whole agreement was written down with this purpose and the acquisition of these estates and the adherent equipment would have served no other purpose but this, then the main purpose of the contract, and not its specified topic has vital significance during the assessment of the matter, and if it can be determined that the aim and purpose of the contract falls under the concepts established in Paragraph No. 1 of the 20th Act of 1931, then the mandates of the 20th Act of 1931 are to be used in said contract's case".[30]

During the evidentiary procedure, the courthouse took the following two testimonies into account. According to the testimony of witness M. B. he was a concerned party in the business transaction that became the topic of the legal action, for 33 per cents of the purchasing price, not to mention the gains and losses of the enterprise rightfully belonged to him. He was present at the discussion of the transaction with his partners with the purpose of "strengthening the three local interested parties at the other's expense, thus making a strong competition to the rest".[31] According to the sworn testimony of the chief executive officer of the plaintiff, L. O. the goal was to get a hold of the defendant's estate first as a rental, and later on, actually purchase it, and the reason behind this was that "the poultry farming practices of Sámuel K. were definitely harmful, he knowingly paid higher prices on the markets for weeks and months with the purpose of squeezing out the competition; therefore, excluding him from poultry business was in their interest. This is why they rented the estate in the year 1933, and although they lost the whole rental fee of 30 000 Pengos, this is the reason they wanted to continue to rent and purchase the estate. As a personal note, he considered the defendant's business at H. to be unhealthy, and stated that renting the business was no longer a viable option, it must be purchased and modernised".[32]

The court determined that the aim of establishing an option and this whole agreement was to exclude the defendant and his principal shareholders from the market, because a poultry vendor was an interested party in the purchase of the estate. This proved without a doubt that the contract limited economic competition in connection to price for-

[30] P. V. 681/1936. In: GDt. vol. XXIX, p. 661.
[31] P. V. 681/1936. In: GDt. vol. XXIX, p. 661.
[32] P. V. 681/1936. In: GDt. vol. XXIX, p. 661–662.

mation, and had the aim of establishing a commitment to regulate it, especially the free price formation of agricultural products of the market.

According to the Cartel Court, it was indubitable that "the agreement that served as the foundation of the lawsuit and provided an option to the plaintiff fell under the effect of the 20th Act of 1931, for its purpose was to limit and regulate economic competition in its entirety. According to the stated bearings of the case, although only the plaintiff and the defendant were the signing parties of this contract, but the plaintiff did not write it down for his own gain, but in favour of two of his professional privies".[33]

The agreement between the two parties should have been presented to the authorized secretary for registration according to Paragraph No. 2 of the Cartel Procedure Law that was mentioned several times. This omission resulted in its disannulment.

The court of appeal determined that "the contract should be judged according to the mandates of the 20th Act of 1931; therefore, its presentation was obligatory, and did not happen – although its legal statement was that even if the clause of the contract referring to the non-compete obligation may be considered null and void, does not concern the validations concerning the sale and purchase instruction of the contract due to the announced conditions, for the topic of the legal action is not the non-compete obligation, more to this, despite the fact that the defendant claims that the non-compete obligations that refer to him are null and void, the plaintiff still sticks to the contract; therefore, the plaintiff does not wish to validate the uniformity of the contract".[34] The Cartel Court stated that the court of appeal should have taken the fact that the agreement that the participants formed fell under the effect of the 20th Act of 1931 into account.

The "material law"[35] according to the court stated that in cases of partial nullification the whole legal contract fails, unless it can be determined that the declarer would have signed the contract without the statements of the nullified part. According to the bearings of the case assessed during the lawsuit, the main purpose of the contract was to remove the defendant from the market, and also to regulate the competition between the plaintiff and his privies. The reason behind the inclusion of the non-compete obligation was in order to exclude the defendant and Sámuel K. from the poultry- and egg-market, this is why they wanted to rent and purchase the estates and the equipment of the defendant. It also came into light that the plaintiff would not have entered into this agreement without the non-compete obligation and the listed competition-limiting methods, more so since in the request of review, the plaintiff itself debated that the court of appeal determined that the plaintiff insisted on the non-compete obligation of the contract, "therefore, by adhering to the aforementioned law, even though the case was only partially nullified, the whole business is null and void, and so the plaintiff cannot derive rights from this".[36] The plaintiff debated that the created agreement was cartel-like, and expressed the opinion that the presentation to the authorized secretary was not necessary.

Finally, the Cartel Court adjudged that due to its nullification, the plaintiff cannot derive rights from the agreement that was the foundation of the legal action, it is pointless

[33] P. V. 681/1936. In: GDt. vol. XXIX, p. 662.

[34] P. V. 681/1936. In: GDt. vol. XXIX, p. 662.

[35] The Curia quoted the article 1010 of MTJ (draft of the Hungarian Civil Law Code in 1928). P. V. 681/1936. In: GDt. vol. XXIX, p. 663.

[36] P. V. 681/1936. In: GDt. vol. XXIX, p. 663.

to evaluate whether or not withdrawing from option rights was specified to the defendant, and due to this, assessing the protests against the decision of the court of appeal, – with which it stated the specification of withdrawing rights in favour of the defendant – as pointless, had to be neglected".[37]

By examining the aforementioned cases, it can be stated that the role of the Cartel Court was strongly administrational in connection to lawsuits of public interest. The principle of judicial sovereignty had to be taken into account during the establishment and practice of the law. This is why the option of secretarial interference was only made available in cases when the protection of public interest, economy and public well-being were present.[38]

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