

WRITTEN MORNING-GIFT, A SPECIAL LEGAL INSTRUMENT OF MARITAL LAW

IBOLYA KATALIN KONCZ

Associate Professor, Institute of Legal History and Jurisprudence

University of Miskolc

konczibolya.k@gmail.com

Morning-gift was a term defined in the framework of the legal instruments of marital law. As the instrument of morning-gift was a share in properties rightfully given to a lawfully married wife from the husband's wealth, the subjects of this instrument were mainly husbands and wives. Written, or contractual morning gift was a particular practice arising from practical reasons and then made part of legal practices by courts. When defining its term, we can accept the standpoint of Knorr, according to whom written morning gift was a contribution of assets promised to be given by one spouse or a third party to the other spouse according to a respective contract, as a consideration for proper marital conduct.¹ As early as in *Planum Tabulare*, it was stated that "the lawful morning-gift is superseded by written morning-gift, thus the widow cannot claim both, as the provided assets of a man supersedes the provisions of the law".² According to Szladits, the "...husband may undertake contractual obligations with respect to his wife; a written morning-gift annuls the lower-ranked lawful morning-gift".³ However, in case the written morning-gift clause is void or ineffective due to any elements of the respective contract, the lawful morning-gift becomes effective again.⁴ Consequently, these two kinds of morning-gifts only had the provision not to exist simultaneously, in parallel, therefore could not be effected at the same time.⁵

Lallossevits called the written morning-gift as contracted morning-gift,⁶ and defined the its effectiveness to be valid as of the consummation of marriage.⁷

Based on this definition, this dual name can be acceptable. The two terms – written morning-gift, contractual morning-gift – were used by 19th century legislators and renowned practical legal professionals as synonyms, often using one for the other.

When investigating the circumstances of the establishment of contractual morning-gift, Schaurek admitted that the *Tripartitum* written by Werbőczy, there is no mentioning of written morning-gift, although it did exist in practice in the 16th century. Nevertheless, he pointed out that 'dos sripta' "it is the straight and logical enhancement, improvement of the lawful morning-gift, i.e. it is not contrary to but rather supplemental to the limitedness and deficiencies of the legal morning-gift..."⁸

¹ ALMÁSI, 1940, 285; KNORR, 1899, 129.

² *Planum Tabulare* Dec. 9. ad *acquis. mobil.* Cited by STAUD, 1913, 66.

³ SZLADITS, 1933, 356; This standpoint was also accepted by Lallossevits. LALLOSSEVITS-LÁNYI, 1910, 96.

⁴ ALMÁSI, 1940, 285.

⁵ The Hungarian Royal Curia took a stand through its Resolution No. 5952/1894.

⁶ LALLOSSEVITS-LÁNYI, 1910, 96.

⁷ LALLOSSEVITS-LÁNYI, 1910, 97.

⁸ SCHAUREK, 1917, 169.

The subject of a written morning-gift could be any kind of property, i.e. money, movable or immovable assets.⁹ However, Acsády, based on his research, firmly stated that it could only be settled from acquired assets.¹⁰ However, nearly half a century later (according to court practices), it was stated to be settled primarily from acquired assets, and only if such assets were not sufficient, the respective family assets could be used for the settlement.¹¹

Naturally, only lawful morning-gifts could serve the basis for stipulating exact values, as written morning-gifts were established between the parties in the form of a civil law contract, therefore the respective values could be determined freely, case by case.¹² Naturally, written morning-gifts seemed to be a sensible choice in case the value of the gift was higher than that of the lawful morning-gift.

Regarding written morning-gifts, as it was a contract governed by civil law, the contracting party was liable to pay, and the party to receive the payment was always the wife.¹³

In case an engaged couple concluded a contract between them on a written morning-gift, such gift could be claimed upon the conclusion of marriage of the contracting parties. Upon the death of either spouse, the written morning-gift could be claimed by the heirs of the deceased.

Another characteristic difference between the lawful and written morning-gifts was the fact that regarding written morning-gifts, based on the nature of such gifts, no social position was stipulated with respect to the contracting parties.

Generally, a written morning-gift could be claimed upon the termination of marriage. However, it was possible for the contracting parties that they would specify certain particular means of the termination of marriage as the grounds for applying the contents of a written morning-gift.¹⁴

For the protection of the wife, it was stated that a morning-gift could not be claimed, and the wife was only granted the right share of property to be paid upon the termination of marriage.¹⁵ Furthermore, it was also true that from the moment of the conclusion of a marriage, the morning-gift became the property of the given wife, therefore she could make decisions on the gift even before the termination of marriage. A morning-gift was to be paid from the heritage of the given husband and the wife was granted a right of retention.¹⁶

The legal instruments of written morning-gift and gifts provided upon death had to be distinctly separated. The obligation of a written morning-gift was a type of contribution, but

⁹ Curia 4547/1913; *Jogtud. Közlöny*, Vol. VIII, 168; LALLOSSEVITS-LÁNYI, 1910, 97.

¹⁰ ACSÁDY, 1842, 82.

¹¹ Lfi. 11944/1878.; “A woman marrying for the second time may claim her morning-gift due to be paid by the first husband ... primarily from acquired assets. Inherited assets may only serve as a basis for the settlement of such claims, in case the claim of morning-gift could not be fully settled from acquired property.” Lf. itsz. 7127/1879); Curia 10238/1881, Curia 304/1884; Curia 9307/1892.

¹² LALLOSSEVITS-LÁNYI, 1910, 97; ALMÁSI, 1940, 285.

¹³ SCHAUREK, 1917, 179.

¹⁴ ALMÁSI, 1940, 285; Curia 4209/1929; Grill-féle új döntvénytár [Grill's New Collection of Decisions] edited by: NIZSLOVSZKY, Endre-ZEHÉRY, Lajos-PETROVAY, Zoltán-TÉRFY, Béla-BACSÓ, Ferenc-PUSZTAI, János (hereunder: *Grill Döntvénytár*), XXIII, 493; According to the decision made by the Curia, it can also be stipulated as a provision that written morning-gift is only payable in case no child was born from the marriage and the husband is deceased. Curia, 1195/1930., *Jogtud. Közlöny*, I. 190.

¹⁵ LALLOSSEVITS-LÁNYI, 1910, 96; SCHAUREK, 1917, 183.

¹⁶ LALLOSSEVITS-LÁNYI, 1910, 97.

it needs to be emphasized that it was a gift not given upon death.¹⁷ However, on the other hand, regarding obligations on written morning-gifts, the Curia stated that it was “a gift to be given upon the occurrence of death...”¹⁸

Regarding written morning-gifts, the parties were entitled to stipulate restrictive conditions, but such conditions could not be contradictory of the purpose of asset contribution. The Curia judged a case as contrary to the purpose of this legal instrument, where the parties did not connect the contribution to the termination of marriage, and ordered it to be regarded as an “other contribution”.¹⁹ Practices also classified it as a contribution when “the husband gave assets to his wife. It did not classify as a morning-gift according to its definition, because according to it, the gift shall be given upon the death of the husband or perhaps the termination of marriage”.²⁰

Szladits emphasized that a morning-gift is not a gift, but, as a free gift, it cannot be taken from the heritages duly payable to descendant heirs (‘legitimate portions’).²¹ “...it does not fall under the rules on wills and testimonies...”²²

Legitimate portions could not even be violated by a contribution agreement concluded between living parties.²³ The practices of the Curia developed this rule to the point where not only any expressed contribution or gift, but also any free contribution of a testator violated the extent of a legitimate portion the value of which would have been subject to the given heritage should the testator had not given out such gifts or contributions. Also, other violating provisions were any deeds or defaults that included a waiver of any rights. For example, a foundation established by the testator for living people was considered as a free contribution; written morning-gifts were also considered under this definition.²⁴ The written morning-gift, as a contribution-type legal instrument was similarly involved in falling under sums belonging to legitimate portions, just like any other gifts. Accordingly, it could not be deducted from the value of the property, because it could not be taken from the value of the legitimate portion a quasi-gift.²⁵ It had a priority position with respect to the inheritance charges of the husband’s heritage, but its value could not be taken from the extent of the legitimate portion.²⁶

On the other hand, lawful morning-gifts had to be considered among the charges, because they were not generated from the liability of the testator (the husband), but lawfully

¹⁷ Curia 2655/1911; *Grill Döntvénytár*, VI, 67.

¹⁸ MÁRKUS, Dezső: *Felsőbíróóságaink elvi határozatai* [Principal Decisions of Our Supreme Courts]. Bp., 1891, 755, 65. § (hereunder: MÁRKUS, 1891).

¹⁹ Curia 4209/1929; *Grill Döntvénytár*, XXIII, 493.

²⁰ STAUD, 1913, 70.

²¹ SZLADITS, 1933, 356.

²² SZLADITS, 1933, 356.

²³ “OBÉ” 4. §. In: SZLADITS, Károly (ed.): *Magyar magánjog*. Vol. VI, Law of Inheritance. SÁNDORFALVI PAP, István: *Törvényes öröklés* [Lawful Inheritance]. Bp., 1939, 412 (Hereunder: SÁNDORFALVI, 1939).

²⁴ SÁNDORFALVI, 1939, 412; Curia 5377/1906, *Magyar magánjog mai érvényben: törv. rendeletek, szokásjog, joggyakorlat* [Hungarian Private Law Effective Today: Decrees, Customary Law, Legal Practices]. Part 4, Öröklési jog és örökösödési eljárás [Law and procedures of inheritance] Prepared and explained by Tihamér FABINYI. Bp., 1935, 477 (Hereunder: FABINYI, 1935); *Jogi Hírlap*, V, 140.

²⁵ Curia 5377/1906; FABINYI, 1935, 477; SÁNDORFALVI, 1939, 441; STAUD, 1913, 70.

²⁶ ALMÁSI, 1940, 284; Curia 3377/1906; *Jogtudományi Közlöny* által szerkesztett Magánjogi Döntvénytár [Collection of Private Law Decisions Collected by the Law Gazette], Vol. 1, 166 (Hereunder: *Jogtud. Közlöny*).

generated upon the conclusion of marriage, as a family law obligation. According to the standpoint of Sándorfalvi, the consequent act was that written morning-gifts had to be divided into two parts. The part equalling the sum of the given lawful morning-gift had to be considered among the liabilities and only the remaining sum was free from being considered among the liabilities.²⁷ Although his theory cannot be refuted, I could not find any relevant Curia decisions.

Regarding the formal structure of contractual morning-gifts, Szladits expressly pointed out that "...the provision of a written morning-gift is a marital law contract, sharing the formal requirements of such contracts".²⁸

The validity of contracts on marital property required a formal certification issued by a notary public. Sections 22 and 23 of Act VII of 1886 provided a detailed list of cases, when legal acts concluded between spouses required formal documents of notarial acts.²⁹ In this list, the instrument of written morning-gift was not indicated 'expressis verbis', but in Section 22, it was stated in general that any contracts concluded between spouses required notarial deeds, and this also applied to written morning-gifts.³⁰

In this study, I wished to point out that the legal instruments of civil law can demonstrate similarities or concordances in certain elements of theirs, but regarding the entirety of their contents cannot be supplemented from one another. This is particularly true regarding the contractual morning-gift, which had characteristics similar to giving gifts or contributions upon death, yet based in its individual legal instrument criteria, it could remain valid even in the 40's of the 20th century. In the explanation of the bill on civil law, it was specified that "the elimination of written morning-gift would cause a legal vacuum that could not be supplemented by either succession contracts or the provision of gifts. The aim of a morning-gift is to provide funds for a woman not only upon surviving the husband, but also upon the termination of marriage, and also to ensure that such gift is to be received

²⁷ SÁNDORFALVI, 1939, 442.

²⁸ SZLADITS, 1933, 356.

²⁹ Act VII of 1886: Section 22. A notarial act is required for the validity of legal acts:

- a) regarding contracts regulating the property relations between spouses, whether such contracts are concluded prior to or during the marriage;
- b) contracts concluded between spouses or engaged couples in the subject of sale and purchase, exchange, annuity and lending, as well as renting and leasehold contracts, which are concluded for periods of more than three years, legal transactions in the subject of the acknowledgement of debts, assigns, and any other types of legal acts where one of the spouses or fiancé(e) transfers the property or leasehold rights of their immovable assets to the other spouse or fiancé(e);
- c) regarding real properties in cases of giving contributions by the same parties, where this rule generally applies; regarding movable assets, it is effective if the given gift has not been handed over.

In case of the invalidity of legal acts between spouses or engaged couples, either party is obligated to return to the other party any items received upon the course of the invalid legal transaction, regarding which, however, private documents issued by spouses or engaged couple do not have a conclusive force against one another.

Section 23. For the validity of a legal transaction, a notarial deed is also required in case of the following:

- a) general authorisations issued between spouses or engaged couples, and
- b) special authorisations between spouses and engaged couples on undertaking promissory note liabilities, borrowing, the acknowledgment of debts, and the alienation or mortgaging of real properties, or the acquisition of real properties for consideration and the free waiver of any rights.

³⁰ This is also believed by Lallossevits. LALLOSSEVITS-LÁNYI, 1910, 97.

by the woman's heirs or successors in case the woman should die first. Due to the regulation of revocability, giving gifts significantly differs from the general term of morning-gift provisions. Accordingly, the legal content of *sui generis* applied in our country verifies the preservation of morning-gift, as an individual legal instrument.³¹

³¹ Main proposal and the related evaluation material for preparing the further discussion of the bill for the Hungarian General Civil Code. The proposal was submitted by the directorate of the permanent committee established in the Ministry of Justice, Károly Grill, Imperial and royal bookshop, Budapest, 1904, 239.