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LEGISLATURE CONCERNING THE ENTITLEMENT TO RESERVED PORTION IN TELESZKY ISTVÁN'S DRAFT LAW

A KÖTELESRÉSZRE VALÓ JOGOSULTSÁG SZABÁLYOZÁSA TELESZKY ISTVÁN TÖRVÉNYTERVEZETÉBEN

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Abstract: After the Judge Royal Meeting summoned in 1861 terminated the effect of the Austrian Civil Code and as a consequence, that of the Austrian inheritance law, then to replace them, it elaborated temporary inheritance rules, following the Settlement, the Hungarian government saw the time coming for creating a general civil code, within the framework of which Teleszky István state secretary of the Ministry of Justice was assigned by Pauler Tivadar Minister of Justice[1] to prepare the draft law of the inheritance law of the future general Hungarian private codex. Teleszky prepared his work in accordance with the direction of the European legal development on high quality, which, though widely supported, never did enter force. It is worth inspecting the legislature of the draft law concerning testamentary freedom and the reserved portion, and within this, taking a detour to see the ways of disinheriting.

Keywords: *disinheriting, reserved portion, inheritance, will, Hungarian law history*

Absztrakt: Azt követően, hogy az 1861-ben összehívott Országbírói Értekezlet megszüntette Magyarországon az Osztrák Polgári Törvénykönyv és ennek következtében az osztrák öröklési jog hatályát, majd ennek helyébe átmeneti öröklési szabályokat dolgozott ki, a kiegyezést követően a magyar kormány elérkezettnek látta az időt egy általános polgári jogi kódex létrehozására, amelynek keretében Teleszky István igazságügy-minisztériumi állam-

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1 *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében.* A Magyar Jogászegyletnek 1882. november 11.–deczember 4. tartott teljes-üléseiben folytatott vita. Franklin társulat nyomdája, Budapest, 1883, 32.

titkár 1873-ban Pauler Tivadar igazságügyi minisztertől felkérést kapott[2] arra, hogy elkészítse a jövőbeli általános magyar magánjogi törvénykönyv öröklési jogi tervezetét. Teleszky művét az európai jogfejlődési iránynak megfelelően, magas színvonalon készítette el, amely azonban széles körű támogatottsága ellenére sosem lépett hatályba. Érdemes megvizsgálni a törvénytervezet végintézkedési szabadságra és kötelesrészre vonatkozó szabályozását, ezen belül is kitérőt tenni a kitagadás rendezésének mikéntjére.

Kulcsszavak: *kitagadás, kötelesrész, öröklés, végrendelet, magyar jogtörténet*

1. Legislation on intestate succession and the legal institution of the reserved portion in accordance with the original dispositons of Teleszky's draft law

Teleszky's completed work started to appear on the columns of the Legal Science Bulletin in parts from 1880, the draft law concerning the reserved portion in 1882.[3] Teleszky regulated the institution of the reserved portion with comprehensive details, on the level of modern legal development. He explicitly stated as the first passage of the chapter concerning the legal institution (Section 70), that apart from the disinheriting attitudes listed by law, the testator cannot withdraw the reserved portion from the persons entitled to it, he/she cannot shorten it, as well as the claim for the reserved portion expires in three years upon the death of the testator (Section 80). Teleszky already thought of the protection of the reserved portion against the donations while the testator is still alive: in his draft law the circle of subjects could claim that the extent of their reserved portion is determined on the basis of the complete estate prior to the testator's donation (Section 73). Teleszky did not set a retroactive time interval regarding the legal transactions of donations, which was not fortunate, since he primarily marked as subject the descendants or their descendants already entitled to the reserved portion at the time of the donation; in their absence – to which he referred with the "at last" expression – the children and their descendants born into the wedlock existing at the time of the donation; therefore the claim provided to the persons entitled to the reserved portion could reach back to long decades, even for fifty or sixty years from the death of the testator, which seems unfair. Teleszky ordered to regulate intestate succession similarly to the legal codices of other, developed European states. According to the draft law, basically the descendants inherited from the testator in equal proportions on the basis of the principle of substitution (Section 19–20),[4] in the absence of descendants, the descendant's parents inherited among themselves half-half also on the basis of the principle of substitution (Section 21–22). In the absence of grandparents and their descendants or in case of their exclusion, the testator's more distant

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2 *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében.* A Magyar Jogászegyletnek 1882. november 11.–deczember 4. tartott teljes-üléseiben folytatott vita. Franklin társulat nyomdája, Budapest, 1883, 32.

3 TELESZKY István: A köteles-rész iránti törvénytervezet. *Jogtudományi közlöny* 1882/27., 210–213.

4 Öröklési jog. [A törvénytervezet szövege. 1. r.] *Jogtudományi közlöny* 1880/41., 280.

ancestors were entitled to inherit according to the draft law, but ancestors more distant than great-grandparents held no inheritance right (Section 28–30).[5] In case of descendants it was significant whether the child was born from a legal and valid marriage, was adopted, was legitimised or illegitimate. Children born from a legitimate marriage, children legitimised ex post or via the King's order, as well as adopted children inherited from both parents, illegitimate children, however, in accordance of the main rule, only from their mother (Section 13–17). The provision of the draft law providing extraordinary possibility for illegitimate children to inherit from the testating father's estate is remarkable and inlands so far unprecedented (Section 38–48). That is, if there were neither legitimate successors nor parents, nor surviving spouse after the testator, then with the other successors the testator's child born out of legal wedlock also would have inherited – or in the absence of other heirs he/she would have got the whole legacy – with the condition that the testator acknowledged him/her as his/her child in a declaration either in a notarised deed or in a written private document, or the testator was registered as the father of the child in the Birth Register. Therefore in accordance with the draft law, the children born out of wedlock did not have absolute inheritance rights after their father, so probably in many cases they did not get their inheritance; however, the provision was a significant step forward in the legal position of illegitimate children as compared to the status co. It has to be mentioned that throughout the years of the ACC effective in Hungary it provided equal inheritance to children born out of wedlock and to legitimate children in the mother's acquired estate (Section 754), but this rule was removed from Hungarian legal life with the introduction of the TLR (Temporary Legislative Rules).

Teleszky settled[6] the inheritance rules of surviving spouses in a separate chapter and in a fairly generous way: with the existence of children he provided a child's portion as assets to the widowed spouse – but maximum one fourth of the legacy – and usufruct till his/her death on the portion of the mutual child with the testator. In the absence of children and with parents the widowed spouses would have got one-third of the legacy as assets, while with grandparents and their descendants half of the legacy (Section 31–33). According to the draft law, the widowed spouse would have inherited half of the legacy as assets in case of adopted children and the complete legacy if nobody had been left as heir in the succession line after the testator. Teleszky highlighted that spouses separated by a final judicial decision cannot inherit after each other (Section 37), thus the breaking up of the matrimonial cohabitation would not have been an obstacle to inheriting. From among the legitimate heirs of the testator, Teleszky only provided a reserved portion to his/her descendants, ancestors, as well as to the surviving spouse (Section 70); in case of descendants if the testator was male and had legitimised children entitled to the

[5] Öröklési jog. [A törvénytervezet szövege. 2. r.] *Jogtudományi közlöny* 1880/42., 283–284.

[6] CHAPTER III. The Inheritance of spouses. See: Öröklési jog. [A törvénytervezet szövege. 2. r.] … 284.

reserved portion, while in case of female testators, also her illegitimate children, the latter provided that they were no longer entitled to reserved portion after their mother's ancestors. In case of descendants the draft law determined the extent of the reserved portion as half of their inheritance (Section 90), in case of children it was one- third (Section 98). The surviving spouse's reserved portion was half of his/her due portion, while if he/she had inherited the whole legacy, then his/her reserved portion was one- third of the portion he/she was entitled to. Besides the inheritance of illegitimate children, thus it is also a significant innovation that the spouse's entitlement to reserved portion appeared in Hungarian legislature for the first time.

1.1. The settlement of the legal institutions of unworthiness and disinheriting

Similarly to the contemporary legal codices, Teleszky's proposal distinguished reasons of unworthiness[7] and disinheriting, to which he listed several attitudes of criminal category. According to Teleszky,[8] the distinction was justified because although our law earlier knew only the cases of disinheriting, there are cases which due to their anti-social nature fall under more serious judgement than other actions, therefore their highlighting and being qualified as ipso iure inheriting obstacle is justified. One can agree with the above statement, because the Tripartitum also placed the decision whether to exclude his/her descendant after he/she made an attempt against his/her life in the testator's hand.

Teleszky's draft law regulated the reasons for disinheriting separately concerning descendants, parents and spouses. The governing reasons for disinheriting descendants were the following:[9]

> *"*Section 94. *The descendant relative can be disinherited:*
> *1. If he/she falsely charged the testator or his/her spouse with committing some crime and in a way that as a consequence, criminal proceedings were initiated*
> *2. If he/she had left the testator without help when in need.*

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7 "5. § As unworthy is excluded from the inheritance right:
1. He who committed or attempted murder or wilful homicide against the testator or participated as accomplice in committing these crimes.
2. He who by physical force or by unlawful threat or by caused mistake coaxed the testator to make a disposition of property upon death or to change it or prevented him/her to do any of these.
3. He who embezzles the testator's written will or the deed about his oral will, or the inheriting contract made by the testator, or deprives it of its substantiating force participates in committing such crimes."
See: Öröklési jog. [A törvénytervezet szövege. 1. r.] … 279.

8 TELESZKY István: Indokolás az általános magyar magánjogi törvénykönyv tervezetének az öröklési jogot tárgyazó ötödik részéhez. *Jogtudományi közlöny* 1880/44., 302.

9 TELESZKY: A köteles-rész iránti törvénytervezet… 212.

3. If he was endeavouring to put an end to the testator's or to the testator's descendants' or ancestors', brothers'/sisters' or spouse's life, or facilitated other person's such crimes.
4. If he/she was sentenced to imprisonment of minimum 10 years for committing an ordinary crime.
5. If he/she raised a forceful hand or committed any other serious assault against the testator.
6. If he/she obstinately lives a lifestyle conflicting public morality."

The draft law recorded the crimes aiming against the testator's life as an explicit reason for disinheriting again – this time with extended personal circle –, in addition, it included physical assault aiming against the testator among the disinheriting reasons again.

The testator could have disinherited his/her parents and spouse on the basis of the reasons worded in the above points 1, 2, 3, and 4; while in addition to these, his/her spouse also if breaking up the matrimonial cohabitation, he/she disloyally left the testator and did not return regardless of the instruction or the summon even after a year or if he/she committed adultery (Section 100 and 103).[10] Parents and the spouse thus would not have been disinheritable, if they had pursued immoral lifestyle or physically assaulted the testator. Of course, in case of the spouse the disinheritability on account of disloyalty was a part of the immoral lifestyle, but it too would have had the matter if the testator sued the disloyal party to break up the marriage because of the adultery. The basic conception, that the child who owes gratitude to his/her parent for raising and keeping him/her cannot disinherit his/her father or mother pursuing an immoral lifestyle, can be understood, but what constituted the content of the concept, the drunkenness, prostitution, gambling, begging or wasteful lifestyle, besides the fact that it may bring shame to the testator child and can diminish his/her social respect, it can also negatively affect the fate of the estate left to the parents in the future.

The same goes for the spouse, even if it would have been fortunate to include physical assault as a reason for disinheriting.

Thus as it can be seen, that with the exception of one point, Teleszky tried to build the system of disinheriting and unworthiness on objective basis, that is, to tie the attitudes to an element which without any doubt can decide about their existence or the lack of it. Vasdényey Géza called the attention to the fact[11] that although in the justification of the draft law according to Teleszky, legal security demands the most possible accurate listing of disinheriting reasons and this way the least possible interpretation space to judgement, but when a disinheriting attitude is weighed from the point of view how much the given action had hurt the family ties, criminal laws and their precise concepts cannot provide an explanation. One can

[10] TELESZKY: A köteles-rész iránti törvénytervezet… 212.
[11] VASDÉNYEY Géza: A magyar örökösödési törvénytervezet érdemtelenségi és kitagadási eseteiről. *Jogtudományi közlöny* 1885/10., 75–76.

completely agree with this opinion and it provides a durable reminder to judge disinheriting attitudes belonging to criminal law category, as the foundation of the realisation or non-realisation of a given disinheriting reason is the injury of the family bond between the testator and his/her heir,[12] which will always remain a question of civil law to be decided in each case. Besides finding Teleszky's draft law excellent[13] in general, Haller Károly, university lecturer, criticised its reasons for unworthiness and disinheriting. According to his opinion, on the one hand, it cannot be correct in any circumstances that the heir's attitudes injuring the testator physically, in his honour or freedom forbidden by the criminal law could only be disinheriting attitudes according to the draft law; on the other hand, the testator's forgiving after his/her murder would be impossible deriving from its natural cause, in addition, according to his opinion, if the murder remained an attempt or the person in question participated as accomplice in the crime, forgiving is impossible out of moral reasons.[14]According to Haller, it would have been more appropriate to dispose that forgiving makes cases of unworthiness ineffective with the exception of Point 1 of Section 5. Haller's opinion is exaggerated, nobody but the testator is entitled to decide whether to forgive his/her heir the acts committed against his/her life, as well as whether to verify it as a disinheriting reason later; the same refers to physical assault or defamation.

Weinmann Fülöp, royal public notary in Budapest spoke of Teleszky and his draft law approvingly, according to his opinion, the system and division of the draft law is "completely satisfying",[15] its principles are correct and consequent, its dispositions that are worded with an exceptionally fortunate hand are clear, comprehensible, precise and concise; Teleszky proved his full understanding and comprehension of the legal material. Weinmann especially appreciated the unworthiness and disinheriting dispositions of the draft law along the distinction of the seriousness of the crimes, but he added [16]– in unison with Haller Károly in this respect –, that it would be worth considering including the case as unworthiness reason if someone has made the testator incapable of making a disposition of property upon death with his/her act, therefore also making him/her of disinheriting, because in this case public morality undoubtedly demands the perpetrator be excluded from inheriting after the testator. This opinion cannot be shared either, because the second point of the unworthiness reasons is not worded that way – and Teleszky did not write such thing in his justification either – preventing someone to make a dis-

[12] See e.g. BH 1992.463., BH 1993.358., BH 1996.39., Hajdú-Bihar County Court P.21.656/2008/39., Csongrád County Court P.20.441/2010/45.

[13] HALLER Károly: Észrevételek a magyar magánjogi törvénykönyv előadói tervezetének ötödik rész, első és második czímére. *Jogtudományi közlöny* 1882/13., 97.

[14] HALLER Károly: Észrevételek a magyar magánjogi törvénykönyv előadói tervezetének ötödik rész, első és második czímére. *Jogtudományi közlöny* 1882/14., 108.

[15] WEINMANN Fülöp: Észrevételek az általános magánjogi törvénykönyv tervezetének az öröklési jogot tárgyazó részére. *Jogtudományi közlöny* 1882/39., 305.

[16] WEINMANN Fülöp: Észrevételek… 306.

position of property upon death by using physical force would refer to one given, disposition of property upon death just to be made; it can refer to the future as well. Teleszky regulated the system of disinheriting from the inheritance comprehensively in his draft law, therefore he pinpointed, that it can be made only in a valid will, with stating the disinheriting reason, especially made in a declaration (Section 85), as well as the testator's forgiving prior to the will containing the disinheriting entails the invalidity of disinheriting, while the forgiving following that entails its ineffectiveness (Section 86). Teleszky also recorded as an important practical issue that in case of not acknowledging the disinheriting, the person was obliged to provide the reserved portion was also obliged to prove it (Section 85). Although the draft law is similar to the dispositions and the structure of the ACC, it is stricter in regulating the system of unworthiness and disinheriting reasons. Among the unworthiness reasons only the attempts against life and participation in them as accomplice would have been verifiable as disinheriting later, any other attitude implementing unworthiness would have resulted in ipso iure complete falling out from inheriting. Differently from the ACC, as we could see, if the testator's parents seriously assaulted him/her, according to the draft law, they couldn't have been disinherited.

2. The reception of Teleszky's draft law

Teleszky's draft law was met with appreciation following its appearance not only in the national legal life, but it also launched another process of debates, the central question of which was revolving again around the entail system. The greatest opponent of the draft law was Grosschmid Béni (Zsögöd Benő), who on the one hand, resented against the completion of inheritance law before any other field of law, on the other hand, Teleszky omitted lineal inheritance, which "is outrageous injustice" and "it tramples over real family sense".[17] Grosschmid with his conservative way of legal thinking characterised Teleszky's work as a letter of accusation against the concept of inherited and acquired estate, but he also remarked that the draft law does not contain legal concepts, therefore their dissection later is going to lead to misinterpretations. Teleszky did not regard the rules of lineal succession applicable in the future, because besides it is not capable of providing the protection of the family estate, the legal institution is not of Hungarian origin at all,[18] it is a feudal-like succession system, "in our country it evolved intertwined together with the law

[17] ZSÖGÖD Benő: Öröklött s szerzett vagyon. *Magyar Igazságügy* 1877/4., 346.

[18] Referring among others to the Lex Romana Visigothorum created in the VIth century and the passages of the Swabian Mirror created in the XIIth century, which already regulated the return of the testator's estate to the paternal and maternal line, but it also referred to the works of Bernhard Walther professor, known as the father of the Austrian legal science, summarising Austrian law published in 1718, in which he made several references about the estates returning to the parental line. See: TELESZKY István: *Örökösödési jogunk törvényhozási szabályozásához*. Franklin társulat nyomdája, Budapest, 1876, 80–82, 85–88 and 98–101.

of entail (ius aviticum)"[19], in reference to which Article XV of the Act of 1845 stated that "following its complete and final abolition, a new civil code be created and be presented"[20] at the next Diet by the responsible Hungarian Ministry. Grosschmid also attacked the enactment of the reserved portion, according to his opinion, "the type of obligation which forms the basis and the spirit of the reserved portion lacks the stable moral basis which is necessary for a certain obligation to root deeply in the soul"[21], as the fact that the amount of the reserved portion cannot be calculated in advance – as it depends on the increase or the decrease of the estate – results in uncertainty both in the successor and the testator, as opposed to the ancestral succession, on which one can safely count. The correctness of the above mentioned opinions can be acknowledged inasmuch that indeed the content of ancestral inheritance could not be known in advance, but its being more ethical as compared to the reserved portion cannot be deducted, at least as far as certainty is concerned. Grosschmid did not deem the reserved portion to be fully rejected anyway, but he considered it acceptable with the distinction of the ancestral and the acquired estate so that a reserved portion is due to the successor from the acquired estate besides inheriting the complete ancestral estate, as a kind of supplementary to it, that is, with the concept of the almost complete impossibility of testamentary freedom. Grosschmid fiercely criticised both the testamentary freedom regulated by the draft law and the disinheriting related to it, he did not consider it acceptable that the testator who too had inherited the ancestral estate, should freely dispose of it to his liking; that he should disinherit his/her innocent children from it, because the ancestral estate was not liberated with the patent about the entail system so that the citizens should shorten the next generation, "but so that they can have more freedom to trade with it for the benefit of the offsprings".[22]

It is a curiosity that when Grosschmid said in his explanation – presumably in the heat of his passion – "the careless parent who can be grateful for all his assets for his father: can disinherit his innocent infants from half of the not acquired estate, so that he can give it to his lover or God knows to who else"[23]; he made a factual mistake related to the institution of disinheriting, because he did not take into consideration, that disinheriting affects the complete estate, while testamentary freedom – without harming the disinheriting and the reserved portion – half of the full estate. Anyway, the fact that the draft does not contain legal concepts – Grosschmid criticised it as a mistake – also proves that Teleszky prepared his work on the modern level of the European legal development, as the law is not a course book; the text of the law has to thrive for accuracy and clarity, to detail the legisla-

[19] TELESZKY István: *Örökösödési jogunk törvényhozási szabályozásához*… 77.
[20] TELESZKY István: Az öröklési jog indokolásának bevezető része. *Magyar igazságügy* 1885/24/6., 355.
[21] ZSÖGÖD Benő: Öröklött s szerzett vagyon. *Magyar Igazságügy* 1879/6., 532.
[22] ZSÖGÖD Benő: Kiskorúak utáni törvényes öröklésről. *Magyar Igazságügy* 1879/4., 240.
[23] ZSÖGÖD Benő: Kiskorúak utáni törvényes öröklésről… 240.

tor's purposes there is a commentary, which Teleszky provided for paralelly with the preparation of the draft law.

Herczegh Mihály, university lecturer, royal court counsellor, also defended the institution of lineal succession as opposed to Teleszky's draft law. His work about it is rather contradictory, because besides supporting the complete testamentary freedom the restricted only by the reserved portion[24] – like he did that during the Hungarian Legal Assembly of 1872 – he highlighted that it would be desirable to maintain the distinction between the ancestral and the acquired estate at least in the form of the lineal estate, because the distinction "is much more in harmony with not only the natural legal principles and sense of justice, but also with the spirit of today's age, as well as the principles of economy".[25] Herczeg also wrote that not the lineal succession should be considered anachronistic, much more the tribal (intestate) succession, because it makes no distinction between the forms of assets, it does not consider either the acquirer or the acquisition. Herczegh's remark is also interesting[26] according to which he wishes to support the process of the European legal development in other fields of private law, such as in the field of personal, material, or even obligation law, but as far as inheritance and family law is concerned, not the international but the national law should be kept in mind, thus in case of these fields of law let us be loyal to the already tested national basis. Having read the work, by the time Herczegh arrived at its end, he reached the conclusion that he could not consider its statements made at its beginning to be supported: the reserved portion he appreciated at the beginning – which in our country was introduced by the ACC representing the foreign influence – towards the end becomes anachronistic and incompatible with the nation.

2.1. The debate of the draft law at the Hungarian Lawyer Assoication

The first public and wide debate of Teleszky's draft law took place from 11 November 1882 to 4 December at the sessions of the Hungarian Lawyer Association, where throughout discussing the draft law, the opinions of the persons taking the floor once again concentrated around the entail system and testamentary freedom and the reserved portion. On the first day, Dell' Adami Rezső started his speech by remarking how much Herczegh's lecture is similar to Grosschmid's work aiming at attacking Teleszky's work, "not only sharing the arguments and the process of thoughts, but in many cases the identical expressions as well". [27] It would be difficult to argue this brave remark, as not only the message, but the words, sometimes complete sentences were identical in the two works, regardless of the fact that Her-

[24] HERCZEGH Mihály: *Az ági öröklés fentartása*. Franklin társulat nyomdája, Budapest, 1882, 13.

[25] HERCZEGH Mihály: *Az ági öröklés fentartása*… 15.

[26] HERCZEGH Mihály: *Az ági öröklés fentartása*… 16.

[27] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében*… 3.

czegh Mihály denied this on the session of the same session series held on 27 November.[28]

Dell' Adami explained that according to his point of view, keeping the lineal succession would only slightly contribute to enhancing the national existence, as well as, according to his opinion, Herczegh mistakenly judged the patent on the entail system,[29] because it declared against the ancient law. According to Dell' Adami, in retrospect to the passed twenty years, the institution of the lineal succession did not prevent the demise of the families, the breaking up of the medium-sized estates therefore is not threatened by the lineal succession, and neither does it enhance the national existence. Dell' Adami also reacted to Herczegh's negative criticism concerning parentelar succession: according to him, it cannot be comprehended how "someone can consider the opposite system accepted in the civilised world as acting against the family, and to presume everywhere outside our country the moral decay and the less tender nurturing of the family ties".[30] According to Dell' Adami, contrary to Herczegh's statement, there is no connection between the existence of lineal succession and enhancing the economy, as well as encouraging to acquire estates, its opposite was mentioned by foreign lawyers against the reserved portion, but it cannot be read anywhere in connection with the lineality.[31] Besides Herczegh's point of view, Dell' Adami also attacked the maintenance of the reserved portion; primarily on the basis of the arguments supplied with the same powerful adjectives, as he did it earlier at the session of the Hungarian Lawyers Assembly of 1879. He repeatedly highlighted that the reserved portion is "immoral, against the family ties, as it undermines the parental prestige, children's obedience, affection"[32] and is straight contradictory to the testamentary freedom, in addition, the cases of disinheriting cannot be established in a general way, this should be left to the parents to decide. Dell' Adami compared the laughing successors who undoubtedly inherit the reserved portion to the ravens approaching the ground at smell of death. In addition to the above mentioned, Dell' Adami voiced his concerns related to the draft law that without being familiar with family law, it would be a hurried thing to codify the inheritance law in advance, because the possibility of success is out of the question on account of non-collation.[33]

Barna Ignácz, lawyer, academic lecturer, called the attention to a very important a so-far unhighlightened fact when he emphasised in the defence of the reserved portion that it is worth keeping in mind that the reserved portion is not an obstacle to estate transactions, because it is to be counted from the estate at the moment of the testator's death; the wealth can be mobile during the testator's life, it can be rotated, not to mention the wide circle of disinheriting reasons. Teleszky, taking the

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[28] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében…* 89.
[29] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében…* 4–5.
[30] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében…* 6.
[31] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében…* 14–15.
[32] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében…* 20.
[33] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében…* 30.

floor on the 20 November day of the series of sessions, addressing his criticisers one by one, first he reacted to Grosschmid's and Herczegh's charge that his draft law is almost the complete copycat of the Saxon codex and Mommsen's inheritance law draft law, he lectured that in the justification of the draft law he stated in advance that he took the Austrian and the Saxon codices as basis for his work; in addition, it can be proved that Mommsen's inheritance law draft law appeared two years after his draft law, as well as if he had not relied on other modern codices during his work, they surely would have criticised him for that.[34] In addition, concerning the criticism of the part-codification, Teleszky presented that as the abolition of the entail system shook the basics of inheritance law, the codification of this field of law is especially urgent, which statement was received with approval during the session.[35] Teleszky answered Dell' Adami's charge concerning the reserved portion that it suppresses the inclination of the successors to acquire estates, because this way they can count on a certain estate. According to Teleszky, there is no disinheriting without the reserved portion, therefore without these two legal institutions the successors surely can count on the fact that the testator will not disinherit them, that is, they can live their lives with the certainty of the acquisition, which this way does not necessarily indicate the acquisition of estates.[36] To Dell' Adami's suggestion, namely the reserved portion decreases the parental prestige, Teleszky gave the answer that at any place where the reserved portion is a living institution it can finely cohabit with the parental prestige and with the system of disinheriting reasons the draft law is just strengthening the parental prestige with the possibility of disinheriting from the complete estate.[37] Finally, Teleszky made a witty remark to Dell' Adami that if he compared the successors to ravens approaching the ground at the smell of death, then what kind of simile would he apply to the cases if any legacy-scavenger took advantage of the weak moments of the testator armed with the complete testatory freedom and dispossessed the legitimate successors.[38] With reference to Herczegh's earlier work aiming at the maintenance of lineality, Teleszky explained that as the unfamiliarity of the legal institution can undoubtedly be proved – wherever exactly it may originate from –, he expressed his surprise at Herczegh's delight in the originality of the Hungarian succession order. Teleszky refuted with examples Herczegh's statement according to which Deák Ferenc himself was also supporting the preservation of the lineal

[34] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében…* 32.

[35] He maintained this later too, adding that the connection between family law and inheritance law is undeniable, but it is not as tight that it would make the independent legislature of inheritance law possible. See: TELESZKY István: Az öröklési jog indokolásának bevezető része... 362.

[36] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében…* 37.

[37] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében…* 37.

[38] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében…* 39–40.

succession[39] – quoting his lecture at the Judge Royal Meeting – pointing out its opposite and at the same time, to the fact that Deák Ferenc firmly raised his voice against the reinstatement of the entail system. In addition, Teleszky maintained his standpoint that the lineal succession is not uniquely Hungarian and that he considers it a feudal-like inheritance law, which following the abolition of the entail system has no place in the Hungarian legal system any more. Jellinek Arthur, lawyer, who spoke on 23 November, also considered the lineal succession to be rejected; he explained that in modern times the emphasis is no longer on the establishment and maintenance of the family estate; therefore it is desirable to create a law that allows for the division of the estate; preventing it is opposing democracy and may lead to oligarchy and plutocracy.[40] Jellinek heavily criticised the maintenance of distinguishing ancestral and acquired estate, because according to him, it had rationale in the state system that had undergone changes since then, so its application would be anachronistic and a system rejected in all modern European countries that apply modern inheritance law. In addition to all, Jellinek did not consider the part concerning testamentary freedom in Teleszky's draft law acceptable, because according to his opinion that would restrict the dispository freedom so much that it would result in the complete oppression of trade, which would entail the increase of the interest rates, the boom of usury, as well as the decay of trade and industry. I cannot agree with this opinion, because, as Barna Ignácz also emphasised, restricting dispository freedom does not refer to transactions made while still alive, Teleszky himself also provided the right to attack to the persons entitled to the reserved portion only in the cases of the testator's legal transactions free of charge.

Herczegh Mihály gave a lengthy speech against Teleszky's draft law on the 27 November day of the series of sessions, which lecture was centred on the maintenance of the lineal succession and the complete abolition of the dispositions of the Austrian inheritance law. In his speech picking the finest of the debates of the Judge Royal Meeting, he referred to the declarations of several national authority figures, who one time testified to support the succession system before the patent on the entail system and against keeping the Austrian rules, for instance he quoted the words of Tóth Lőrincz, Kiss Andor, Horváth Boldizsár, Barkóczy János, Dessewffy Emil, Somoskeöy Antal, then he deduced that if we inspect the European legal development, we can see that everywhere distinguished attention was paid to ancient-national institutions, while we wish to be "the carriers of the train of the foreign parts, their barren copier, servilient imitator".[41] Herczegh thus tried to support with arguments that appreciated men of our nation were inclined to maintain

[39] HERCZEGH Mihály: *Az ági öröklés fentartása*… 8. See furthermore the relevant passages about supporting the abolition of the entail system in Deák's envoy report written about the Diet of 1839. In: *Követ jelentés az 1839-1840-ki országgyülésről. Deák Ferencz és Hertelendy Károly Zala vármegyei követektől.* Pesten, Kiadta Landerer és Heckenast, 1842, 77–78.

[40] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében…* 58.

[41] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében…* 106.

the lineality and the entail system, in addition, that the dominating Austrian rules in our country – on which Teleszky's draft law was built – were desired to be abolished. It is certain that Herczegh shouldn't have compared the state of affairs twenty years ago to the status quo of his age, because on the one hand, the speakers and participants there had to make decisions openly on temporary basis for a short term, therefore they had to choose the most obvious solution, in addition, as Hodossy Imre also remarked, at that time understandably they "hated everything that was Austrian."[42] Hodossy Imre largely supported the introduction of the parentelar succession and the abolition of the lineal succession as well as maintaining the reserved portion; according to his opinion, the reserved portion is useful and fair from economic point of view, because with its application it cannot happen that the testator's children suddenly are disinherited from their customary way of life and the estate legally due to them out of some whim of their father, which opinion was met by the vivid acclamation and approvals from the participants.[43] Beksics Gusztáv, lawyer, journalist, translator, Member of Parliament explained in a very interesting and objective manifestation during the session that actually it is completely all the same whether the lineality is of foreign origin or not; its practical side has to be taken into consideration: is it necessary, is it a useful institution or not? If it has no advantage in order to prove the often cited reason that it would keep the family estate together, then it should be abolished regardless of its origin. According to Beksics, it should be sufficiently supported that the lineality in itself possess no estate-saving role, therefore he cannot comprehend the fierce attacks against Teleszky's draft law which were brought about on account of lineality.[44] Czorda Bódog, judge of the Curia, state secretary, considered the lineal succession to be abolished and called the attention to the fact, that to his knowledge, the citizens regard it unfair, in addition, if the testaments of the past years were reviewed, we would find that they contain dispositions of property concerning the beloved ones closest to the testator.[45]

3. Intestate succession and the reserved portion in the first draft law of the inheritance law

Teleszky's draft law was evaluated by a committee of experts, and then Fabiny Teofil contemporary Minister of Justice presented the reviewed work, dated on 8 January 1887,[46] with Teleszky's justification[47] and supplied with commentaries

[42] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében…* 113.
[43] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében…* 117.
[44] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében…* 120–121.
[45] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében…* 128.
[46] *Az 1884. évi szeptember hó 25-ére hirdetett Országgyűlés nyomtatványai*. Képviselőház – irományok. XX. Pesti könyvnyomda-részvény-társaság, 1887, 98–313.
[47] As early as in 1885 the justification appeared attached to the content of the draft law. See: TELESZKY István: Az öröklési jog indokolásának bevezető része. *Magyar igazságügy* 1885/24/6.

after each chapter as a draft law to the House of Representatives. With his, Teleszky's legal draft law thus had become the official draft law of the inheritance law to be created.

The justification explained that although there would be undeniable advantages of creating a unified and complete civil code, but given the current circumstances, codification of inheritance law has a priority, because among the parts of private law it is exactly the inheritance law where "legal security based on precise legislature both for the individuals and families out of both private and public interest is most desirable".[48] Teleszky elaborated in his justification that the interrelation of inheritance law and the other parts of the civil code – family law in particular – does not have such an emphasis so that it can balance the advantages which would derive from the preliminary creation of the important fields of inheritance law and their coming into effect, because the connection between the two fields of law is not so strong,[49] that it would not allow to connect the effective family law rules with the new inheritance law within the framework of a separate act, with the means of temporary legislation. According to Teleszky, in addition to the above mentioned, the creation of the rest of private law could be implemented earlier as well, as its completion would urge them.

The review by the committee of experts did not touch upon the legislature concerning the intestate succession of descendants and parents, as well as the extent of the reserved portion; however, they considerably reshaped the inheritance system of surviving spouses. According to the reviewed draft law, the surviving spouse would have inherited only usufruct in case of descendants in addition to the portion of the estate and the proportion from the commonly acquired assets due to him/her as originally set by Teleszky; while he/she would have got the assets in case of descendants if the testator only had adopted children or their descendants – in this case the widowed spouse would have inherited half of the legacy next to them.[50] Besides the parents – or in their absence their descendants – the surviving spouse would have been entitled to half of the legacy as assets, besides grandparents – or their descendants – two-thirds, while as a sole successor, he/she would have been entitled to the complete legacy (Section 33–37).[51] Taking into consideration that reviewing the more frequent legal situation of inheritance, namely inheritance with the existence of children resulted in the decrease of the spouse's portion, this way the testator's widower/widow got into a less favourable situation. According to the commentary attached to the draft law, the spouse's inheriting the assets with the existence of children was neglected, because it would have been opposing the financial interests of the testator's descendants, as they are naturally destined to in-

[48] *Az 1884. évi szeptember hó 25-ére hirdetett Országgyűlés nyomtatványai…* 103.

[49] *Az 1884. évi szeptember hó 25-ére hirdetett Országgyűlés nyomtatványai…* 103.

[50] The justification of the draft law adds that this disposition is correct because adoption does not create such strong bonds as relations based on blood.

[51] *Az 1884. évi szeptember hó 25-ére hirdetett Országgyűlés nyomtatványai…* 25.

herit their parents' estate.[52] The reserved portion of the spouse would have become surprisingly after the review, because with the existence of children, she would have had usufruct in addition to one-fourth of the complete legacy on one-fourth of the commonly acquired assets, while with the existence of parents and grandparents – or their descendants – the reserved portion would have been half of the legacy, in addition, in case of being the only successor to the legacy, one- third of the complete legacy (Section 95).[53] As a consequence of the above mentioned, the inheritance law situation of the spouse could have been that in case of three or more children his/her reserved portion and his/her portion from intestate succession would have been the same. The committee of experts made no fundamental changes in the legislature of unworthiness reasons, in addition, they included as an attitude category what Weinmann Fülöp and Haller Károly proposed, namely the act of wilfully incapacitating the testator to make a disposition of property upon death.[54] As opposed to this, the committee of experts clarified all of the disinheriting reasons – with the exception of the attitude violating public morality –, therefore it demanded the wilfulness in the charge recorded in Point 1; in case of leaving without help the testator's need had to be depressing and it became a condition that the successor would have been able to help. The act against life facilitated by the successor mentioned in Point 3 was also included in the list; with Point 4 the committee of experts left the adjective "ordinary" from the word crime, in addition, the imprisonment had to be at least fifteen years, as well as with Point 5 the assault against the testator had to be physical (Section 86).[55] The committee of experts did not change the disinheritability of the testator's parents, however, they removed the disloyal leave from the disinheriting attitudes of the spouse (Section 97). In relation to the attitude conflicting public morality, the commentary called the attention that single profligacies even of greater in scale cannot serve the basis of disinheriting; the legislator's emphasis is on continuing this type of lifestyle, as well as such way of life still has to exist at the time of disinheriting, the descendant who was previously pursuing a lifestyle conflicting public morality, but since then has become better, cannot be disinherited any more.[56]

The commentary of the draft law added to the parental disinheriting reasons that the wilful omission of the testator's physical assault was done because of the parents' due disciplining power over their children.[57] Taking the spirit of the era into consideration, this explanation could even be acknowledged, however, the same

[52] *Az 1884. évi szeptember hó 25-ére hirdetett Országgyűlés nyomtatványai…* 132.
[53] *Az 1884. évi szeptember hó 25-ére hirdetett Országgyűlés nyomtatványai…* 35.
[54] "6. §. Who is as unworthy is excluded from the inheriting:
1. Who committed or attempted murder or wilful homicide against the testator, or wilfully made the testator incapable of making a disposition of property upon death, or participated in committing these crimes as accomplice; (…)"
[55] *Az 1884. évi szeptember hó 25-ére hirdetett Országgyűlés nyomtatványai…* 33.
[56] *Az 1884. évi szeptember hó 25-ére hirdetett Országgyűlés nyomtatványai…* 167.
[57] *Az 1884. évi szeptember hó 25-ére hirdetett Országgyűlés nyomtatványai…* 172.

disinheriting reason in case of disinheriting spouses cannot be explained with anything. An important innovation compared to the draft law that the first draft law already recorded explicitly that in case of legal disinheriting, in the absence of the testator's opposing disposition, the portion of the disinherited person is due to his/her descendants and they are entitled to demand it (Section 87). In relation to the reserved portion of the disinherited person, Teleszky recorded in his draft law that the legally disinherited persons are considered as if they had died before the testator did while the reserved portions of the other persons entitled to the reserved portion is calculated (Section 88). Actually the disposition of the first draft law is just a clarification, The legal consequence described by the draft law is unambiguously points at the direction that as a main rule, the reserved portion of the disinherited person is passed on to his/her descendants.

As the draft law, the proposal also recorded that disinheriting can only be made in a valid will with a specific declaration and its reason does not have to be stated (Section 78). In accordance with the justification attached to the passage, it is not necessary for the testator to use the expression disinheriting, any declaration with the identical meaning is sufficient and its legal reason does not have to be mentioned either, because the legislator "wishes to avoid exaggerations"[58] in demanding formalities. The commentary attached to the proposal appreciated the harmony of testamentary freedom and the protection of the family in Teleszky's draft law at establishing the amount of the reserved portion and at selecting the disinheriting reasons.[59] After Kern Tivadar, lawyer, assigned by Fabiny Teofil Minister of Justice translated the text of the draft law into German,[60] it became available and could be familiarised with outside Hungary too.

3.1. The reception of the inheritance law draft abroad

Teleszky's draft law was received with approval abroad as well, Pfaff and Hoffmann, university lecturers in Vienna highlighted that codifying the draft law would mean a significant progress for Hungary towards "modern culture states";[61] while Hartmann Gusztáv, university lecturer at the university of Tübinga praised it for its "clarity and factual correctness";[62] according to Dernburg Henrik, university lecturer in Vienna, the draft law is "basically sound and contains the appropriate

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58 *Az 1884. évi szeptember hó 25-ére hirdetett Országgyűlés nyomtatványai…* 160.

59 *Az 1884. évi szeptember hó 25-ére hirdetett Országgyűlés nyomtatványai…* 107–110.

60 RANDA Antal: A magyar öröklési jog tervezete. (Készítette és az igazságügy-minisztériumban tartott értekezlet alapján átdolgozta dr. Teleszky István, igazságügy miniszteri államtitkár. Budapest, 1887.) *Jogtudományi közlöny* 1888/2., 9.

61 A magyar öröklési jog javaslata. Pfaff és Hoffmann, bécsi egyetemi tanárok véleménye. *Jogtudományi közlöny* 1888/4., 29.

62 A magyar öröklési jog tervezete. Kritikai észrevételek Hartmann Gusztáv tübingai egyetemi tanártól. *Jogtudományi közlöny* 1888/36., 294.

measures and partially new and fortunate notions".[63] Josef Kohler, lecturer of the University of Würzburg acknowledged the draft law and in addition, phrased improving proposals in connection with the institutions of unworthiness and disinheriting.[64] Besides accepting the system of disinheriting, he found that leaving without help and knowingly making false charges should have been listed as reasons for unworthiness due to their seriousness; as well as in relation to the lifestyle conflicting public morality, he added that it has to be dealt with carefully, because on the one hand, he can see its identification in cases of girls; on the other hand, it is worth keeping in mind the relevant dispositions of the Prussian Landrecht, which establish this disinheriting reason only if the child has been given a decent upbringing. Kohler touched upon the essence of the attitude violating public morality with his latter observation,[65] as if the parent does not fulfil his/her moral nurturing obligation towards his/her child, then it can significantly contribute to the formation of the immoral lifestyle of the child later, on account of which it feels unfair to deprive him/her of the complete portion. Kohler noticed[66] the disposition aiming at defending the reserved portion against the testator's donation in his/her life and he found it unfair from the point of the persons bestowed. It has to be remarked that not many could find this passage unjust, because it remained with the same content in the text of the draft law following its revision.[67]

Taking into consideration that the House of Representatives could not complete the discussion of Teleszky's draft law, therefore following minor amendments, Fabiny Teofil Minister of Justice presented it again with a justification completely identical with the first justification and commentary[68] to the House of Representatives on 22 October 1887.

4. The second and third inheritance law draft law

The rules of intestate succession did not change in the second draft law as compared to the previous one; likewise, the dispositions concerning the reserved portions and unworthiness remained the same. The second draft law did not rewrite the

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63 Vélemény a magyar örökjogi törvényjavaslatról. Dernburg Henrik berlini egyetemi tanártól. *Jogtudományi közlöny* 1888/6., 49.

64 A törvényhozás és az öröklési jog alakulása. Tekintettel a magyar öröklési jog tervezetére. Irta dr. Köhler J., würzburgi egyetemi tanár. *Jogtudományi közlöny* 1888/10., 85–86.

65 See e.g. BDT2011. 2493. or Kúria Pfv. 20.181/2014/5.

66 "It is true that it may lead to unfair things if a bestowed person is being attacked, who got the donation at a time when nobody thought of the obligatory heir." See: A törvényhozás és az öröklési jog alakulása. Tekintettel a magyar öröklési jog tervezetére. Irta dr. Köhler J., würzburgi egyetemi tanár. *Jogtudományi közlöny* 1888/11., 94–95.

67 Was modified to Section 67 as a consequence of re-numbering. See: Törvényjavaslat az öröklési jogról. – A képviselőház igazságügyi bizottságának szövegezése szerint. *Jogtudományi közlöny* Issue 1888/17., Annex, 4.

68 *Az 1887. évi szeptember hó 26-ára hirdetett Országgyűlés nyomtatványai.* Képviselőház – irományok. II. kötet, Pesti könyvnyomda-részvény-társaság, 1887, 79–297.

disinheriting attitudes either, only it omitted the earlier included wilfulness in Point 1 (Section 89).[69] The discussion of this second draft law could not be completed either, so after updating some of its content and formalities, Fabiny Teofil presented a third and at the same time, the last Teleszky draft law on the session of the House of Representatives on 12 February 1889.[70] The third draft law was revised by a committee of Justice under the chairmanship of Kőrösi Sándor, the summarising report of which became attached to the draft law.[71] The committee recommended the draft law of inheritance law prepared on Teleszky's draft law for complete approval and they highly appreciated its dispositions in the justification. The committee emphasised in the justification that it is not desirable to maintain lineal succession, they do not support it, because it does not serve the defence of the family estate and with its application it would be necessary to return to the entail system, which "would not be at all affordable with regard to the existence of credit, modern property law";[72] the committee accepted the most natural and most ethical order of succession, that is, parents' and brothers/sisters' inheriting before more distant collateral relatives, in accordance with Teleszky's draft law. The committee saw that by eliminating lineal succession – which is an unsustainable remnant of the altered past – a reform meeting the requirements of the development can take place; in addition, they welcomed the institution of substitution inheritance Teleszky proposed to include in legislature, with which the protection of the family estate really became realised, which has been a very important concept of the nation. The third draft law leaving the rules of intestate succession unchanged in other aspects, it altered the intestate succession of spouses, on the one hand, it very correctly omitted the rule according to which the adopted child and the spouse would inherit the legacy in half-half,[73] on the other hand, leaving the surviving widow in a more favourable position, it would have provided usufruct on half of the legacy, which would have dropped to one-fourth in case of her remarrying. The committee of Justice would have provided further on one-fourth as usufruct to the surviving husband till his death (Section 33).[74] The reserved portion of the spouses decreased in the recent draft law, because the widower would have been entitled to the usufruct on one-eight of the complete estate; the widow to the half and following her remarrying, similarly to men, she would have had the widow's right on one-eighth (Section 98). The committee fully supported Teleszky's draft law con-

[69] *Az 1887. évi szeptember hó 26-ára hirdetett Országgyűlés nyomtatványai*. Képviselőház – irományok. II. kötet… 15.

[70] GROSSCHMID Béni: *A házasságjogi törvény.* (1894. XXXI. t cz.) I. kötet, Általános rész, Politzer-féle könyvkiadóvállalat, 1908, 16.

[71] *Az 1887. évi szeptember hó 26-ára hirdetett Országgyűlés nyomtatványai*. XIV. kötet, Pesti könyvnyomda-részvény-társaság, 1889, 225–275.

[72] *Az 1887. évi szeptember hó 26-ára hirdetett Országgyűlés nyomtatványai*. XIV. kötet… 228.

[73] The committee wished to support the main principle of the institution of adoption that it creates an inheriting relation between the parties.

[74] *Az 1887. évi szeptember hó 26-ára hirdetett Országgyűlés nyomtatványai*. XIV. kötet… 281.

cerning the proposal for regulating the reserved portion, the circle of the persons entitled to the reserved portion, but they explained that although they approved the measures of the draft law concerning the spouses' intestate succession, they found it justified that taking men's position in society and the related wage-earning capacity related to it into consideration, to try to provide a bigger proportion of usufruct to the widow until she finds the secure support in her new marriage.[75] The committee of Justice did not make any significant changes in the rules of unworthiness, while they reshaped the system of disinheriting reasons to some extent due to its formality requirements, but they kept its legal consequences already described. The ways of disinheriting spouses continued to build on the disinheriting cases of descendants, but while the dispositions concerning the parents remained the same, the possibility of disinheriting spouses had significantly increased. The committee removed the condition of starting the criminal proceedings from Point 1 of the disinheriting reasons concerning all the three circles of subjects entitled to the reserved portion, thus it was sufficient if the successor fraudulently charged the testator, for the disinheriting the proceedings did not have to start. The proposal divided the act against life earlier in Point 3, its attempt and being an accomplice in it into two points from the side of the injured party and omitted brothers/sisters from them, while continuing immoral life from the earlier Point 6 was placed to Point 7, with the change that this time the attitude had to conflict public morality seriously. The committee proposed to keep the attitude conflicting public morality as a disinheriting reason, because according to their opinion, the testator has to be allowed to keep the tools necessary for practising discipline regardless of the sex of the successor; nevertheless, the committee confirmed that the disinheriting reason can only be established if there is a series of cases of this sort. Disinheriting spouses was modified so that the attitude seriously conflicting public morality referred to them as well, in addition, disloyal leave again became a reason for the basis of disinheriting and adultery was also included in legislature as novelty, if the matrimonial cohabitation of the parties was not restored to the testator's death (Section 100). The case is interesting in Point 4 in the draft law according to which the successor can be disinherited if he/she committed, attempted or as accomplice participated in acts against life, from the part of the spouse it did not constitute a disinheriting reason. The committee spoke on the voice of appreciation about the cases of disinheriting; they highlighted that in essence they became established in accordance with the legal status so far, while keeping the ethical requirements of or social life.

5. The failure of the entry into force of the inheritance law draft law

The inheritance law draft law based on Teleszky's draft law thus, also supported by the Minister of Justice, was ready for approval by the House of Representatives and following its proclamation, its entry into force. Despite its triumphal march described above, the draft law failed. Possessing the easily accessible and common

[75] *Az 1887. évi szeptember hó 26-ára hirdetett Országgyűlés nyomtatványai*. XIV. kötet… 229.

knowledge facts, without difficulty, it is easy to answer the question how it was possible that a proposal evoking a wide spectrum of support in the contemporary national legal world, enjoying the support of the Minister of Justice, approved by several professional committees, could not become codified. Mostly Grosschmid Béni's significant mediation is to blame for the failure of the draft law, which cannot really be questioned after reading and studying the contemporary technical literature written by Grosschmid himself in retrospect to the specific phases of the codification of the civil code.[76] Grosschmid's attack against Teleszky, the draft law, and then the proposal materialised in different publications started around 1877 and it lasted till 1890 from the discussion of the draft law at the House of Representatives to its removal. Grosschmid attacked both Teleszky and his work from several fronts; his attacks can be divided into two groups. Primarily, he tried to emphasise that the work builds on the product of the hated foreign influence, in addition, rejects the original Hungarian legal institutions, principles created by our ancestors. Actually, Teleszky himself acknowledged that he took the legal codices of developed European countries as basis for the sake of Hungarian legal development to catch up, but reading Grosschmid's rhetorical, sometimes too fierce and offensive publications, it may seem that Grosschmid tried to picture him in an anti-Hungarian colour. The other corner stone of Grosschmid's attacks in close relation with the first one was that to his best he tried to prove that the interrelation between family law and inheritance is so tight that it would make their separate codification impossible, that is, he tried to undermine the preliminary completion of the inheritance right law. Among Grosschmid's publications in the above mentioned circle of subjects it is worth highlighting for instance his publication series titled, "Inherited and acquired estate" published on the columns of Magyar Igazságügy between 1877 and 1879, in which he elaborately attacked Teleszky for rejecting the lineal succession. Grosschmid criticised Teleszky for referring to "most obsolete"[77] foreign legislature to fight to prove the foreign origin of lineal succession, in order to convince the Hungarian way of thinking that the legal institution is not original Hungarian, rather contains German elements, thus insisting on keeping is unnecessary. In connection with this Grosschmid also criticised Teleszky that with his intricate examples for lineal succession, as "outrageous injustice and impossibilities" he tries to pose the legal institution as something unsuitable for keeping the family estate together, which examples make up the richery of his work. [78] Among Grosschmid's other works written in connection with the criticism of the inheritance law draft law, are his work titled "About the inheritance law draft law" published in 1882 and 1883 is also worth mentioning, the whole of which he dedicated to the intensive and direct attack against Teleszky's person and his draft law. According

[76] GROSSCHMID Béni: *A házasságjogi törvény*. (1894. XXXI. t cz.) I. kötet, Általános rész, Politzer-féle könyvkiadóvállalat, 1908.

[77] ZSÖGÖD Benő: Öröklött s szerzett vagyon. *Magyar Igazságügy* 1877/4., 347.

[78] ZSÖGÖD Benő: Öröklött s szerzett vagyon. *Magyar Igazságügy* 1877/6., 424–425 and 439–440.

to Grosschmid, Teleszky forced the preliminary codification precursory to the codification of the rest of our private law;[79] his draft law was made as a product of "industrial legislature"[80] created with reverse law-making methods. Scrutinising Teleszky's draft law, Grosschmid primarily explained that it is the stylised, moulded "mixed translation"[81] of the Saxon civil code and Mommsen's inheritance law work, which dedicated a large amount of law space to the establishment of the inheritance law as opposed to Teleszky, who does not even approach this with his draft law. According to Grosschmid, Teleszky tried to conquer the abroad by applying its products in our country; something which had been elaborated in foreign parts, however, this method would not serve our development, but would harm it, because at translations it is the grammar and the quill that are at the front and thinking is lagging behind,[82] which affects the legal accomplishment of the nation in a destroying and delaying way. Grosschmid mentioned the Hungarian criminal code as an example – namely the effective Csemegi-code – which "makes one grow in height knowing that this law is ours and that its root is here and here and only here",[83] and when interpreting it, one does not have to travel to Dresden, Kiel and have to search for the German decisions, as it is from home. According to Grosschmid, Teleszky considers Hungarian inheritance law as non-existent, because the fact is not the past and present of "our law",[84] but what he finds written at the Germans. According to Grosschmid, it didn't occur to Teleszky to start from the basics of Hungarian law, one element of which would be the distinction between ancestral and acquired estates and in his draft law it wouldn't be obvious which estate attribute he would build the new basis on. After the previous subjective opinions concerning this point of view it can be objectively added that the text of the draft law is unambiguous, it does not build on the distinction of the origin of the estate to be incorporated into the legacy and to this way of legislature the rejection of lineal succession adjusts. In his work titled About the Inheritance Law Draft law, considering everything, Grosschmid declared that he could barely pick one passage from Teleszky's draft law which he could recommend as the text of the law, because it is self-repeating, insecure, conceptual clichés,[85] has no clear view of the basis notions. According to Grosschmid's opinion, he just "rakes everything together, and he does know everything imaginable pro et contra; but embraces nothing firmly and simply";[86] is not willing to take over anything from the Roman law that can be

[79] ZSÖGÖD Benő: Az örökösödési törvénytervezetről. *Magyar Igazságügy* 1883/6., 509–510; ZSÖGÖD Benő: Az örökösödési törvénytervezetről. *Magyar Igazságügy* 1882/5., 373.
[80] ZSÖGÖD Benő: Az örökösödési törvénytervezetről. *Magyar Igazságügy* 1882/5., 370.
[81] ZSÖGÖD Benő: Az örökösödési törvénytervezetről. *Magyar Igazságügy* 1882/5., 369.
[82] ZSÖGÖD Benő: Az örökösödési törvénytervezetről. *Magyar Igazságügy* 1882/5., 373.
[83] ZSÖGÖD Benő: Az örökösödési törvénytervezetről. *Magyar Igazságügy* 1882/5., 373.
[84] ZSÖGÖD Benő: Az örökösödési törvénytervezetről. *Magyar Igazságügy* 1882/5., 376.
[85] ZSÖGÖD Benő: Az örökösödési törvénytervezetről. *Magyar Igazságügy* 1882/5., 380 and 392.
[86] ZSÖGÖD Benő: Az örökösödési törvénytervezetről. *Magyar Igazságügy* 1883/5., 439.

considered as the mother law and from the national law, and if we approve this draft law as inheritance law, that would not be European level, much rather Vlach (Romanian).[87] According to Grosschmid, in addition, the draft law is not worthy for the Hungarian nation, for the past of our national law, and not worthy for the Hungarian lawyer either, because we have our independent legal development "institutions of centuries what is more, in its roots millennia"[88], which the maker of the draft law did not take into consideration, considering the foreign inheritance law much better.

Besides the above mentioned works of Grosschmid's criticising the inheritance law draft law, it is worth mentioning his work supporting lineal succession, published in 1879, titled "Inheriting After Juveniles", his series of publications titled "Draft About Intestate Succession" published in 1885 and in 1886, as well as his series of articles of 1888 titled "The Dependence of the Entitlement to the Reserved Portion on the Intestate Succession" – Interpretations to the Hungarian Inheritance Law Draft law, with Respect to the German Draft law', which also contain intensive criticism against Teleszky's inheritance law work, which scrutinising each passage of the draft law, try to point out the weaknesses of the draft law or its disputable elements. Following this, the facts are that the Minister of Justice announced the removal of the inheritance law draft in his budget speech held on 5 February 1890 – using the reasons described above by Grosschmid, sometimes with completely identical phrases[89] – and he said that on the field of private law for the time being there is possibility for partial codification only, in addition, taking into consideration the close connection between the two legal fields, inheritance law cannot be codified separated from family law.

Bibliography

[1] A magyar öröklési jog javaslata. Pfaff és Hoffmann, bécsi egyetemi tanárok véleménye. *Jogtudományi közlöny* 1888/4., 29–30.

[2] A magyar öröklési jog tervezete. Kritikai észrevételek Hartmann Gusztáv tübingai egyetemi tanártól. *Jogtudományi közlöny* 1888/36., 294.

[3] A törvényhozás és az öröklési jog alakulása. Tekintettel a magyar öröklési jog tervezetére. Irta dr. Köhler J., würzburgi egyetemi tanár. *Jogtudományi közlöny* 1888/10., 85–86.

[4] A törvényhozás és az öröklési jog alakulása. Tekintettel a magyar öröklési jog tervezetére. Irta dr. Köhler J., würzburgi egyetemi tanár. *Jogtudományi közlöny* 1888/11., 94–98.

[87] ZSÖGÖD Benő: Az örökösödési törvénytervezetről. *Magyar Igazságügy* 1883/5., 440.

[88] ZSÖGÖD Benő: Az örökösödési törvénytervezetről. *Magyar Igazságügy* 1882/5., 395.

[89] P. SZATHMÁRY Károly (szerk.): *Az 1887. évi szeptember hó 26-ára hirdetett Országgyűlés Képviselőházának naplója.* Tizenhatodik kötet, Pesti Könyvnyomda Részvénytársaság, 1890, 117–120.

[5] *Az 1884. évi szeptember hó 25-ére hirdetett Országgyűlés nyomtatványai*. Képviselőház – irományok. XX. Pesti könyvnyomda-részvény-társaság, 1887.

[6] *Az 1887. évi szeptember hó 26-ára hirdetett Országgyűlés nyomtatványai.* Képviselőház – irományok. II. kötet, Pesti könyvnyomda-részvény-társaság, 1887.

[7] *Az 1887. évi szeptember hó 26-ára hirdetett Országgyűlés nyomtatványai*. XIV. kötet, Pesti könyvnyomda-részvény-társaság, 1889.

[8] *Az örökjog alapelvei. A Magyar Polgári Törvénykönyv tervezetében.* A Magyar Jogászegyletnek 1882. november 11.–deczember 4. tartott teljes-üléseiben folytatott vita. Franklin társulat nyomdája, Budapest, 1883.

[9] GROSSCHMID Béni: *A házasságjogi törvény.* (1894. XXXI. t cz.) I. kötet. Általános rész. Politzer-féle könyvkiadóvállalat, 1908.

[10] HALLER Károly: Észrevételek a magyar magánjogi törvénykönyv előadói tervezetének ötödik rész, első és második czímére. *Jogtudományi közlöny* 1882/13., 97–98.

[11] HALLER Károly: Észrevételek a magyar magánjogi törvénykönyv előadói tervezetének ötödik rész, első és második czímére. *Jogtudományi közlöny* 1882/14., 107–108.

[12] HERCZEGH Mihály: *Az ági öröklés fentartása*. Franklin társulat nyomdája, Budapest, 1882.

[13] *Követ jelentés az 1839–1840-ki országgyülésről. Deák Ferencz és Hertelendy Károly Zala vármegyei követektől.* Pesten, Kiadta Landerer és Heckenast, 1842.

[14] Öröklési jog. [A törvénytervezet szövege 1. r.]. *Jogtudományi közlöny* 1880/41., 278–280.

[15] Öröklési jog. [A törvénytervezet szövege 2. r.]. *Jogtudományi közlöny* 1880/42., 283–286.

[16] P. SZATHMÁRY Károly (szerk.:) *Az 1887. évi szeptember hó 26-ára hirdetett Országgyűlés Képviselőházának naplója.* Tizenhatodik kötet. Pesti Könyvnyomda – Részvény-társaság, 1890.

[17] RANDA Antal: A magyar öröklési jog tervezete. (Készítette és az igazságügy-minisztériumban tartott értekezlet alapján átdolgozta dr. Teleszky István, igazságügy miniszteri államtitkár, Budapest, 1887.) *Jogtudományi közlöny* 1888/2., 9–10.

[18] TELESZKY István: A köteles-rész iránti törvénytervezet. *Jogtudományi közlöny* 1882/27., 210–213.

[19] TELESZKY István: Az öröklési jog indokolásának bevezető része. *Magyar igazságügy* 1885/24/6., 353–377.

[20] TELESZKY István: Indokolás az általános magyar magánjogi törvénykönyv tervezetének az öröklési jogot tárgyazó ötödik részéhez. *Jogtudományi közlöny* 1880/44., 300–302.

[21] TELESZKY István: *Örökösödési jogunk törvényhozási szabályozásához*. Franklin társulat nyomdája, Budapest, 1876.

[22] Törvényjavaslat az öröklési jogról. – A képviselőház igazságügyi bizottságának szövegezése szerint. *Jogtudományi közlöny* 1888/17., 1–8.

[23] VASDÉNYEY Géza: A magyar örökösödési törvénytervezet érdemtelenségi és kitagadási eseteiről. *Jogtudományi közlöny* 1885/10., 75–76.

[24] Vélemény a magyar örökjogi törvényjavaslatról. Dernburg Henrik berlini egyetemi tanártól. *Jogtudományi közlöny* 1888/6., 49–51.

[25] WEINMANN Fülöp: Észrevételek az általános magánjogi törvénykönyv tervezetének az öröklési jogot tárgyazó részére. *Jogtudományi közlöny* 1882/39., 305–308.

[26] ZSÖGÖD Benő: Az örökösödési törvénytervezetről. *Magyar Igazságügy* 1882/5., 367–396.

[27] ZSÖGÖD Benő: Az örökösödési törvénytervezetről. *Magyar Igazságügy* 1883/5., 414–442.

[28] ZSÖGÖD Benő: Az örökösödési törvénytervezetről. *Magyar Igazságügy* 1883/6., 468–477.

[29] ZSÖGÖD Benő: Kiskorúak utáni törvényes öröklésről. *Magyar Igazságügy* 1879/4., 213–250.

[30] ZSÖGÖD Benő: Öröklött s szerzett vagyon. *Magyar Igazságügy* 1877/4., 233–250.

[31] ZSÖGÖD Benő: Öröklött s szerzett vagyon. *Magyar Igazságügy* 1877/6., 341–358.

[32] ZSÖGÖD Benő: Öröklött s szerzett vagyon. *Magyar Igazságügy* 1879/6., 421–441.