

THE ROLE OF EXPERTS IN HUNGARIAN COPYRIGHT DISPUTES

*The History of Codification in the 19th Century**

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In judicial or legal terms, expert activity can primarily be mentioned with regard to legal proceedings when, in the trial, experts with special skills or professional practice provide assistance to the judge in case of lacking knowledges, which however are necessary for judging the statement of facts.

Of course, it cannot be expected from anyone, including the judge, to be competent in everything. Ignác Frank regarded the knowledge of laws as the only obligation of a judge, thus, in case any technical question arises in the litigation, he considered expedient for the judge to use the assistance of experts, *“because they fill up the gaps present with the judge.”*¹

As we describe it later, the authors of Hungarian legislative bills for copyright required the use of experts in any lawsuit, because such questions may arise in a litigation process regarding copyright, to which only a practising printer, book publisher, translator, photographer, architect, sculptor, handicraft artist can give an answer, who is aware of the general professional habits in addition to the tricks of his line of business. However, the proposals for the mandatory acceptance of the expert opinions or the arbitration proceedings of an expert body highlight the most likely negative experiences concerning the litigation proceedings in the middle of the 19th century and the judges as well. In spite of the measures in

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¹ FRANK, Ignác: *A' közigazság törvénye Magyarhonban II. [The law of public justice in Hungary]*. Buda, Egyetemi Nyomda, 1846. 190.

the reform era, the Hungarian jurisdiction was characterised by a cumbersome and complicated procedural law;² the attorneys having an excellent oratorical ability but frequently insufficient legal skills were able to defer the lawsuits even for decades, and the judges were only defenceless viewers of the dispute.³ This is supplemented by the fact that the judges held typically an elected or appointed office and the mandatory requirement for their appointment was only the oath of the judge,⁴ in addition to exactly knowing the Hungarian legislation.⁵ Contrary to the lawyers' obligation, the law provided for the mandatory legal qualification for the judges only from 1869 and the practical exam of judges became equivalent with the lawyers' exam only from 1913.⁶

So, it can be stated that the authors of the proposals were afraid to lay the charge of the complicated copyright lawsuits, which were conducted first in writing, on the talkative lawyers and the passive judges, furthermore, the adaptation of the Prussian, later German regulation also ensured the maintenance of the professional influence for those engaged in publishing of books and in art.

² BÓNIS, György – DEGRÉ, Alajos – VARGA, Endre: *A magyar bírósági szervezet és perjog története [The history of the Hungarian judicial organization and litigation law]*. Zalaegerszeg, Zala Megyei Bíróság és a Magyar Jogász Egylet Zala Megyei Szervezete, 1996. 156–157.; SZIVÓS, Kristóf: Az eshetőségi elv alkalmazásának dogmatikai alapjai a polgári peres eljárásban [Dogmatic bases for the application of the principle of contingency in civil litigation]. *Iustum Aequum Salutare*, 2021/4. 297.

³ BÉLI, Gábor: *Magyar jogtörténet [Hungarian History of Law]*. Budapest, Dialóg Campus Kiadó, 2009. 285.

⁴ The oath of the judges of the country was first regulated by Act XXXIII of 1492 and was in effect basically with an unchanged content until the second half of the 19th century.

⁵ Article 3 of Act XXX of 1723 on the establishment of the district courts of appeal and the persons to be employed in them prescribed the Hungarian origin, the good possession and the exact knowledge of the Hungarian law for the judges of the courts of appeal, while, simultaneously with it, the practice of courts of 1723 required the passing of a lawyers exam and the taking of oath, and then, as of 1769 it prescribed a strict legal exam and a certificate of good conduct for the lawyers. Cf.: SZLEMENITS, Pál: *Magyar polgári törvény IV. [Hungarian Civil Law IV]*. Pozsony, Belnay, 1845. 4.; GOJZESTI MADARASSY, János: *A magyar polgári törvénytudomány vázlatja [Scheme of the Hungarian science of law]*. Eger, Érseki Lyceum, 1845. 417. §.

⁶ Articles 6–7 of Act IV of 1869 on the exercising of the judicial power. See TÉRFY, Gyula: A magyar bírói és ügyészi szervezet fejlődése az utolsó ötven év alatt [Development of the judicial and prosecution services during the last fifty years]. In: DÁRDAY, Sándor (ed.): *Jogi dolgozatok a Jogtudományi Közlöny ötven éves fennállásának emlékére [Legal theses in commemoration of the fifty years existence of the Juridical Gazette]. 1865–1915*. Budapest, Franklin, 1916. 752.; STIPTA, István: *A magyar bírósági rendszer története [History of the Hungarian judicial system]*. Debrecen, Multiplex Media, 1997. 122.; ANTAL, Tamás: *Törvénykezési reformok Magyarországon (1890–1900) [Legislation reforms in Hungary (1890–1900)]*. Szeged, Csongrád Megyei Levéltár, 2006. 158–159.

The first body of experts, at that time under name Copyright Expert Committee was established by the Copyright Act of 1884; this was in operation as long as until 1952. The Body operating even today was reorganized after a break of about two decades, the operation of which is provided from 1970 by the Bureau for Protection of Author Rights and from 1999 by the Hungarian Intellectual Property Office (SZTNH; its earlier name: Hungarian Patent Office).

The intent for establishing a body of experts was included in all the Hungarian copyright legislative bills in the 19th century. In addition to the presentation of the codification ambitions, the purpose of this study is to describe the steps leading to the establishment of this institution which became indispensable for the purpose of enforcement of rights.

1. First steps in Hungary to protect the authors' property (1838–1840)

The conception spread at the beginning of the 19th century that the author of literary and artistic works shall exclusively be entitled to dispose of the works. Earlier, the multiplication of works was primarily ensured by sovereign privileges for the publishing houses in Hungary.⁷ The procedure necessary for the establishment of publishing houses ensured the supervision of the publishers of books and the censorship of books to be printed served the control of the content of books.

Since, by this period of time, the unauthorized publication of books became frequent, therefore Ferenc Toldy, who himself was even an aggrieved person in several such reprints both as a publisher and as an author, initiated the legal recognition of the authorial property in his writing published in 1838.⁸ A few

⁷ About the general history of the copyright in Hungary, see KELEMEN, Mór: Adatok az írói tulajdonjog hazai történelméhez [Information to the history of writers' property in Hungary]. *Budapesti Szemle* 1869/XIV. 305–317.; ARANY, László: Az írói és művészi tulajdonjogról [About the writers' and the artists' property]. *Budapesti Szemle*, 1876/XX. 225–257.; KOVÁTS, Gyula: *Az írói és művészi tulajdonjog [The writers' and artists' ownership]*. Budapest, Wickens F. C. és fia Könyvnyomdája, 1879.; MEZEI, Péter: A szerzői jog története a törvényi szabályozásig (1884. évi XVI. tc.) [History of copyright to the juridical regulation (Act XVI of 1884)]. *Jogelméleti Szemle*, 2004/3.; PETKÓ, Mihály: A szerzői jogi szabályozás története [History of the copyright regulation]. *Collega*, 2002/5. 23–27.

⁸ Ferenc Toldy (1805–1875) literary historian, critic, university professor, member and secretary of the Hungarian Academy of Science, director of the Kisfaludy Society (1841–1861). TOLDY, Ferenc: *Néhány szó az írói tulajdonról [A few words about the authorial property]*. Athenaeum 1838/45. 705–717.; PÉTER MEZEI: The Development of Hungarian Copyright Law until the Creation of the First Copyright Act (1793–1884). In: Mira T. SUNDARA RAJAN: *Cambridge*

years later, he describes the nature of the authors' property on nearly eighty pages in the *Budapesti Szemle* (Budapest Review), the international history of the copyright regulation and fundamentally lays down the Hungarian basis of the copyright literature.⁹ He is of the opinion that the State should recognize the authors' property so that even the writer should receive the financial consideration.¹⁰ In his study, Toldy describes the Prussian Copyright Act of 1837 adopted recently, except for the rules concerning the works of fine arts, translated into Hungarian.¹¹ According to Article 17 of the Prussian Act, in case the judge is unable to determine, whether a printed matter is considered a reprint or an illegitimate copy impress, or in case the amount of compensation would be debated, it prescribes the use of services of associations of experts ("composed of persons proficient in the matter").

Toldy does not describe the procedural rules, because supposedly it was published at the same time as his study. Since the procedure laid down in the decree¹² became an example to be followed by several Hungarian legislative bills, therefore it is described below briefly.

According to the Prussian decree, three expert bodies composed of seven members would be established, which bodies will have a country-wide competence in the field of disputes in relation to writer and music works as well as fine arts products. These bodies will give expert opinion to the judge in determination of a legally regulated reprint, unauthorized multiplication and the amount of compensation.¹³ The members, the chairman and his deputy will be appointed by the minister of religion, education and health, previously requesting the opinion of the minister of justice. At the time of their appointment, the members of the body take an oath at the Royal Supreme Court.¹⁴ In addition to the procedural rules of the body, the decree also describes that its administration

Handbook of Intellectual Property in Central and Eastern Europe. Cambridge (UK), Cambridge University Press, 2019. 37–50.

⁹ TOLDY, Ferenc: Az írói tulajdon philosophiai, jogi és literaturai szempontból, az azt tárgyzó külföldi törvények, és vélemény egy magyar írójogi törvényről [The writer property from philosophical, legal and literary aspect, foreign countries discussing that, and opinion about the Hungarian writer law]. Különlenyomat a *Budapesti Szemle* első számából. Pest, Heckenast Gusztáv, 1840. (First edition *Budapesti Szemle*, 1840/01. 157–237.)

¹⁰ TOLDY (1840) op. cit. 11. 7. §.

¹¹ TOLDY (1840) op. cit. 48–49. 25. §.

¹² Decree of 15 May 1838 on the foundation of the Prussian Royal Society of Experts referred to in Articles 17 and 31 of the Act of 11 June 1837. (Hereinafter: Prussian Decree.)

¹³ Prussian Decree op. cit. Articles 1–5.

¹⁴ Prussian Decree op. cit. Articles 7–8.

shall be performed by the Ministry of Religion, Education and Health, it shall register the receipt of letters contacting, assign the competent body, and shall send the completed expert opinion to the court acting in the proceedings.

Toldy considered the presence of experts important because this body would be able to judge the rationality of the extent and purpose of the use of, for example, the cited or adopted products in the collected works, would give to the competence of experts to determine “in each individual case” “whether the collection in question is a false reprint or not”¹⁵

2. The first codification ambitions (1844)

The first ‘author’s right’ codification legislative bill was submitted to the Parliament owing to the Kisfaludy Society. The bill prepared by the Board of the Society was passed by the members at their meeting of 21 April 1844.¹⁶ The bill wanted to introduce a certain type of arbitration court. The bill submitted to the Parliament was assessed by Delegate Bertalan Szemere, who finally prepared a clear-cut, coherent material, supplementing the protection of the author’s rights with that of the rights of artists.¹⁷ The lower house of the Hungarian Parliament discussed the bill on 4 November 1844 and accepted it without any change.¹⁸ The peers (upper house) accepted the Szemere-type presentation submitted on 9 November 1844 with minor changes concerning the whole of the bill, however, the provisions relating to the expert procedure with more significant amendments.

The final bill of the peerage referred the copyright lawsuits to the competence of the Regional Courts (which are mostly in the county seats and Budapest). It required strict deadlines for the proceedings, which can be completed basically within a quarter of year. When the pleading is finished, the court must send

¹⁵ TOLDY (1840) op. cit. 74. Article 33.

¹⁶ *A Kisfaludy-Társaság évlapjai [Annals of the Kisfaludy Society] 1844–45*. Pest, Eggenberger, 1845. 55.

¹⁷ BOYTHA, György: Szemere Bertalan és a „jövő zenéje”. In: MÁDL, Ferenc – VÉKÁS, Lajos (eds.): *Emlékkönyv Nizsalovszky Endre születésének 100. évfordulójára*. Budapest, ELTE Polgári Jogi Tanszéke és Nemzetköz Magánjogi Tanszéke, 1994. 42–58.

¹⁸ For details see SZALAI, Emil: Szemere Bertalan szerzői jogi törvényjavaslata [Copyright bill of Bertalan Szemere]. In: DÁRDY, Sándor (ed.): *Jogi dolgozatok a Jogtudományi Közlöny ötven éves fennállásának emlékére [Legal theses in commemoration of the fifty years existence of the Legal Gazette]. 1865–1915*. Budapest, Franklin, 1916. 591–598. BALOGH, Elemér: A Szemere-féle szerzői jogi törvényjavaslat (Szemere’s copyright bill). In: RUSZOLY, József (ed.): *Szemere Bertalan és kora I [Bertalan Szemere and his era]*. Miskolc, 1991. 149–172.

the documents of the proceedings to the board of the elected experts within 24 hours, which shall give a written expert opinion signed by the members present within 15 days that must be sent to the court without delay.¹⁹ According to the proposal of the peerage, the board of experts shall express its opinion based on the documents, explaining *both* the infringement *and* the amount of compensation;²⁰ and it allows (already then!) the free consideration of evidences for the court.²¹

As regards the formulation of the procedural law part of the bill, it is unambiguous based on it that neither the Society nor Bertalan Szemere had confidence in the judgement of the judges in respect of literature and arts.²² The former thought to find the solution in an arbitration court, while the latter in the mandatory request for an expert opinion. In Szemere's opinion, so complicated questions arise in the copyright lawsuits which cannot be decided by a person who himself is not engaged in arts or literature. As against the violation of the substantive property right, the violation of the intellectual property right occurs "even by the taking over of the simple forms, because frequently we have to make separation between the mixed forms of foreign and own thoughts and ideas".²³ – In literal wording – one has to recognize "the stolen gem that they want to make unknown by putting it into a new chasing."²⁴

The proposals in 1844 contained all of the regulations in a matured form, which had already been formulated by the copyright approach of the time. The proposal placed on collected bases by the Society, elaborated by Szemere was ahead of its age in many fields. Later, not only the Austrian Copyright Act of 1846 utilized the proposal, but it laid down such rules which influenced the jurists engaged in the issues of the copyright not only in Hungary.

Finally, no time remained for discussing the remarks of the king in the last days of the Parliament, so the proposal was not validated by the sovereign in the end.

¹⁹ ÖKRÖSS, Bálint: Az 1843–4. évi országgyűlés [The Parliament of 1843–44]. *Jogtudományi Közlöny*, 1866/33. 525. 34. §.

²⁰ ÖKRÖSS op. cit. 525. 34. §.

²¹ Article 35 of the bill beginning with a new part of sentence: "After its receipt, however without restraints for the court, ..." ÖKRÖSS op. cit. 525.

²² SZALAI (1916) op. cit. 597.

²³ SZEMERE, Bertalan: Az írói és művészi tulajdonról szóló törvényjavaslat és indokolása [The bill on the writer and artist property]. *Pesti Hírlap* 1845. július 25.

²⁴ Ibid.

3. The Austrian Copyright Act of 1846

The publication of books was not unprotected in the Hungarian reform era. A decree issued originally in 1775, addressed to the Hereditary Austrian provinces had to be applied as from 1793 also in Hungary. The royal decree²⁵ prohibited the reprinting of books, imposing penalty and the obligation of indemnification, acknowledging the rights of the author and his assignees. New publication by the censorship was permitted only with the consent of the author or his assignees. The decree gave priority to the proceedings by administrative, political authorities against the judicial enforcement of rights.²⁶

By spreading the journals and the publication of books, and by mitigation of censorship, also Vienna wanted to protect the author rights in a more appropriate manner. The Austrian Act dated 19 October 1846 aimed at the protection of the literary and artistic properties against the unauthorized publication, reprinting and copying of the works. The Austrian Copyright Act, contrary to the decree of seventy years earlier, following the new theories, already protected the writers' products and also acknowledged the right to publication and public performance.²⁷

The Hungarian Governor Council had to elaborate a new bill after the promulgation of the Austrian Act. Revising the Szemere bill and having regard to the rules of the new Act, a bill prepared by Pál Jászay²⁸ was submitted to the last Diet opened in the autumn of 1847. However, this bill was not negotiated. Having regard to the fact that this bill could not be found until now, here its provisions relating the Austrian Act are described.

The Imperial Decree of 29 November 1852 put into force the Austrian General Civil Code of 1811 and other rules of law both in Hungary and in Erdély (now it is Transylvania in Romania).²⁹ The Austrian Copyright Act, which was in force

²⁵ For details see KELEMEN op. cit. 310–312.

²⁶ KNORR, Alajos: *A szerzői jog magyarázata [Explanation of the Copyright]*. Budapest, Nagel Ottó, 1890. X.

²⁷ KNORR op. cit. XIV.

²⁸ Pál Jászay (1809–1852) historian, language historian, jurist, expert of diplomatics.

²⁹ HOMOKI-NAGY, Mária: A nemesi magánjog szabályainak tovább élése a neoabszolutizmus idején [The Survival of the Rules of Noble Private Law in the Time of Neo-Absolutism]. In: MEZEY, Barna (ed.): *Kölcsönhatások Európa és Magyarország a jogtörténelem sodrásában*. Budapest, Gondolat, 2021. 140.; HOMOKI-NAGY, Mária: Magánjogi kodifikációk kérdései [Questions of Our Codification of Private Law]. In: MÁTHÉ, Gábor – MENYHÁRD, Attila – MEZEY, Barna (eds.): *A kettős monarchia. Die Doppelmonarchie*. Budapest, ELTE Eötvös Kiadó, 2018. 181.; VARGA, Norbert: Az állampolgárság és a közszégi illetőség szabályozása a neoabszolutizmus időszakában, különös tekintettel az OPTK vonatkozó rendelkezéseire

from 1 May 1853 to 1861 in Hungary and to 1 July 1884 in Erdély, is written in its Appendix 72. When the Austrian Copyright Act entered into force, the enforcement of rights was delegated from the administrative authorities to the criminal courts that could make decision in civil lawsuits.³⁰ The Austrian Act qualified the violation of the copyrights as a serious police transgression, which could be enforced by the aggrieved author or his legal successor upon his request within the period of limitation. The decree determines a special solution in comparison to the general rules of the proceedings in the respect that an “evidence” is required from the experts in disputed issues. In the case of literary works, the experts could be chosen from writers, scientists and booksellers and in the case of artistic works, they could be chosen from artists, art experts, art dealers and music art dealers.³¹

The Act enforced the law-abiding behaviour by confiscation, by a serious fine in addition to the destruction of the devices used for unauthorized multiplication or by detention in prison in replacement of the former, furthermore, in case of backsliding, by losing the business.³² In addition to the penalty, compensation had to be paid to the holders of rights, moreover, they were entitled to receive the revenue from the sold, unauthorized copies, counted on the value of the original (legitimate) work. The opinion of the experts had to be requested if the number of the sold, unauthorized copies could not be determined, furthermore, if the surreptitious edition appeared earlier on the market than the legitimate edition.³³

[Regulation of Citizenship and Residency in the Period of Neo-absolutism, in Particular the Relevant Provisions of the Austrian Civile Code]. *Jogtörténeti Szemle*, 2012/3. 28.; BALOGH, Judit: Az osztrák magánjog hatása a magyarországi kodifikációra a XIX. században. *Publicationes Universitatis Miskolciensis, Sectio juridica et politica*, 1997. (14) 55–68.

³⁰ KNORR op. cit. XV. About detail rules see CSATSKÓ, Imre: *Az 1852-ki május 27-ki Austriai birodalmi büntető törvény magyarázata [Explanation of the Austrian Imperial Penal Act]*. Pest, Armin Geibel, 1853. Article 467 and the explanation of 406–411.

³¹ WENZEL, Gusztáv: *Az ausztriai általános polgári törvénykönyv magyarázata [Explanation of the Austrian General Civil Code]*. Pest, Geibel Ármín, 1854. 739. 33. §.

³² *Ibid.*, 736–737. 25–26. §.

³³ *Ibid.* 737. 27. §.

4. Legislative bills following the Austro-Hungarian Compromise of 1867

The Imperial Diploma of October 1860 partly restored the old historic constitutional status also in Hungary.³⁴ The Conference established under the chairmanship of the Judge Royal determined the jurisdictional rules to be applied on a temporary basis (TJR), which were also approved by the King. In its decision of 23 July 1861, the Curia declared that, until the constitutional legislation provides otherwise, it will follow the temporary rules as a permanent norm in its proceedings. Part I Article 23 of the TJR states that “even the products of the mind result in such a property, which is under the protection of law.” This sentence has served as a kind of protection for the copyright in Hungary for 23 years,³⁵ even though rather as a theory than as an actual judicial protection. Until the elaboration of the future detail rules, János Suhayda proposed instead that “[un]til that time, both the party and the judge should help itself as far as possible”.³⁶

Simultaneously with the introduction of the TJR, the process of legislation was also started. The King convened the Parliament for 2 April 1861, but afterwards, the case of regulation of the copyright progressed slowly. Disregarding the international contracts, the next wave of legislative bills was launched forth by the German copyright act submitted in 1866.

In June of 1866, the work schedule of the Codification Committee of the Parliament was published, according to which it was the task of the Subcommittee VIII to prepare a bill for the purpose of the protection of the writers’ and artist’s property.³⁷ Seeing the openness of the legislation, the Országos Magyar

³⁴ HOMOKI-NAGY, Mária: A magyar magánjog fejlődését befolyásoló jogforrások a neoabszolutizmus idején [Sources of Law Influencing the Development of Hungarian Private Law During Neo-absolutism]. In: HOMOKI-NAGY, Mária (ed.): *Ünnepi kötet Dr. Nagy Ferenc egyetemi tanár 70. születésnapjára*. [Acta Universitatis Szegediensis. Acta Juridica et Politica Tomus LXXXI.] Szeged, SZTE-ÁJTK, 2018. 434–435.; PÉTERVÁRI, Máté: *A járások kialakítása Magyarországon az 1870: XLII. tc. alapján*. Szeged, Szegedi Tudományegyetem, Állam- és Jogtudományi Kar, 2021. 46.

³⁵ For details see KNORR op. cit. XV–XVI.; HOMOKI-NAGY, Mária: „Az ész szüleményeinek védelme” a magyar jogtörténetben: Szerzői és szabadalmi jog, elsőség és etika a tudományban. In: Újszászi, Ilona (ed.): *Szent-Györgyi Albert szellemi öröksége*. Szeged, Szegedi Egyetemi Kiadó, 2014. 72–88.; POGÁCSÁS, Anett: *Különbözőség az egységben*. Budapest, Pázmány Press, 2017. 37.

³⁶ SUHAYDA, János: *A magyar polgári magánjog rendszere [System of the Hungarian civil private law]*. 6th edition. Budapest, Magyar Királyi Egyetemi Nyomda, 1874. 104.

³⁷ HORVÁTH, Boldizsár: A codificationalis albizottmány véleménye, a codificatio körül követendő eljárás iránt [Opinion of the codificatory subcommittee regarding the procedure

Képzőművészeti Társulat (National Hungarian Fine Arts Association), turned to the Parliament in July of 1866 with the request to raise the quality level of the domestic art.³⁸ By 1867, they prepared their own legislative bill based on the Bavarian Act of 1865. However, this bill reached only the minister of justice.³⁹

Seeing the parliamentary works, in addition to the Országos Magyar Képzőművészeti Társulat, also the Kisfaludy Society composed a bill. This second bill of the Society became ready by 1867 and it covered the protection of the artistic rights as well.⁴⁰ However, due to the deficiencies of the work, the Parliament returned the bill to the Ministry of Justice where no essential changes were made.⁴¹

Since the provisions relating to the artists' rights in the bill of the Kisfaludy Society were insufficient and incomplete, Hugó Maszák⁴² prepared an own bill in 1867 which discusses only the artists' rights.⁴³ In his bill that was formulated in a blundering way in many points, the prohibited multiplication of works of art by photographing appeared as a new element.⁴⁴ In his work the recognition of copyright of photo artists represented a significant progress.⁴⁵

The bill of the Magyar Írók és Művészek Társasága (Society of Hungarian Writers and Artists) became ready in 1874. The work was made by the translation of the German act of 1870. Amendments were added to the translation.⁴⁶ The bill would have given protection to the fine arts articles in addition to the written works, regulated the public presentation of dramatic works, music works and

to be followed for codification]. *Jogtudományi Közlöny*, 1866/24. 382–384. About the later processes of legislation and the structure of the bill on the protection of the author property See Ökröss, Bálint: Ideiglenes törvényhozás [Temporary legislation] V. *Jogtudományi Közlöny*, 1867/13. 66.

³⁸ *Az Országos Magyar Képzőművészeti Társulat évkönyve [Almanach of the National Hungarian Fine Arts Association]*. 1865–66. Pest, Kertész József, 1867. 178.

³⁹ ARANY (1876) op. cit. 230.

⁴⁰ *Törvényjavaslat a polgári törvénykezési rendtartás tárgyában és az irodalmi s művészeti jogok biztosításáról. (Bill in the subject of civil legislative code)*, Pest, Pfeifer Ferdinánd, 1867. Prestudy related to this bill by KELEMEN.

⁴¹ ARANY (1876) op. cit. 229.

⁴² Hugó Maszák (1831–1916) writer, journalist, painter, graphic artist, lithographer, photographer.

⁴³ MASZÁK, Hugó: *A művészi tulajdon s a kapcsolatban álló művészeti jogok biztosítása I–IV. [The artist property and the provision of the related artist rights I–IV]*. Magyarország no. 229 27 November 1867, 1.; no. 230. 28 November, 2.; no. 231. 29 November, 2.; no. 232 30 November, 2–3.

⁴⁴ MASZÁK (1867b) op. cit. Article 10 d).

⁴⁵ MASZÁK (1867b) op. cit. Articles 9 and 10.

⁴⁶ ARANY (1876) op. cit. 229.; KENEDI op. cit. 13.

musicalized dramatic works. Its structure is equivalent to the structure as László Arany's bill was finalized by the Committee of Justice later in 1884. The material presented was discussed by the Society of Hungarian Writers and Artists (Magyar Írók és Művészek Társasága). Even though the bill submitted to the Parliament took into consideration the Hungarian requirements as well, the bill was after all removed from the agenda because the Commercial Act, which discussed the publisher contracts in a separate chapter, was adopted in 1875.⁴⁷

5. László Arany's⁴⁸ legislative bill (1876, 1878)

The bill that came into existence in the joint committee of the Kisfaludy Society and the Academy can be regarded as the "entrance-hall" of the first Hungarian copyright act. In pursuance of the procedural provisions of the draft prepared by László Arany, anyone whose copyright or publishing right was infringed or jeopardized had the right to initiate a lawsuit for piracy within the period of limitation of three years.⁴⁹ The bill ruled that, in order to determine the statement of facts in technical questions, the amount of the loss and the unauthorized profit, the judge can use, as first against the rules of procedural law prevailing at that time,⁵⁰ with free consideration of the evidences,⁵¹ the services of experts in the proceedings.⁵²

Based on the pattern, adapted nearly with the same wording, of the German Copyright Act of 1870, Arany wanted to establish a society of experts from scientists, writers, book dealers, printers and other applicable persons.⁵³

⁴⁷ ARANY (1876) op. cit. 230.; HORVÁTH, Attila: A kereskedelmi törvény – 1875. évi XXXVII. tc. In: MÁTHÉ–MENYHÁRD–MEZEY (eds.) op cit. 227.; SÁPI, Edit: *A színpadi művek szerzői joga*. Budapest, Patrocínium, 2019. 53.

⁴⁸ László Arany (1844–1898) poet és collector of folktales, jurist.

⁴⁹ ARANY (1876) op. cit. 245. Article 28.

⁵⁰ MUTSCHENBACHER, Viktor: *A szerzői jog rendszeresen előadva [The Copyright Presented Systematically]*. Pécs, Taizs Könyvkiadó, 1890. 143.; KNORR op. cit. 121. The general principle of free consideration of evidences was made common by the amendment in 1894 of Act LIV of 1868 on the civil procedural code (hereinafter referred to as: CPC) See FODOR, Ármin: *Polgári peres eljárásunk története az utolsó ötven évben [History of our civil litigation proceedings in the last fifty years]*. In: DÁRDAY, Sándor (ed.): *Jogi dolgozatok a Jogtudományi Közlöny ötven éves fennállásának emlékére. 1865–1915. [Legal theses in commemoration of the fifty years existence of the Legal Gazette, 1865–1915]* Budapest, Franklin, 1916. 244.

⁵¹ ARANY (1876) op. cit. 245. Article 29.

⁵² Ibid. 245. Article 30.

⁵³ Ibid. 245. Article 31.

According to the German act, the Commercial Supreme Court of Leipzig had exclusive jurisdiction in copyright lawsuits. Arany reserved this right for the Regional Courts of Budapest, Kolozsvár (today it is called Cluj-Napoca in Romania), and then, adjusted to the Act on the Hungarian-Croatian Compromise,⁵⁴ for the Regional Court of Zagreb⁵⁵ and so, he established the society of experts with seven members in these three cities. Its members, alternate members, chairman and vice-chairman were appointed by the minister of religion and public education as well as the Croatian Ban.

In his proposal of 1878, László Arany calls the Society of Experts already as Committee of Experts.⁵⁶ The Committee forms the expert opinion upon the writ of the court and on the basis of the available documents⁵⁷ for which the Committee receives remuneration.⁵⁸ The proposal also adopted the German solution with regard to the claims of compensation.⁵⁹

The phrases of society and committee are written in plural in Arany's proposal, because he did not think of a big body with the experts of various art branches but he would have continued to establish, on the basis of the German pattern⁶⁰, separate committees for technical questions arising in the case of piracy of works created by literary, music artistic,⁶¹ as well as by "graphic and plastic arts (*ars graphica et plastica*)".

The experts' role formulated in the Arany proposal largely relied upon the activity of the Prussian, later the German Literary Experts' Association set up already in 1837 and operating continuously till the end of the century. The expert opinions of the body were published as collections, sometimes in

⁵⁴ According to Article 9 of Act XXX on the codification of agreement concluded for balancing of the public law issues discussed between Hungary and Croatia, Slavonia and Dalmatia, [...] the measures relating to the writer and artist property are common issues of all countries of the Hungarian Crown. Máté Pétervári: One Empire and Two Ways of Public Administration: The Second Level Administrative Division in Austria-Hungary. *Journal on European History of Law*, Vol. 9. 2018/2. 133–134.

⁵⁵ ARANY (1876) op. cit. 245. Article 26.

⁵⁶ ARANY (1878) op. cit. 67. Article 31.

⁵⁷ ARANY (1876) op. cit. 246. Article 35.

⁵⁸ ARANY (1876) op. cit. 246. Article 38.

⁵⁹ German Copyright Act of 1870 Article 31.

⁶⁰ Article 49 of German Copyright Act of 1870, Article 16 of Statute no. 1110 of 9 January 1876. The German regulation goes further, thus Article 10 of Statute no. 1111 of 10 January 1876 establishes associations of experts in the field of photo art works and Article 14 of Statue no. 1112 in the field of utility models.

⁶¹ ARANY (1876) op. cit. 248. 55. §.

anonymized form,⁶² so the most typical cases could be learned by anybody. The expert opinions were made in such categories as, for example, reprint of world maps, cookery books, translations, bishopric circulars, handbooks for tailors, moon maps or botanical works.⁶³ Later, the expert opinions were published already thematically assorted, grouped according to the subjective right of the author and publisher, the subject of the copyright protection, the copyright infringement and indemnification.⁶⁴

So that the copyright requirements should not remain only dead letters, László Arany launches his legislative bill of 1876 with the following words: “Otherwise I hope the best result from this bill if the societies of experts would be composed through a careful selection. The future of the law will be in their hands, they are who have the opportunity to explain its details and they are who can adapt its principles to the real life. The permanence of members, the continuous practice and the equality of their decisions will also guarantee the rightfulness of their judgements. And a law stating the general principles can be fruitful if a good judge delivers judgements based on it.”⁶⁵

6. Adoption of the first copyright act (1882–1884)

The bill based on the Arany draft was submitted to the House of Parliament by the minister of justice, Tivadar Pauler⁶⁶ on 20 November 1882.⁶⁷ This bill

⁶² See Ludwig Eduard HEYDEMANN: *Sammlung der Gutachten des Königlichen Preussischen Literarischen Sachverständigenvereins*. Berlin, Unger, 1848.; Otto DAMBACH: *Die preußische Nachdruckgesetzgebung, erläutert durch die Praxis des literarischen Sachverständigenvereins*. Berlin, 1863.; Otto DAMBACH: *Gutachten des königlich preussischen literarischen Sachverständigenvereins über Nachdruck und Nachbildung aus den Jahren 1864–1873*. Leipzig, 1874.; Otto DAMBACH: *Gutachten des königlich preussischen literarischen Sachverständigenvereins über Nachdruck und Nachbildung aus den Jahren 1874–1889*. Leipzig, 1891.

⁶³ HEYDEMANN op. cit. Expert opinions no. 2, 7, 9, 20, 23, 28, 39–40.

⁶⁴ DAMBACH (1891) op. cit. 6–10. KNORR cites two such expert opinions op. cit. 214–224. This activity largely similar to the current practice of the Body of Copyright Experts. Even though these expert opinions cannot be applied as leading cases, but they have high significance in the practice of copyright.

⁶⁵ ARANY, László: Az írói és művészi tulajdonjogról [About the writer and artist property right]. *Budapesti Szemle*, 1876/XX. 225–257.

⁶⁶ Tivadar Pauler (1816–1886) jurist, university professor, minister, the first chairman of the Association of Hungarian Jurists.

⁶⁷ *Az 1881. évi szeptember hó 24-ére hirdetett országgyűlés Képviselőházának irományai XII. kötet* [Documents of the House of Members of the Parliament announced for 24 September 1881, Volume XII]. Budapest, Pesti Könyvnyomda Rt., 1884. 210–233. Document no. 385.

delegates the enforcement of rights to civil courts both in law-cases and in out-of-court cases, including the imposition of penalties. By this, he puts aside the role of experts in arbitration court proceedings. According to the explanation by the minister, in order to avoid difficulties, it would be advisable to make one single decision for both the penalty and the compensation.⁶⁸ The lawsuit can be initiated at the regional courts where the judge can listen to the opinion of experts with regard to the statement of facts, the losses and the possible profits and their amounts. According to the explanation, the outcome of the copyright lawsuits depends on the issues requiring significant skills. For the purpose of permanent technical rules of the expert opinions, they want to regulate the proceedings and the rules of procedure of the committee by decree.

In addition to changing the structure of the bill, the Committee of Justice amended a provision essentially affecting the Committee of Experts. The Committee of Justice removed the right of the judge to give the opportunity to the Committee of Experts to provide statement about the losses arisen as well as the profits lost and their amount. The judge is allowed to request an expert opinion from the Committee only in technical questions influencing the determination of the fact of piracy,⁶⁹ which would cause a significant practical problem in the future.

The amendment fundamentally determines the scope for action of the Committee of Experts, simultaneously causing difficulties for the judge in judging the cases. For nearly thirty years, “referring to the exact text of the law, the Committee has been consistently averse to make a declaration whether any loss was caused and how much the amount of loss was – and it was only willing to determine: whether any piracy occurred or not.”⁷⁰ The deficiency of this provision was remedied only in 1915, allowing the possibility for the Committee to give opinion about the loss arisen and its amount.

In the detailed debate in the Lower House, the members tried to achieve again that a committee of expert should also be established in Kolozsvár (today Cluj-Napoca in Romania) and that there should be committees separately by art

⁶⁸ Ibid. 231. 56. §.

⁶⁹ *Az 1881. évi szeptember hó 24-ére hirdetett országgyűlés Képviselőházának irományai XIX. kötet [Documents of the House of Members of the Parliament announced for 24 September 1881, Volume XIX]*. Budapest, Pesti Könyvnyomda Rt., 1884. Report 272.

⁷⁰ SZALAI, Emil: Az új eljárás szerzői jogi perekben. [The new procedure in copyright lawsuits]. *Jogtudományi Közlöny*, 1915/5. 62.

branches.⁷¹ However, Rapporteur István Teleszky⁷² insisted on the fact that “for the purpose of ensuring equality to the expertising, because, even though an expert opinion does not obligate the judge but it would constitute an important basis of the judicial judgement in many cases, therefore I accentuate the importance that one single such a committee of experts should be established in Budapest.”⁷³ The one single committee also meant that no separate committees were established by art branches.

The final text was adopted by the Lower House on 12 March 1884⁷⁴ and by the Upper House on 24 March in an unchanged form.⁷⁵ Finally the sovereign validated the submitted bill on 26 April 1884. Its promulgation took place on 4th of May⁷⁶ in the National Gazette. Finally, the law entered into force on 1 July 1884 as Act XVI of 1884.

7. Appointment of the first Copyright Committee (1884)

“Habemus papam! We have a literary court.”⁷⁷ – Kálmán Mikszáth begins his sarcastic sketch with these words. In his opinion, it is hard to imagine a committee, only two members of which are close to the literature and, where possible, even these two members are not of the same opinion.

Contrary to the Prussian and German pattern, in Hungary the minister of religion and public education appointed a committee with 22 members, and ensured the conditions of operation for the experts. The Act terminated the influence of the Academy that was written in the proposals, even though nine of the 22 experts were members of the Academy. In addition to the members

⁷¹ P. SZATHMÁRY op. cit. 220.

⁷² István Teleszky (1836–1899) jurist, lawyer, member of parliament, under-secretary of the Ministry of Justice. He was the person presenting the act in the parliamentary debate in replacement of the unhealthy István Apáthy.

⁷³ P. SZATHMÁRY op. cit. 221.

⁷⁴ P. SZATHMÁRY op. cit. 346.

⁷⁵ MASZÁK, Hugó (ed.): *Az 1881. évi szeptember 24-ére hirdetett országgyűlés Főrendi Házának naplója II. kötet. [Logbook of the House of Peers at the Parliament convened for 24 September 1881 Volume II]*. Budapest, Pesti Könyvnyomda Rt., 1884. 233.

⁷⁶ *Az 1881. évi szeptember 24-ére hirdetett országgyűlés Főrendi Házának irományai [Documents of the House of Peers at the Parliament convened for 24 September 1881]*. Budapest, Pesti Könyvnyomda Rt., 1884. 82–96.

⁷⁷ MIKSZÁTH, Kálmán: *A szakértő bizottság [The Committee of Experts]*. In: R. HUTÁS, Magdolna – REJTŐ, István: *Mikszáth Kálmán összes művei 68. [All works of Kálmán Mikszáth 68]*. Budapest, Akadémia Kiadó, 1973. 67.

of Parliament who played an important role in the adoption of the bill, also the heads of publisher groups as well as the outstanding artists of the era were among the experts.

The rules of procedure relating to the earlier committee were regulated by the Civil Procedural Act of 1868.⁷⁸ The special rules of procedure relating to the Committee were determined by the Decree no. 1686 dated 10 July 1884 of the Royal Minister of Justice in addition to the Copyright Act. And the rules of procedure of the Committee were regulated by the decree no. 42.019 of the Minister of Religion and Education issued in 1885.⁷⁹ The establishment of the first committee of experts took place on 4 July 1884.⁸⁰

Nearly half a century had to be past for the copyright to be regulated by law in Hungary. From the first ambitions for codification on, nearly all legislative bills held important to separately determine the establishment of a committee composed of experts experienced in practical fields of the copyright, which can be used for the enforcement of rights. By appointment of the members, by laying down the special rules of procedure and by defining the rules of operation, the Committee was ready to perform the expert activity in the proceedings initiated for piracy of copyright.

⁷⁸ Kristóf SZIVÓS: The Eventualmaxime in the Hungarian Civil Procedure – A Historical Perspective. In: David A. FRENKEL – Norbert VARGA (eds.): *New Studies in History and Law*. Athens, Athens Institute for Education and Research, 2019. 82.

⁷⁹ MUTSCHENBACHER op. cit. 155–157.

⁸⁰ *Budapesti Közlöny*, 1884/154. 4 July 1884.