

## **Freedom of the Press: Its Idea and Realization in Pre-1914 Hungary**

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In nineteenth century Hungarian scholarship of the history of law, the following — not exactly flattering — view was formulated: "The free press, in this country, matured to a ripe fruit under the magic of the legislation of 1848." One can hardly agree with this generalization. The achievement of the freedom of the press cannot simply be explained by reference to the impact of a few action-packed revolutionary days. In a well-documented study, Ödön Both pointed out that the proponents of Hungarian progress fought almost sixty years for the freedom of publishing and spreading ideas. They persisted in their struggle until it became law that "everyone may freely publish and freely spread their ideas through the press." In this paper we cannot undertake the in-depth investigation of the struggle for a free press prior to the enactment of the Press Act of 1914, we can only undertake a brief outline of it.

The first advocates of the need for the freedom of the press in Hungary were the Hungarian Jacobites. Behind this demand lies the fact that following the 1790 "realization of the incurable crisis of feudalism," philosophers and politicians intended a decisive role for the press, and for the free dissemination of ideas. They did this at a time when official policy in the Habsburg Empire after Joseph II's death "established a system of the most narrow-minded paternalism," in which the press was burdened with innumerable regulations.

Those who struggled for the freedom of the press took natural law as their point of philosophical departure, and defied growing political repression. Their demands for the abolition of censorship became increasingly vociferous. Private individuals and bodies, philosophers and legal authorities, raised their voice "for the finest human right," the freedom of the press. It should be admitted that the local movements for a free press, instead of demanding the liberation of the press as a point of principle, initially merely objected to the excesses of censorship. By 1832, however, a good many counties instructed their deputies to the legislature to participate in the struggle for the complete freedom of the press.

The conservative majority of the Lower House stood in the path of this aspiration. Moreover, the Diet of 1839-40 did not enact legislation on the freedom of the press, and the Diet of 1843-44 also failed to fulfil the hopes of its advocates. The debate on the proposed Press Act was postponed — despite increasingly categorical instructions by the reformist counties to their deputies for the enacting of legislation concerning the freedom of the press. At the preliminary sessions of the 1847-48 Diet, the efforts of the opposition bore fruit. A parliamentary committee on the press was established under the chairmanship of Széchenyi. Bertalan Szemere became the committee's secretary. It is true that, as a body, the committee achieved little, but in the spring of 1848, Szemere started, single-handed, work on the draft of the future legislation guaranteeing the freedom of the press in Hungary.

The revolutionary wave of 1848 accelerated the birth of the Press Act. In the wake of the revolution in Vienna, Louis Kossuth could announce at the 14th March meeting of the Lower House, that "the freedom of the press is granted by the ruler." "Do you want to . . . open this country to the flood of printed matter not written in the Hungarian language inundating the country under responsibility not in accord with Hungarian law" asked Kossuth, suggesting the need for the speedy enactment of the Press Act. "What is needed," he continued, is someone to "write down" the following: "The freedom of the press is restored in Hungary. Press offenses are placed under court procedure. Court procedures and punishments are those laid down by the last Diet in the Criminal Code." Kossuth's appeal prompted the Lower House to instruct the "committee entrusted with the drafting of the Press Act" to hammer out this piece of legislation "as soon as possible."

Developments in Pest overtook the proceedings in Parliament when the revolution swept away censorship. The very first demand of the Twelve Points, formulated also on 14th March, was the "freedom of the press and the abolition of censorship." Point One of the decree of the Council of the Governor General stated that "The press operates freely, without any prior censorship whatsoever." This set of regulations established a twenty-five member provisional committee and empowered it — and the ordinary courts — to retaliate for "abuses and irregularities" committed through the press. A few days later, Szemere hastily submitted his first draft of the proposed Press Bill to the legislature. Keeping the interests of the well-to-do classes in mind, it stipulated the depositing of twenty or ten thousand forints caution-money by the founders of political periodicals. After a brief debate, Parliament adopted the draft with a few minor changes. However, the revolutionary action of the March Youth in Budapest prompted the legislators of the liberal nobility to change their mind at the last moment, as a result of which the amount of the "caution-money" was reduced to half. The Act now reached its final form and the

king gave his royal assent on 7th April. The law establishing the bourgeois freedom of the press in Hungary became effective on 11th April. It was to serve the Hungarian state and society for some fifty years.

The provisions of the Press Act proclaiming the liberation of the press were not entirely progressive. Almost from the moment of its birth it encountered resentment. The debate over the bill in the Lower House had produced some favourable changes, but these failed to justify Kossuth's hopes that the "improved structure" would forestall public debates about the act. The Act's critics: Táncsics, Ákos Birdnyi, Ferenc Toldi and others, objected primarily to its severe penal provisions. Sebő Vukovics, the future Justice Minister, wrote, in not exactly flattering terms, that "the Lower House's momentary deviation from the path of liberty has given birth to an act that has engendered general anxiety: the Press Act."

Bearing in mind the principle of the bourgeois freedom of the press, the Press Act of March abolished "preliminary scrutiny", and declared, for the first time in Hungary, that "everybody is entitled to publish and spread their ideas through the press." This declaration, and its honest intentions, however, were somewhat overshadowed by other sections of the act, particularly the strict penal provisions regarding press offenses classified under criminal law.

First mention in connection with these provisions must go to Section Six of the Act which proposed to punish sedition aimed at "changing the constitution by force and stirring up discontent against the lawful higher authorities" by a maximum of four years imprisonment and a fine of two thousand forints. Section Seven contained rather strict provision for the protection of the king's person and the order of succession, whilst Section Eight did the same with respect to members of the royal family.

The above examples are, perhaps, sufficient to illustrate the ambiguity of the Press Act of 1848. We may therefore agree with Ödön Both who stressed that the Press Act progressed along the path of freedom as far as could be expected of its drafters.

It must, however, be noted in defence of the legislators, but even more so of those who enforced it, that the Act's stringent penal provisions were not used at all in 1848-49. This despite the fact that, according to contemporaries, at that time "there surfaced vast numbers of publications representing the interests of the various parties, with passionate debates in their columns, alternating with the most vicious personal attacks."

The March Laws of 1848, laid down the foundations of Hungary's bourgeois transformation. The War of Independence, and the dark years of Neo-Absolutism in the wake of defeat, excluded the possibility of further constitutional and political progress. The Compromise of 1867 between Austria and Hungary allowed the resumption of the political trends interrupted in 1848. In particular, the "deal" gave the Hungarian

ruling class the opportunity to continue the country's capitalist development, within a multi-national empire characterized by numerous contradictions.

In the new Dualist state elements of parliamentarianism and certain absolutist tendencies co-existed, and so did the liberal face of the political system and the predominance of the executive branch of government. In this regard it needs to be emphasized that even though in this fledgling democracy "bourgeois liberties and minority rights were restrictive, they nonetheless existed and provided a suitable framework for the development of the forces of democracy, . . . The best illustration for this is the evolution of the issue of the freedom of the press after 1867.

The defeat of the War of Independence, the terror and oppression in its wake, signified the temporary death of the freedom of the press. Hungarian legislation was replaced by Austrian law and its string of decrees on the press. For the next eighteen years these kept the Hungarian papers under control with varying degrees of severity.

In the mid-1860's, the country and its Parliament gradually prepared for a peaceful pact with the Habsburg dynasty and with Austria. As part of these preparations, a 12 member committee of the Lower Chamber of the 1865 Parliament studied the questions that could require "the attention of the legislature" following "the restoration of constitutionality."

This body first demanded significant changes in the patched-up edifice of the Hungarian legal system. In its report dated 12th April 1866, the committee recommended that the issue of the press ought to be out of Parliament's agenda.

At this stage the legislative body did not yet begin work on the realization of this ambitious plan. Nevertheless, the aforementioned report rendered perceptible the reform aspirations with which contemporary politicians and prominent public figures became involved. The need to achieve press reform also figured among these ideas. This could be explained by press law of 1848 throughout its existence.

However, this discontent was not enough to bring about the birth of a comprehensive law, one with due consideration to the changes in social and political conditions. Apart from the parliamentary committee's proposal, nothing else was happening in this regard. Thus, when the Compromise came into force, the Andrassy government, on entering office, had no alternative but to return to the press law of 1848. This solution was not only the most obvious, but as had been pointed out, was "also politically the most attractive."

As the first step, the new Cabinet restored the municipal authorities and introduced measures to settle the issue of the press. On 28th February, 1867, the government promised the reintroduction of the Press Act of 1848 as soon as possible. The revival of Act 18 of 1848 did not, however, mean that a piece of complimentary legislation, the Assizes Act of

1848, would also be revived without any changes. In 1848 this decree, following the intentions of the Press Act, declared the setting up of juries at the municipal level. Andrásy and his government had no intention of reviving it. The government felt that implementing the Assizes Act of 1848 would not only give rise to complications, but would also be inexpedient. Therefore, as early as February 1867, it requested the approval of the Lower Chamber to ignore the decree and to empower not the municipal juries but the royal court of appeal, and the district courts of appeal, to deal with the matter.

The request did not seem to have disturbed the legislature's unduly, even though the majority of them probably still vividly recalled Sec. 18 of the 1848 Press Act. This had instructed the government to "provide for the setting up of juries" authorized to judge press offenses. Parliament was not made anxious even by the fact that the authorization they had voted for could enable the executive branch to enter the terrain of passive legislation. At the time, politicians professed, and applied, the "French revolutionary concept" with regard to executive and legislative powers. This theory stipulated that the executive branch may not possess independent legislative authority, and "in principle every legislative act of the government and public administration is issued on the basis and for the implementation of a specific act that is, the authorization therein contained." Acceding to the government's request did not appear as a violation of concept.

The motion was debated in Parliament on the 9th March. The brief, almost formal discussion merely gave an opportunity to minority MP's to voice their displeasure with the Press Act. First to speak, György Sztrati-mirovich stated with laconic simplicity that the Press Act of 1848 was "inadequate," its penal clauses were too stringent, and that caution money was not the paragon of liberalism. Rumanian MP József Hodosium went so far as to draw the attention of the House to Act 18 of 1848 on the "unfree press." However, the Deák Party and the ministers present displayed no inclination for serious, substantive debate. Only Pál Jámbor emphasized, as a quiet manifestation of disagreement, the "freer nature" of Hungarian press legislation in comparison with its Austrian counterpart.

The relocation of the juries to the seats of the courts of appeal did provoke a greater controversy. MP's representing the nationalities were concerned that by adopting the motion, non-Hungarian speaking members of the press would in reality be removed from the courts of their municipal authorities, and juries in distant towns would be passing sentences in their cases. "Being sentenced by a jury that was alien and of opposing principles amounts to being convicted in advance," stressed Svetozar Miletic. Speaking out against centralization, Sztrati-mirovich echoed the gloomy prophesy: "within half-a-year a certain number of editors and

staff in our provincial towns . . . will be jailed . . . I am so bold as to ask the government to supply an adequate number of journalists so that it [could] replace those put in jail."

Opponents of the motion concerning juries did, however, come forth with counter-proposals. Several MP's supported the idea of setting up courts in Pécs, Arad and Újvidék in addition to the five planned by the government. The majority of the Lower Chamber, however, agreed with Zsigmond Bernáth who held that if the government was only capable of setting up five courts, then "it is not advisable to oblige it to do something it is not capable of doing." In the end this meaningless argument carried the day. With a few minor, insignificant changes, Parliament accepted the government's proposal, thereby giving a free hand to the Cabinet's press policy.

Only a few months after the decision of Parliament, the need for enacting a new and more comprehensive press act was voiced in several quarters. Nográd County was first to call on the Lower Chamber to "enact legislation as soon as possible to make up for the deficiencies of Act 18 of 1848." The contradictions of and the loopholes in the Press Act of the 1848 revolution presented difficulties not only to local political entities, however. For already in the first year following the Compromise of 1867, the almost unrestricted functioning of the liberated press caused so much annoyance to government officials that in February, 1868, the Cabinet announced that in the realm of the domestic press the situation "can, on account of the deficiencies of our laws, be regarded abnormal."

Himself in the firing line of attack by the opposition press, the Justice Minister could boast with confidence before his colleagues that he had "worked out a bill concerning the press." Admittedly, the weight of this announcement was slightly diminished by the minister's comment to the effect that, as he saw it, the enactment of the finished draft would require some time. Considering, however, the "absurd state of affairs", immediate steps must be taken over a host of issues — stated the minister. To this end, he planned to inaugurate new regulations affecting such issues as parliamentary immunity, allegations made in Parliament, disrespect for laws, the importing of foreign publications (especially anonymous pamphlets), and the question of the editor's responsibility. The minutes of the Cabinet meeting failed to throw more light on points enumerated above, but from earlier statements by officials it becomes obvious that the Justice Minister intended to restrict the freedom of the press.

The attacks on the Dualist Hungarian government by the opposition press often forced government politicians to make bitter statements. This indicated that the representatives of power regarded the sharp voice of the press as licentiousness rather than a manifestation of liberty. Basically though, the party in power was seeking protection against attacks on the

law that had created the Austro-Hungarian Compromise. The proposed amendments to the press law announced by the Justice Minister probably had this purpose. The bill limiting the freedom of the press, however, never found its way to the legislators, despite several promises, made in public, by the minister himself. It was similarly in vain that speeches from the Throne inaugurating subsequent parliamentary sessions of the period stressed the need for "separate regulations to be enacted with regard to the press." For a long time the amendment of the Press Act of 1848 was not on the Parliament's agenda.

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In the last quarter of the nineteenth century, Hungary's politicians, lawyers, and journalists revealed a growing willingness to acknowledge the loopholes in the first Press Act, and increasingly urged its fundamental revamping.

Sándor Dardai, the well-known legal expert, wrote as early as 1873 that Act 18 of 1848 "met neither the ideal of legal perfection nor that of the freedom of the press." For its part, the Fourth Hungarian Lawyers' Congress set up a special section, still in that year, to debate the question of press legislation. Though a few years later the first Hungarian Penal Code significantly modified regulations concerning "press offenses," the Act of 1848 remained valid for the constitutional aspects of the freedom of the press, thereby delimiting government policy with respect to opposition and minority papers.

The failure to enact comprehensive laws to regulate the publication and dissemination of ideas in print did not, however, mean that there was no legislation in this regard in Hungary between 1867 and 1900. On the contrary. Besides the first Hungarian Penal Code, curtailments were introduced concerning advertising. Also, the institution of the "journalists prison" was abolished, the jury's sphere of authority was restricted, the right to anonymity was eliminated, the institution of "detention under remand" involving press matters was established and judicial practice was also changed. All of this indicated how significantly the issue of the freedom of the press had been complicated or even changed for the worse. In view of the above we must agree with the verdict rendered in the first decade of this century that "a basic law with so many loopholes could no longer be patched up and rendered fully suitable with minor improvements . . ."

The bill undertaking the full transformation of the press law, was introduced by the government of István Tisza. It bore the laconic title "On the Press," and was submitted to the legislature in November 1913. The new press reform was debated at various meetings. Besides the

learned members of the Lawyers' Association, publishers and journalists also took part in the preparatory work. The debates indicated how widely opinions on the government's press reform differed. The liberals firmly denounced the bill's apparent intention to curtail the freedom of the press, which they discerned by reading between the lines. Government spokesmen were claiming just the opposite: "In the provisions on the dissemination of press products and on press law liability . . . the proposal not only retains the press' privileges which have proved expedient in the past, but renders a hitherto unknown institutional guarantee for the freedom of thought . . . it significantly eases the responsibility of the intellectual workers of the press . . . also adequately providing for their interest in terms of their independence . . . it lays the noble principle of the freedom of the press on a more solid foundation." Understandably, these rather divergent standpoints do not make it very easy for posterity to form an objective opinion of the second major law of the Hungarian press.

The text of the bill itself can provide the safest point of departure for judgment. Only after an in-depth scrutiny of the Act's individual provisions can it be judged, praised or denounced.

The new press law consisted of five chapters. The preamble defined fundamental concepts. Conspicuously, this section of the Act reiterated the provisions of the revolutionary press law verbatim: "Everybody may publish and disseminate their ideas freely through the press." Obviously, by retaining this passage, the government wanted to show its respect of the 1848 tradition. Defined in the next section of the Act were the concrete stipulations that set boundaries for the realization of the principles proclaimed in the preamble. They concerned, amongst other things, conditions for manufacturing press products, regulations concerning the registering of printing shops, and the stipulation that printers are obliged to keep books in which "a record must be kept of the name of the publisher of the press product, the title of the press product, its shape, the number of sheets and copies."

The principle stipulations of these administrative provisions reformulated the rules governing the distribution of the daily and weekly papers, prescribing the authorities' permission for street distribution. Permission for such distribution of papers of nation-wide circulation could be obtained from the Minister of the Interior, whilst the head of public administration was empowered to issue permission for the sale of local papers.

This by no means marked the end of the end of the stipulations dealing with the conditions of distribution. Bearing in mind the elementary interests of politics, the legislation stipulated that "Permission shall not be issued for the street distribution of press products that violate or endanger public order or public morality, [might] . . . arouse hatred



against some minority, class, or denomination, or [which] discusses intimate family matters without public interest requiring this."

The already enumerated regulations, as well as those not mentioned here, could, upon a superficial reading, prompt posterity to infer that the Press Act of 1914 radically curtailed the previously free distribution of the printed idea, veritably restoring the system of a priori censorship that had been denounced in 1848. This was, however, by no means the case. The legislators and their political supporters pointed out, with justification, that the stipulations so fiercely denounced by the opposition had been a fact of life for decades, and all the law did was to incorporate them into the system of written legislation. In passing judgment on this legislation, we can hardly speak of the "inquisition-like" persecution of members of the press. The Press Act of 1914 did not even contain provisions that could have been used to curtail left-wing newspapers in the interwar period. At this time the leftist press was brought to heel not with reference to the provisions of the Press Act of 1914, but through lower-level regulation. But the tribulations of the Hungarian press after 1914 — through war, revolution, counter-revolution, a new war, and foreign occupations — is another theme that will have to be explored in a future study.

#### EDITORS' NOTE:

This paper's references are predominantly to Hungarian works that are rarely available in North American libraries. Those readers who are interested in these endnotes should request a copy of an annotated, manuscript version of this paper from the journal's editors.