

0340

LAW AND ECONOMICS IN HUNGARY

András Sajó and Kinga Pétervári

Central European University (Budapest) - Legal Studies

© Copyright 1999 András Sajó and Kinga Pétervári

Abstract

This chapter describes the state of law and economics in Hungary in 1996. Its main conclusion is that little work has been done in this field. Earlier it was the socialist economic system which hindered the introduction of this sort of analysis. But - contrary to our expectations expressed in the 1992 precursor of this article - the creation of a market economy did not lead to the establishment of law and economics in Hungary as a side-effect. The main factors which prevented this were the nature of the Hungarian legal system and legal thinking and the rigid divisions within the academic system.

JEL classification: K00

Keywords: Hungarian Legal System, Research, Teaching, Hungarian Academic System

1. Introduction

As you will see below the numbers of items in the bibliography of this chapter is smaller than that of the 1992 list. The main reason for this is that we have decided to change the principle upon which the selection is based. When compiling the 1992 bibliography we construed law and economics in a very broad sense, which now seems to be far too broad. The reason why this broad construction seemed justified to us back then had to do with some promising starts at the ELTE Law School, for example the extra-curriculum seminars on law and economics in 1987 held by András Sajó, which are no longer available.

2. Past and Present Situation

In the 1970s and very early 1980s the non-conceptual, 'case-by-case oriented command market system' was often referred to. This term implies a softened planned economy, in which state enterprises have some degree of legally guaranteed autonomy in executing the central plans, as opposed to the strict command economy characteristic of the 1950s and early 1960s, in which the

state exercises discretionary and direct control. However mild the system had gradually become, it was still in control of the economic regulations, thus leaving no room for considerations of efficiency analysis. Even though students of law had to study economics, the kind of economics they were exposed to was Marxist economic theory, the spirit of which is quite alien to that of law and economics.

After the fall of the communist regime, economic legislation got from the ground and an enormous number of new laws were introduced (for example the Company Act of 1988, the Income Tax Act, the VAT Act, and so on in 1989, and so on). This frenzy of economic legislation has of course given rise to serious theoretical reflections and the 1992 bibliography is the record of that. Certainly, some of that literature does not belong to law and economics proper, but it dealt with related topics and had the promise of developing into law and economics in a narrow sense. To put it briefly, it seemed to us then that the economic analysis-related legal literature of the late 1980s and early 1990s constituted the rudiments of a session study of law and economics. This expectation proved to be wrong.

The more recent literature, voluminous as it still is, shows little signs of the assimilation of the theoretical principles, explanatory models, argumentative strategies, methodological approaches, and so on characteristic of law and economics in its narrow sense. The most significant common feature of the Hungarian articles, comments and textbooks is that they focus on the mere interpretation of the new laws, the explanation of new legal institutions and the description of enforcing specific provisions. Because of that, new legal periodicals have been established in the past few years (for example *Gazdaság és Jog*, *Economy and Law*), which despite their inspiring titles show no inclination to apply the method of analysis of law and economics. We might have continued to construe law and economics broadly and put together a bibliography as long as (or even longer than) that of 1992, but this would have been thoroughly misleading.

3. Explanations for Lack of Success

Clearly, the application of the same principles of selection, which may have been charitable in 1992, would now be straightforwardly deceptive. At this juncture one may naturally inquire into the reasons of why the economics-related legal literature has failed to develop into an economic analysis of law. It seems that the main factors include the following:

(a) The predominance of traditional German legal thought in Hungarian legal thinking. It must be emphasised that this involves traditional German

legal thought. Recent developments in German legal thinking incorporating law and economics approach are little known.

(b) Not only Hungarian legal thinking as such but the whole *Hungarian legal system* follows traditional German legal thought (even though it is just as heavily influenced by Roman law). Whereas the exact nature of the connection between law and economics and the Anglo-American legal system is still a question of dispute, it seems clear that it is difficult to adopt a mode of analysis when the circumstances are quite different from those under which it has usually been applied. So the differences between the Anglo-American and the Hungarian legal systems constitute a barrier, even if it is not an insurmountable one

(c) For historical reasons, Hungarian higher education has not provided people with a sufficient background in both law and economics to be able to conduct this sort of analysis. The university system, modelled after the Russian one, preferred relatively small, specialised units of higher education. As it happens, economics and law have ended up in different institutions. Since all other scholarly institutions have been organised along the same disciplinary boundaries as higher education, the institutional separation of law and economics has spread over the whole of Hungarian intellectual life. Therefore the interdisciplinary approach of law and economics not only has little scholarly support, it was virtually defined out of existence by the rigidity of the academic system.

Furthermore, lawyers have increasing difficulties with the increasingly mathematicised economic analysis of law. As a corollary, the lack of significant legal research in the field contributes to a great extent to the poor publication list in law.

4. Prospects

Even so it does not seem justified to conclude from all this that the chances of law and economics are meagre. Integration into the international community of legal scholars has increased and the Hungarian students of law are aware of the issues which have the focus of attention of the international community. A good example to that may be that there are more articles in English on law and economics now than in Hungarian. So, whereas five years ago the great majority of Hungarian scholars had not yet heard of law and economics, this is not the case any longer. The community of Hungarian legal scholars has a fairly good basic understanding of the basic issues and approaches associated with law and economics, which seems to provide a strong enough basis for the future development of law and economics research.

Bibliography on Law and Economics in Hungary (0340)

- Ábel, István and Szakadát, László (1995), 'Csd a Piacgazdasági Átmenetben (Insolvency in the Transitional Economy)', **10** *Közgazdasági Szemle*, 942-954.
- Berde Éva (1994), 'Közjavak és Potyautasok (Public Goods and Free Riders)', **5** *Közgazdasági Szemle*, 431-443.
- Lendvai, Balázs and Nyíri, Viktor (1994), 'Az Üzlethelyiségek Bérleti Jogának Egyes Kérdései (Some Questions on Lease Rights of Retail Premises)', **12** *Jogtudományi Közlemény*, 498 ff.
- Major, Éva (1994), 'Iparjogvédelem Gazdaságtana (Economics of Intellectual Property)', in X (ed.), *Iparjogvédelmi Kézikönyv* (Handbook of Intellectual Property), Budapest, *Közgazdasági és Jogi Könyvkiadó*, 188-197.
- Mátyás, Antal (1996), *A Modern Közgazdaságtan Története* (History of Modern Economics), Budapest, Aula.
- Mátyás, Antal (1996), 'A Hagyományos Közgazdaságtan Bírálata és Kutatási Körének Kiszélesítése az új Intézményi Iskola Képviseli Részéről (Criticism and Extension of the Scope of Research of Traditional Economics as Carried out by the Neoinstitutionalists)', **7-8** *Közgazdasági Szemle*, 614-628.
- Szakadát, László (1991), 'A Tulajdonjogok Problémája a Bankrendszerben (Problems of Property Rights in the Banking System)', in X (ed.), *Ki Fizes a Végén?*, Budapest, MTA Közgazdaságtudományi Intézet.
- Szakadát, László (1995), 'Ronald Coase és a Közgazdaságtan Módszertana (Ronald Coase and the Methodology of Economics)', **11** *Közgazdasági Szemle*, 1044-1051.
- Urbán, László (1995), 'Közcélú Szabályozás Hatáselemzése Public Policy Elemzés (Efficiency Analysis of Public Policy (Public Policy Analysis))', **3** *Közgazdasági Szemle*, 270-278.