THE CARTEL POLICY IN THE CARTEL LAW SPECIAL ATTENTION TO THE FIRST CARTEL ACT IN HUNGARY

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A very specific area of Cartel Law was the Cartel Policy Law, which was in close connection to the state's power to oversee cartels, which meant nothing more or less than the protection of economy and public welfare. This procedure included the ordinary fining procedures.[1]

According to the Act XX of 1931, only those could be punished by ordinary fines who failed to introduce the Cartel Settlement or the order, and did not provide ample reason for this omission, who did not obey the appeal for the examination of the case of the Secretary of Economy, all in all, failed to fulfil the duty to provide data, or obstructed the fulfilment of the appeal.[2] Those who carried out appeals or settlements which they were forbidden to do so by the Cartel Court, or manifest behaviour or carry out acts forbidden by the Cartel Court are contained within the same framework.

In the first two cases, the assigned courthouses were required to see the case through, which started the procedure according to the request of the legal director of the treasury based on the proposal of the secretary. In the third case, the Cartel Court was privy to the case, for it could establish a fining ex officio. The Cartel Court was assigned to the case if the fine was established repeatedly but unsuccessfully for a second and third time according to the motion of the Secretary of Economy, or in another lawsuit of general interest according to the motion of the legal director, if they wished to suggest proscription from trade or industry permanently, or for a pre-established period of time.[3]

According to Harasztosi, none of his cases in fining procedures only the lawsuits concerning ordinary fines had any actual significance, especially if the presentation of a document was forgotten or was filed in late; or in cases filed for omission of compulsory data presentation. In cases filed for the failure to oblige presentation duties, the matter of penalty fell under the rights of the assigned secretary. The conformations filed to the

[1] Research was supported by the GVH. Harasztosi Király Ferenc: *A kartel*. Grill Károly Könyvkiadóvállalata, Budapest, 1936. 546-547.

[2] Lőw Tibor: A gazdasági versenyt szabályozó megállapodások bemutatásáról. *Magyar Jogi Szemle*, 1935. XVI. köt. 350.

[3] Lőw, 1935. 351. Dobrovics Károly: A karteljogi rendbüntetés gyakorlata. *Közgazdasági Értesítő*, 1934. XXIX. 33. sz. 10., Dobrovics Károly: A karteltörvény három évi gyakorlata. – A kartelszerződés érvényességi kellékei. *Közgazdasági Értesítő*, 1935. XXX. 4. sz. 9.

secretary had no such effect which vindicates the affair, the contestants could not achieve more with it than saving themselves from paying the ordinary fine.[4]

In fining procedures started at courts of justice, the court had to used the rules in in cases of trade delinquencies. This order of 68,400/1914. I. M. had to be taken into account.[5]

In a case of ordinary fining procedures, no imprisonment could be ordered as a main rule, for the fine levied due to the failure to present a document could be transformed into custodial sentences. There were specific cases where the fine could not be collected, but even then the Act had to specifically allow this transformation.[6]

The legal director asked for the actuation of the procedure, and presented the Mihály Schwarz, Mihály Menzer and Ignácz Ádler, timber merchants from Kiskunhalas, made an agreement in 1933 according to Pharagraph No. 1 of the Cartel Procedural Law concerning timber, terracotta bricks and pottery products. They introduced the cartel contract to the Secretary of Trade on the 12th April, 1933, however, the list of pre-determined prices, which should have been one of the appendices of the contract, was only presented on the 4th May, 1933. In this case, the participants were late, and didn't even provide a justification for this. According to this, the Secretary of Trade ordered the legal directorate to actuate a case due to the failure to present a document. According to decree No. 68400/1914. I. M., the legal directorate asked the Royal Court of Kalocsa to actuate a case against the aforementioned companies.[7]

The fining procedures was heard out by one of the orderly judges of the court of justice, who, as the presenter of the case and put the examination and trial aside to direct the attention of the complainants that the justifying statement had to be presented within 15 days after the appeal to do so was received. After this, the court decided on the appropriate penalty or the annulment of the case by takin the presented documents and the officially imparted information. The warrant established during the closed hearing was delivered to both the complainants and the royal legal directorate. According to this, the aforementioned decree presented role of public accuser to the royal prosecutor, but based on legal practices, this position was fulfilled the legal director in such cases.[8]

In the aforementioned lawsuit actuated by the Court of Kalocsa, the participants were asked to provide a document in proof.[9] According to this, the complainants provided the document in proof, with which they wished to verify that they did not fail their duty to present documents, established in the Act.[10] According to their document of proof, their opinion is that there're wasn't no sin of omission, for they didn't establish the appendix of the contract when they signed the contract, and after it was signed, they introduced it to the Secretary for inspection within the deadline.[11]

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[4] Harasztosi, 1936. 548., Lőw, 1935. 352.

[5] 1931:XX. tc. 15. §.

[6] See: Act X of 1928 article 16.

[7] Cg. 187/1933. sz. BKML. VII. 2. c. See: P. VI. 9489/16/1934 BFL, 13. P. 46341/3/1933. In: 2746/1934 BFL, Cg. 35030/9. sz. In: 1158/1934 BFL., Cg. 33989/6/1932 In: 920/1933 BFL., Cg. 34592/4. sz. In: 4913/1933 BFL.

[8] Harasztosi, 1936. 549.

[9] Cg. 187/3/1933. sz. BKML. VII. 2. c. See: 13. P. 46341/3/1933. In: 2746/1934 BFL

[10] Cg. 187/1933. sz. BKML. VII. 2. c.

[11] Cg. 187/1933. sz. BKML. VII. 2. c. See: Cg. 187/4/1933. sz. BKML. VII. 2. c., Cg. 35030/9. sz. In: 1158/1934 BFL., Dobrovics, 1934. 14.

Within 8 days after the delivery, they could turn to the assigned High Court against the decision. This affected the decision by having a postponing effect. Any individual who was thwarted in validating his or her individual rights in a lawsuit of the first or second degree, could file a document of proof. However, one could not file a document of proof because of an omission, the application f or the document of proof had to be filed for the court of justice within 30 days of the established day of the trial or the expiration date of the failed legal remedy.[12]

The formulaic rules of the application was under the effect of Paragraphs 464-466 of the Criminal Code of Procedure. It had to be filed at the courthouse where the complainant failed to keep to the deadline. This application had to contain the reason for the delay and the justification information and data, with the evidences that the court needed also had to be enclosed. If the matter was of the omission of an act of legal remedy, then the appointed court of the first degree turned the application over to the assigned higher court. In cases where the court made place for the document of proof, than, at the same time, also acted for the substitution of the omitted documents. The Court of Appeal had the power to come to an absolute decision in the case.[13]

In the lawsuit filed against the companies Nagykovácsi Lime Factory Corporation and the Lime and Grout Sales Corporation, the complainants presented in their document of proof that the debated agreement was not made on the 20th March, 1933, for on this date, they only signed the draft of the contract. The court did not accept the statement presented in the document, and fined the complainants for breaking Paragraph No. 14 of the Cartel Procedural Law.[14]

To find out the bearings of a case, the court could order an examination, if deemed necessary. In this case, the court selected an investigator from its own apparatus of judges or notaries. The duty of the investigator was to describe the bearings of the case, and based on this, the court of justice could order the termination or the continuation of said legal action. In order to do so, the investigator interrogated the complainant, and acquired all documents and evidences necessary to clarify the bearings of the case.[15]

The rules of Bp. were deemed valid during the interrogation of witnesses and experts.[16] The court or the investigator could absolve any business associate from clarifying any circumstance which was not deemed vital to the examination or the case, yet would result in business secrets that are not necessary for the trial to come to light. If the investigator deemed it necessary, he could ask for a court order for an audit. This procedure was only valid if it was deemed necessary to ascertain the omission or act under investigation. If the procedural step could only be fulfilled by the means of writ, it was necessary to turn to the assigned County Court. The court of justice could order the investigator to continue or terminate the investigation.[17]

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[12] Harasztosi, 1936. 549.

[13] Ibid. 549.

[14] Cg. 35537/3. In: 5812/1934. BFL. Lőw, 1935. 354. Dobrovics Károly: A karteltörvény három évi gyakorlata. *Közgazdasági Értesítő*, 1935. XXX. 3. sz. 12., Dobrovics Károly: Bírói gyakorlat kartelügyekben. *Közgazdasági Értesítő*, 1934. XXIX. 47. sz. 13.

[15] Harasztosi, 1936. 550.

[16] Cg. 35030/9. sz. In: 1158/1934 BFL. Dobrovics, 1934. 15.

[17] Harasztosi, 1936. 550.

To uphold common welfare, the legal directorate could oversee the inspection, and because of this, it could examine the investigation documents, and could file a proposal to the investigator to continue or terminate the investigation, or could file a proposal to the court of justice to debate the investigator's regulations. The latter two was within the complainant's rights, as well, who could select a defence attorney even during the investigation, whose rights were also determined by the Bp. The defence attorney could only be one of the practicing legal experts, one who was registered at one of the Bar Associations.[18]

The complainant had no right to intervene or propose during the examination or the rest of the procedure, could not form a statement or get legal remedy. However, he or she was free to introduce any circumstance to the investigator, the court of justice or Court of Appeal which could move the examination of the omission or illegal activity forward or assists the verification. If he was not selected to appear as witness, he could press for this, and the court of justice and the Court of Appeal was obliged to enact this, with the added burden of nullifying.

After the examination was finished, the investigator sent the documents to the court of justice. Based on these documents, the court could order the termination or the continuation of the legal action. The court stated the termination of a legal procedure in a warrant. In any other case, a term had to be set in order to continue the case orally. In cases when the act or malpractice fell under the effect of criminal law, the legal action had to be transferred to a Criminal Court.[19]

A case was filed against the Chinoin Pharmaceutical and Chemical Factory Corporation for breaking Paragraphs No. 2 and 14 of the Cartel Procedural Law, and thus committing cartel malpractice, and it took place at the court of justice of Budapest, where the court of the second degree reached a warrant, specified as No. 35779/2, but was turned to a higher court by the legal directorate, yet it was rejected by the Court of Appeal, and in their warrant, they pointed out Paragraph No. 1 of the 5th Act of 1878, according to which an act can only be considered a crime or a delinquency if the Act considers it as such.[20] In such cases, Criminal Courts should proceed.

The court could order the legal action to move forward, if the bearings of the case were clear. Before this, the complainant was asked to make a statement with a 15-day deadline.[21]

In the warrant ordaining the trial, the act or malpractice encumbering the complainant had to be stated, with the exact place of a specific provision under the law.

At the same time, the court of law was assigned with the task to provide a warrant to appear to all contestants, witnesses, and experts. They could issue a warrant to appear for even those participants who were announced after the beginning of the trial by any of the contestants. The complainant had to be warned that if he or she chooses not to appear, this non-attendance does not obstruct the continuation and discussion of the case, he was free to hire a legal representative and take place in the case.[22] The arrival of the subpoena and the beginning of the trial had to be at least 15 days apart. During trials, if the complainant was a natural person, he or she could not be apprehended, committed into custody or put

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[18] Ibid. 551.

[19] Ibid. 551.

[20] P. VI. 8146/4/1934. BFL.

[21] Harasztosi, 1936. 551.

[22] Cg. 187/2/1933. sz. BKML. VII. 2. c.

in detention awaiting trial. This was a significant difference between this and a criminal legal action.[23]

The beginning of the trial was marked by reading out the warrant which ordained it, and after that, the judge summarized the case. The trial could be held even if the contestants failed to appear. The witnesses and experts could be ordered to step forward, and, in order to do so, the trial could be interrupted for a few hours.

After this, the president could interrogate the present complainant in connection to the act or malpractice, and the members of the judicial board, the president of the legal department and the defence attorney could ask their questions.[24] After these, verification was recorded.

After verification was finished, the president of the legal department introduced his proposal to the court, followed by the defence attorney and, finally, the complainant. There was no place for any other discussion in this section of the legal action. In cases where the contestants failed to appear, the judge introduced and described the evidence.[25]

The publicity of the trial was under the rules written down in Bp. The court could order the exclusion of the public in order to preserve business secrets. The rules written down in Bp. were also valid in connection to the development of the trial and maintaining order.[26]

During the fining procedure filed against the Textile Factory of Győr Corporation, the Textile Industry of Soroksár Corporation, and Mózes Freudinger and Sons corporation, the royal court of Budapest considered the minutes of the 18th February, 1931 as evidence, and according to this, they determined that the complainants were present on the general assembly on the raw material agreement, and these individuals "report their inclusion to the raw material agreement, since up to that point, their inclusion was based on gentlemen's agreement".[27] The court considered this unwritten gentlemen's agreement to fall under Act No. 1 of the Cartel Procedural Law.

The court judged the circular letter on the same merit, when it stated that it is a regulation in itself that should have been presented to the Secretary of Trade, "for it obviously serves the purpose that the individuals who wrote it down and signed it could sell their merchandise on a higher price, and this, limit the economic competition in connection to the formation of prices".[28]

The court considered the fact that the agreement formed by Rezső Vágó Corporation and the Hungarian Timber Corporation was not presented to the court in time for it only fell under the effect of Paragraph No. 1 of the Cartel Procedural Law after the P. IV. 5261/1932 verdict of the Cartel Court as an extenuating circumstance. The court stated that "the decrees of the Cartel Procedural Law are not only valid for cartel contracts, but also establish the duty to present any sort of agreement which, in connection to merchandise, establishes any sort of limitation or regulation duty to the economic competition, both in

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[23] Harasztosi, 1936. 551.

[24] Ibid. 552.

[25] Ibid. 552.

[26] Lőw, 1935. 354.

[27] Cg. 35504/6. sz. In: 4681/1934 BFL.

[28] Cg. 33989/6/1932 In: 920/1933 BFL.

the matters of circulation or price formation, so, even a delivery contract can fall under the regulations of Act No. 20 of 1931[29]

After the trial was finished, the court of justice could either terminate the proceedings or could determine that the complainant was guilty and described the appropriate punishment in its warrant. In both cases, the order needed reasoning. The proposal of the legal director did not bind the court in any way. The fine had to be executed with a 15-day deadline.[30]

The legal director established a similar procedure against the Sándor Angyalfi Asphalt and Tar Industry Corporation, János Biehn, Grozit Asphalt and Tar Chemical Products Corporation, Tivadar Helvey, DSc, Manó Kallós Ferenc Kollár and Co. Hungarian Asphalt Corporation, Posnánszky and Strelitz and Hungarian Cover Panel Factory purchaser and sales cooperative due to cartel elision[31] The royal court of Budapest stated in its warrant that the complainants are guilty, for the agreement which elongated the contract that expired on the 28th February, 1934, was only presented after the deadline, so, belatedly.[32] The court stated that "according to Paragraph No. 2 of the 20th Act of 1931, any agreement which modifies or regulates the economic competition, modifies and elongates he original, or any necessarily written agreement that falls under Paragraph No. 1 of the Cartel Procedural Law should be presented within 15 days after the establishment of the agreement. According to this mandate, it is not enough to just report the agreement, but a written form of the agreement had to be filed for the Royal Secretary of Trade of Hungary for registration."[33]

In another case, the court of justice of Budapest terminated the procedure against the complainants, for it turned out that the agreement was presented before the deadline, since the court established that the formation of a cartel agreement is, by definition, the moment when every participant signed the contract.[34]

To sum it all up, according to the sources available in archives, most cartel cases were judicial proceedings. It can be stated that the special nature of the rules of these proceedings were unique in the Hungarian Code of Civil Procedures, for the civil courthouses made their decisions in a case of civil law by using the rules of the Code of Criminal Action.

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[29] Cg. 34592/4 In: 4913/1933 BFL. Lőw, 1935. 355

[30] Harasztosi, 1936. 552. See: 13. P. 46341/3/1933. In: 2746/1934 BFL, Lőw, 1935. 353.

[31] Cg. 35891/3. sz. BFL. 11543/1934

[32] Cg. 35891/3. sz. BFL. 11543/1934

[33] Cg. 35891/3. sz. BFL. 11543/1934, Dobrovics Károly: Karteljogi kérdések. *Közgazdasági Értesítő*, 1934. XXIX. 35. sz. 14.

[34] Cg. 35547/12/1934 BFL