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Definitions and Interpretations of *Stellionatus* in 18th Century Hungarian Law

When defining *stellionatus,* just like in the case of other legal institutions, one should interpret the legal term by proceeding – as far as possible – from its original meaning as a starting point and not by "thinking backwards" and attempting to unravel its history proceeding from some present-day criminal offence. Although the latter approach may be useful dogmatically from the aspect of statutory law, it is problematic, since it does not have regard to the historical development of the term and therefore that kind of approach is often a simplifying one from the aspect that – while concentrating on a criminal offence existing today – it may disregard the elements that cannot fit into the present-day statutory elements of the offence of fraud. Therefore, for a legal historian it is worth examining when this term appeared in Hungarian law, what content it had at that time, how it was interpreted, then how it was translated during the formation of Hungarian legal terminology. It is through tracking this development that one can present the conceptual changes the term had gone through by the time the statutory elements of fraud were formulated by the codification of criminal law in the 19th century.

1. Definition of stellionatus by translation and word explanation

Defining *stellionatus* by way of translating the term may seem easy: fraud; this word is given for it, for instance, in *Pallas's Great Encyclopaedia (Pallas Nagy Lexikona),* which – besides the Latin origin of the word – also indicates that it is a *crimen.*[1] The term is already present in the first Hungarian–Latin dictionary, which defines *stellionatus* as: "Fraudulence in fraternizing, treachery and other forms of fraudulence in contract, when something is sold to two persons."[2] Likewise, the most widespread 19th century dictionary provides not a mere translation, but also an explanation: "any form of fraud or bribery, forgery that is not separately specified by the Act".[3] This suggests that *stellionatus* was a subsidiary statutory offence that covered those fraudulently committed acts that were not defined as a separate delictum and included some types of forgery as well. However, these definitions are useless in a legal sense and imprecise with regard to the era they refer to, therefore explaining the exact content of the legal institution is a lot more complicated than this.

At the time of the publication of the Finály dictionary, criminal offences had already been codified by Act No. 5 of 1878, and under the modern principle of *nullum crimen sine lege,* only conduct that was punishable under the law was deemed a criminal offence. However, § 379 of the Criminal Code contained a provision relating not to *stellionatus*, but fraud instead: "Fraud shall mean when a person uses deceit, deception, or trickery for unlawful financial gain either for himself or another person, and thereby causes damage." The further sections of the Act lay down details of other forms of conduct by which the offence may be perpetrated, then the following chapters deal with forgeries and fraudulent and culpable bankruptcy. Therefore, the first Hungarian Criminal Code did not take one closer to the interpretation of the term *stellionatus*, one had to examine an earlier period.

Early 19th century Hungarian legal terminology had not found an appropriate term for each situation, this gap was attempted to be bridged over for the first time by the *Dictionary of Jurisprudence (Törvénytudományi műszótár)* published by the Hungarian Learned Society (Magyar Tudós Társaság, i.e., the Hungarian Academy of Sciences) in 1843, pursuant to which the *crimen stellionatus* is nothing else but the crime of trickery and fictitious contract.[4] As opposed to this, in the first contemporary work of criminal law literature written in Hungarian, *crimen stellionatus* means the crime or felony of deceitfulness, and the same manual mentions so-called world-fraud (fraud committed against a large group of people) and tricky fraud as identical terms.[5] The use of terminology is not stable, since although the editors of the legal technical dictionary also had regard to works containing the terms listed above when compiling their volume,[6] they announced other new alternatives for *stellionatus*. Being aware of the fact that Chapter XVIII of the draft Criminal Code completed in the same year was entitled *On Fraud,* we are left with the sole logical conclusion: namely, it was on purpose that the creators of the dictionary did not use the word "fraud", since its modern concept did not perfectly match the meaning of *stellionatus*. Therefore, one has to go back further in time to find the explanation.

2. Stellionatus and other fraudulent behaviours in the old Hungarian legal sources

The examination of the old sources of our law soon produces a negative result. Neither our laws before 1848, nor the *Tripartitum* contain *stellionatus*, although they deal with other fraudulent behaviours in several cases.[7] Proceeding from the concise definitions mentioned above, our investigations may be focussed on any shrewd, fraudulent action that results in deceiving others, regardless of whether it causes harm or benefit to anybody or not. It is worth briefly reviewing forgeries as well.

In *Corpus Juris Hungarici,* one may read about forgers of charters and seals in several places. By them our laws meant not only the writers of falsified letters and the carvers

of false seals, but also persons who – while being aware of the falseness – used them. These felonies qualified as instances of disloyalty *(nota infidelitatis)* and were punishable by death and forfeiture of property. They were later removed from this most serious category of offences by Acts No. 11 and 12 of 1723, however, in addition to compensation for the harm caused, these Acts still held out the prospect of capital punishment for the makers of false charters and seals as well as for those who knowingly used such false charters in law courts if by this "they lay in ambush to take the life of others". Those who caused harm only in the property of others were punishable by dishonour apart from being ordered to pay financial compensation. The makers of false passports or private documents were to be punished less seriously based on judicial discretion.

Abuse and falsification of the standard units of measurement was also classified as a public criminal offence under the Act No. 16 of 1588 and later the Act No. 31 of 1655, amending Article 6 of Sigismund's Decree (II) of 1405. This regulation was supplemented in the 16th and 17th centuries by numerous statutes of such content of the counties and free royal boroughs.[8]

In the *Tripartitum,* apart from the acts of forgery related to cases of disloyalty, one may also come across transactions concluded by cheating others – more specifically, contracting parties or relatives – and other insincerities providing the fraudulent person with a benefit. These acts are not restricted to depriving a sibling of inheritance *(proditio fraterni sanguinis)* or *larva,* in other words, acting while impersonating someone else.[9] The *Tripartitum* mentions fraudulence *(fraus)*, acting in a fraudulent manner *(fraudulenter, fraudulenta modo)* by pretending and simulating *(liete et simulate)* and treachery *(dolus)*, and acting treacherously *(dolosus)*, machinating treacherously *(dolosa machinatione)*.[10] However, the *Tripartitum* does not lay down a punishment for committing these acts in every case, such acts may also result in civil sanctions merely (e.g. returning the estate). On the other hand, other acts are judged more seriously and the person carrying out the act is often punished (apart from pecuniary sanctions – such as deprivation of inheritance) by dishonour or even more severely. As a matter of course, the norms of the *Tripartitum* cannot be considered by projecting our present-day approach on them – sharply distinguishing between private law and criminal law –, since by that time no distinction had been made between these branches of law. Nevertheless, what is of key importance with regard to our topic is the following: the above-mentioned acts realized in a similar manner are not summed up under one heading as fraud (or types of fraud).

The first substantial national source in Hungary containing *stellionatus* is the *Praxis Criminalis (Forma processus judicii criminalis, seu Praxis Criminalis),* originating from the *Ferdinandea (Newe peinliche Landtgerichtsordnung in Oesterreich unter der Ennß)* and its translation into Latin at the end of the 17th century. However, this work never became an officially recognized source of law in Hungary; therefore, beginning from the following century, it spread only by way of customary law and it could not generally be applied in criminal cases involving noblemen. Nevertheless, it had a great impact on judicial practice and evolving Hungarian criminal jurisprudence.

Article 94 of the *Praxis Criminalis* contains fraud or *stellionatus*, more specifically, special deceitfulness or fraudulence that cannot be foreseen or prevented even by a prudent person: *"De fraude astuta, et iniqua, quam etiam prudens quispiam praevidere, aut praecavere non possit, seu Stellionatu"*.

Pursuant to the further sections of this article, the essence of *stellionatus* is malice and deceitfulness, which is being spread by wicked people and so increasing continuously and having so many types that it is almost impossible to find names for all of them. In spite of this, the *Praxis Criminalis* enumerates the main methods used by fraudsters in their acts: under the pretext of exchanging or counting money they hide the money in their sleeves, they replace one of the pledged assets secretly, sell the same thing several times, demand the already repaid debt once more and "riskily, they give their own name in such a way so as to prevent the real contracting party from being revealed, thereby deceiving the third party".[11]

These dangerous fraudsters were treated more seriously by the *Praxis Criminalis* than ordinary thieves, and they could be punishable even by death. During sentencing the court had regard to the extent of wickedness and the harm caused. As for the applicable procedure, the rules pertaining to theft and forgery were to be followed.

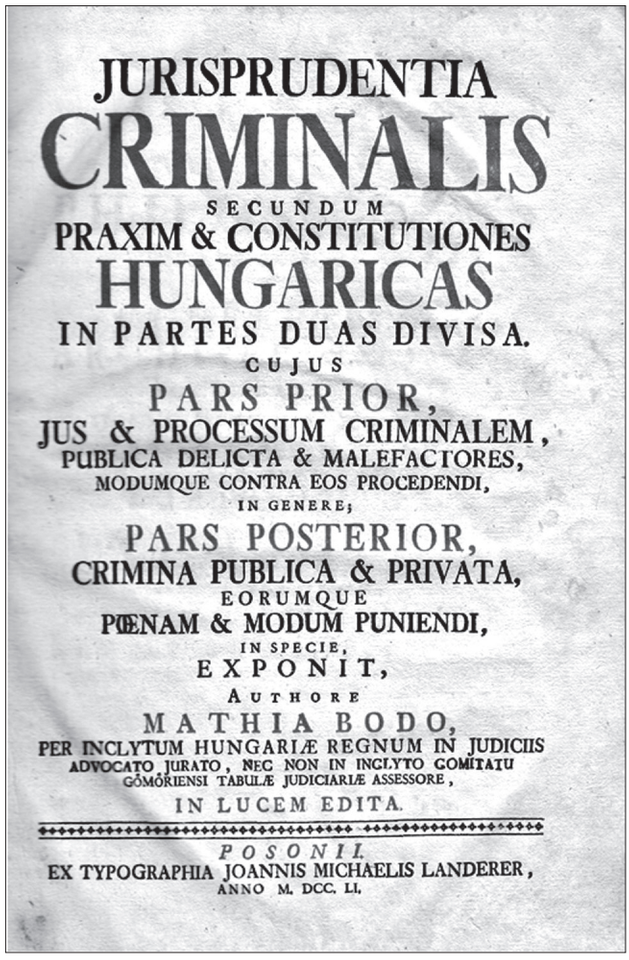
However, *stellionatus* did not include forgeries: money forgery, seal and letter forgery or the forgery of scales, measures and other items used in trade. These crimes were regulated in separate articles.[12]

3. The 18th century Hungarian criminal law literature and the 1795 draft

The 18–19th century's Hungarian criminal law literature contains several, partly conflicting views on the nature of "fraud". Some of the works do not even mention *stellionatus* at all, instead the diverse cases of fraudulence – partly already covered by the *Praxis Criminalis* or national sources of law – are enumerated under the heading *falsum*, *crimen falsi.* Researching the works of early legal scholars may be of interest also for the reason that at the time one may only speak of the evolution of the national science of criminal law and its literature and, therefore, these works constitute the first steps in developing criminal law dogmatics as well as efforts at constructing and defining legal terms earlier missing from Hungarian law and at making distinctions between different crimes from a theoretical aspect.[13]

The term *stellionatus* is mentioned and discussed by Matthias Bodó in Article XCIX of his work published in 1751.[14] However, in his work dating from nearly the same period, Stephanus Huszty merely discusses the cases and definition of *crimen falsi,* he does not even make mention of the term *stellionatus*.[15] Similarly, Matthias Vuchetich – in his textbook-like work written at the beginning of the 19th century and manifesting familiarity with modern academic

literature – also primarily discusses *falsum*, in addition to which a special delictum called *dolosa decoctio* appears.[16] Then the term *stellionatus* occurs again in the criminal law textbook authored by Pál Szlemenics, then later in the one written by Tivadar Pauler. The former author merely mentions the term while citing Matthias Bodó,[17] whereas the latter uses the term while expounding on "fraud".[18] It is also worth referring to the fact that at the beginning of the 19th century – due to the peculiar approach applied in the era –, some private offences were discussed in textbooks on private law, some of which also contained the term *stellionatus* in connection with masqueraders *(personae larvata)*.[19]


JURISPRUDENTIA
CRIMINALIS
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PRAXIM & CONSTITUTIONES
HUNGARICAS
IN PARTES DUAS DIVISA.
CUJUS
PARS PRIOR,
JUS & PROCESSUM CRIMINALEM,
PUBLICA DELICTA & MALEFACTORES,
MODUMQUE CONTRA EOS PROCEDENDI,
IN GENERE;
PARS POSTERIOR,
CRIMINA PUBLICA & PRIVATA,
EORUMQUE
PŒNAM & MODUM PUNIENDI,
IN SPECIE,
EXPONIT,
AUTHORE
MATHIA BODO,
PER INCLYTUM HUNGARIÆ REGNUM IN JUDICIIS
ADVOCATO JURATO, NEC NON IN INCLYTO COMITATU
GÖMÖRIENSI TABULÆ JUDICIARIÆ ASSESSORE,
IN LUCEM EDITA.
POSONII,
EX TYPOGRAPHIA JOANNIS MICHAELIS LANDERER,
ANNO M. DCC. LI.

However, the above authors' writings overarch more than one century; therefore, one cannot expect them to present a unified approach, and in the meantime criminal law also underwent significant changes, let us just think of its codification. Therefore, the present paper merely ventures to provide an overview of works dating from the 18th century. Comparing these works with each other and the sources of law of the era can no longer be subject to the criticism of anachronism.

Matthias Bodó defined *stellionatus* as an act of particularly wily fraudulence that cannot be foreseen or presumed even by a prudent person. This definition is literally identical with the one contained in *Praxis Criminalis,* only the formulation of the start of the sentence being slightly different *"De stellionatu, seu fraude specialiter astuta, …"*[20] Further he lays down that, in the case of *stellionatus,* one may speak of the most scheming form of fraudulence, and he discusses it as a special type of crimes. By it he means crimes that do not come under other titels. As an explanation he states that in cases of fraudulence of such magnitude – or even the greatest magnitude – a criminal court should proceed, while a claim pertaining to ordinary fraudulence could be filed with a civil court. So, in his case one may already discern that the act may be approached either from the aspect of civil law or criminal law, which aspects may be separated from each other.

It is also worth examining what is meant by crimes lacking any other title *("altero titulo Criminis deficiente")*. Although the author enumerates the acts in the case of which *stellionatus* may be established, obviously, numerous cases termed differently and discussed under a separate name in his work do not belong here. Such are in particular *falsum* or *crimen falsi,* which are explained in Article XCI and which are defined in general as acts of intentionally distorting the truth with the aim of causing harm or injury to the rights of others and which are punishable under public law.[21] However, he mentions under a separate heading false judges, lawyers, witnesses and accusers,[22] the makers of false charters and seals,[23] the falsifiers of scales, weights, measures, etc.,[24] as well as masked persons.[25] Therefore, these types of *crimen* specified separately do not come within the notion of *stellionatus*.

At the same time, apart from the above, Bodó enumerates the following cases where *stellionatus* may be established: if a person, concealing an earlier commitment, repeatedly pledges an already pledged thing or pays with a thing that has already been handed over; or – under the pretext of changing money – provides in exchange something lacking in value or something false; or sells the same thing several times in such a manner that he hands over the item being shown exchanging it (invisibly) for something lacking in value; or demands an already paid debt; or – concealing his own name – adopts someone else's name and takes out a loan under that person's name, or deceives or causes harm to the contracting party in some other way. In addition to the above, under a separate point he also mentions as coming within this category the case where a person, temporarily concealing the illness or disability of weakened livestock, sells the animals as if they were healthy and flawless.[26]

With regard to punishment, the first part of the description is literally identical with that contained in the *Praxis Criminalis*: in serious cases the perpetrators of the act may be punishable even by capital punishment and they are to be judged more harshly than common thieves. However, this rule is supplemented in sections V–VI by the provision that, where the act is committed in an ordinary manner, the perpetrator is to be ordered – based upon judicial discretion – to simply refund the money, to be deprived of the fraudulently sold assets and to compensate for the damage

caused. However, where the crime is committed under circumstances involving an oath, then the perpetrator is to be punished additionally by bloodwite *(homagium)* "due to his audacity", or some other form of serious punishment may also imposed on him according to the severity and qualification of the act.

In connection with the imposable punishment, Bodó points out two cases of *stellionatus* specified by him as separate categories, concerning which he states that they fall under *calumnia*, or *larva,* and that they are punishable accordingly. With regard to those demanding an already repaid debt, he cites *Tripartitum,* Chapter II Title 70, and *Directio Methodica,* Chapter 9 Question 16, on *calumnia* and its punishment. As for those who take out a loan under another person's name, he points out – referring back to an earlier article on this in his own work – that they are punishable as thieves or masqueraders according to the qualification of the crime. At first glance, these types of conduct seem to constitute such delicti that also appear as separate statutory offences. However, upon a closer look, these individual cases coming under *stellionatus* are merely extremely similar to the definitions of *calumnia* or *larva* and therefore they are subject to the same punishment. For instance, with regard to the former, the *Tripartitum* and *Directio Methodica* merely mention the case of demanding an already cancelled debt, which is although very similar, but not the same as suing someone on the basis of a debt that has already been repaid. Likewise, when providing a definition for *larva,* Bodó specifically mentions those who push their way into another family under an adopted fictitious name and cause some wrong (for example, by acquiring an inheritance, the family's assets, or privileges for themselves).[27] This is related to the act classified as *stellionatus* only broadly. Taking out a loan under the name of another person does not necessarily mean that the perpetrator lives under a false name permanently; this kind of fraud may also be committed in the manner that the person in question conceals his identity only for the time of the transaction, for instance, to prevent tracking him later. Moreover, a loan of however high an amount cannot be compared with a situation where the name and fortune of noble families are at stake or wronged due to a masquerading usurper – in other words, a difference may also be observed in the extent of harm and the circle of victims. However, since these forms of perpetration are noticeably related, the sanction corresponds not to the punishment imposed for *stellionatus,* but to the penalty for *calumnia* and *larva*.

As opposed to Bodó, Stephanus Huszty does not use the term of *stellionatus* at all, neither this, nor *fraus astuta* may be encountered in his work. Title XXXI of his book is *"De crimine falsi"*.[28] He defines *falsum* here in both a broader and a narrower meaning. According to his broader interpretation, perfidy (*falsum* in general) means anything that is not true, even if it happens not as a result of the fraudulence or intention of a person, while in a narrow sense, the crime of *falsum* (in fact, *crimen falsi*) covers acts that are punishable under the law. Under this category he classifies perjury *(perjurium),* maskerading *(larvata persona),* the audacious denial of consanguinity up to the fourth generation (*temera negatio consanguinitatis carnalis intra quartum gradum)*, blood betrayal *(proditio fraterni sanguinitatis)*, as well as the making of false instruments and false seals *(confectio falsorum instrumentorum, falsorum sigillorum)*, and the intentional use of false instruments *(usus dolosus falsi instrumenti)*. However, this enumeration is not exhaustive; in all probability, he only lists the most frequent cases of *crimen falsi*, as in the next paragraph he provides a more general definition for these cases: *"Definitur crimen falsi, quod sit veritatis immutatio, in alterius praejudicium facta, publico jure poenaliter prohibita."* Then expanding this definition, he provides further details, namely, that the preconditions for establishing the commission of *falsum* include that there be intent *(dolus)*, distortion and changing of the truth *(veritatis immutatio),* and causing harm to others or, at least, causing injury to the rights of others *(damnum alicui, aut saltem praejudicium inferatur)*. However, before expounding on all this, he deals with the fourth element of the definition and remarks that *falsum* – as a public offence – covers only acts that are prohibited under the threat of punishment *(poenaliter prohibita)*. Lying, therefore, does not belong here, as lying in itself is not prohibited by law and, thus, it is not regarded as coming under *crimen falsi*.

During the later codification of criminal law in the 19th century, Huszty's definition of *crimen falsi* was compared with the explanation of *stellionatus* in Matthias Bodó's work.[29] However, this comparison is hardly tenable, since its formulator does not seem to have considered that Bodó also mentioned *crimen falsi,* moreover, with content rather similar to that described by Stephanus Huszty. Bodó also defines *falsum* in both a broader and a narrower sense, the broad definition including everything that is not true, while in a narrow sense, crimes of *falsum* include acts that are punishable under the law.[30] Both the enumeration of cases belonging here – from oath-breaking to blood denial – and the definition of the elements of the criminal offence *(dolus, veritatis suppressio, damni, aut, praejudicii illatio)* clearly correspond to those presented by Huszty. Therefore, only one conclusion may be drawn from the above, namely, that only one of the two 18th century authors mentions *stellionatus* as a separate criminal offense.

From the end of the 18th century, it is also worth mentioning the draft legislation of 1795 on criminal law,[31] a peculiar feature of which lies in the fact that although it contains *stellionatus*, it identifies it with *falsum*. One may recognize the legislator's endeavour in codification: he formulates a general, but too broad definition for fraud (changing or concealing the truth through any instance of perfidious cunning aimed at deceiving or causing harm to others), and right away he also questions it by attempting – although he indicates that this may be impossible – to enumerate all the types of fraud from a) to v) in an exhaustive manner.[32] Therefore, when establishing the statutory elements of the offence, the makers of the draft do not reach a higher level of abstraction, moreover, compared to the authors presented earlier it may even be evaluated as a backward step that they blend *stellionatus* with *falsum*, thereby rendering it more difficult to clearly delimit the criminal offences in question.

Notes and references

[1] *A Pallas Nagy Lexikona: az* összes *ismeretek enciklopédiája [Pallas's Great Encyclopaedia: The Encyclopaedia of All Knowledge*]. Vol. 3. Budapest, 1897. Pallas, 204.
[2] Páriz Pápai, Franciscus: *Dictionarium Latino-hungaricum*. Cibinii, MDCCLXXXII.
[3] Finály, Henrik: *A latin nyelv szótára [Dictionary of the Latin Language],* Budapest, 1884. Franklin Társulat.
[4] *Törvénytudományi műszótár [Technical Dictionary of Jurisprudence]*, Pest, 1843. Magyar Tudós Társaság, 101.
[5] Szlemenics, Pál: *Fenyítő törvényszéki magyar törvény [Hungarian Penal Court Law]*, Buda, 1836. Magyar Királyi Egyetem, 137.
[6] *Törvénytudományi műszótár [Dictionary of Jurisprudence]*. VI–XI.
[7] Some authors have detected acts in the decrees of St. Stephen [Szent István] and St. Ladislaus [Szent László] that may be regarded as the predecessors of fraud. Madai, Sándor: A csalás tényállásának hazai előképei az államalapítástól a felvilágosodás koráig [Hungarian preliminaries to the statutory offence of fraud from the foundation of the state to the Enlightenment]. *Jogtörténeti Szemle [Review of Legal History]*, No. 4, 2009. 17–20.
[8] Béli, Gábor: *Magyar jogtörténet. A tradicionális jog [Hungarian Legal History. Traditional Law].* Budapest–Pécs, 2000. Dialóg Campus Kiadó, 193.
[9] Sándor Madai – in the wake of Tivadar Pauler and Pál Angyal – mentions only two "fraud-like crimes": masquerading and blood denial, although he intentionally disregards wrongs of private law character. Madai 2009. 18.
[10] Werbőczy István Hármaskönyve *[Tripartitum]*. I. 36., I. 37. § 9, I. 38., I. 39., I. 71., I. 86., I. 123., I. 125., II. 14. § 81, II. 15. § 2, II. 16., I. 24. § 7, II. 29–30., II. 70., 80. § 4, II. 83. § 4–5, II. 74. § 8, § 11.
[11] *„suum nomen in hunc finem periculose cummodant, ne verus contrahens sciatur, et sic tertiusdecipiatur, ac damnum patiatur"*
[12] *Praxis Criminalis* Art. 87., 88., 89.
[13] Béli, Gábor: Strafrechtspraxis und Strafrechtswissenschaft in Ungarn im 18. Jh. In Mezey Barna (ed.): *Strafrechtsgeschichte an der Grenze des nächsten Jahrtausendes*. Budapest, 2003. Gondolat Kiadói Kör, 118.
[14] Bodó, Matthias: *Jurisprudentia criminalis secundum praxim et constitutiones Hungaricas*. Posonii, 1751. 314.
[15] Huszty, Stephanus: *Jurisprudentia practica seu commentarius novus in jus Hungaricum*, Budae, 1745.
[16] Vuchetich, Matthias: *Institutiones juris criminalis Hungarici*, Budae, 1819.
[17] Szlemenics, Paulus: *Elementa juris criminalis hungarici*, Posonii. 1817. Hungarian adaptation (first edition): *Fenyítő törvényszéki magyar törvény [Hungarian Penal Court Law]*, Buda, 1832.
[18] Pauler, Tivadar: *Büntetőjogtan [Study of Criminal Law]*, Pest, 1870. Pfeifer, 269–270.
[19] Czövek, István: *Magyar hazai polgári magános törvényről* írt *tanítások [Teachings on Hungarian Private Civil Law]*, Pest, 1822. 704.; Fogarasi, János: *Magyar közpolgári törvénytudomány elemei (Kövy Sándor után), [Elements of Hungarian Civil Jurisprudence (based on Sándor Kövy)]*, Pest, 1842. 314–315.
[20] Bodo 1751. 314.
[21] *„Falsi autem Crimen est dolosa veritatis immutatio, vel suppressio, in alterius damnum et praejudicium facta, Publico Jure poenaliter prohibita. Seu, Falsum est, quod animo corrumpendae veritatis, in alterius fraudem seu perniciem, dolo malo fit."* Ibid. 300.
[22] Articulus XCII. *De falso Judice, Procuratore, Testibus et Delatoribus.* Ibid. 302.
[23] Articulus XCV. *De Falsarum literarum, Sigillorum et c. Confectoribus.* Ibid. 307.
[24] Articulus XCVI. *De Iis, qui Libram, Pondus, Ulnas, Mensuras, Merces, et alias Res falsificant.* Ibid. 310.
[25] Articulus XCVII. *De Larvatis Personis.* Ibid. 311.
[26] Ibid. 314.
[27] *„Larvatae pp.ersonae sunt illae, alterus familiae nomen seu cognomen assumunt, et subhocce ficto et larvato nomine, ac Persona, sive successionem et haereditatem in alterius Familiae bonis, seu praerogativas, ni damnum et praejudicium legtimarum Familiarum, dolose sibi vendicare attentat."* Ibid. 311.
[28] Huszty 1745. 120.
[29] A büntető törvénykönyv indokolása [Explanatory Notes on the Criminal Code]. In *Képviselőházi irományok [Papers of the House of Representatives].* 1875. Vol. 9, No. 372. 300.
[30] *„Falsum, latiori, latiori significatione, dicitur omne id quod non est verum." „* […] *falsum strictiori sensu accipitur, pro Crimine illo, quod de jure poenaliter est."* Bodó 1751. 300.
[31] Kódex a bűntettekről és azok büntetéséről [Code on Crimes and Their Punishment]. Hungarian translation of the Latin draft in the appendix of Hajdu, Lajos: *Az első (1795-ös) magyar büntetőkódex-tervezet [The First (1795) Draft of Hungarian Criminal Code].* Budapest, 1971. Közgazdasági és Jogi Könyvkiadó, 387–512.
[32] Ibid. 489–492.

Máthé, Gábor

Misconduct as Solid Substantive Legal Institution

1. Theoretical underpinning

Due to the French Criminal Code of 1791 and, subsequently, the Code Penal of 1810, the concept of misconduct entered the criminal law system as a distinct group of criminal offences. The trichotomous (felony – misdemeanour – misconduct) and dichotomous (felony – misconduct) criminal codes were based on the classification of criminal offences upon their gravity.

A major issue in the assessment of minor crimes is therefore to clarify their relationship with other offences. It follows that they are the basis for a lighter form of liability according to criminal liability. Minor offences, as they are not homogeneous in nature, give rise to further problem. That is, there is a significant number of acts which are the consequences of breach of the law and are not simply forms of a crime which can no longer be assessed in criminal law.

As the institutions have evolved, these rather complex illegal behaviours have also required "reconciliation" with the principles of criminal law and the separation of powers