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HOSPES RIGHTS AND ÁRPÁD-ERA TOWNS

The great migration upset the geographical location and legal order of the peoples who had lived in Europe until then, and gave birth to new states; nevertheless, the migration of individuals and groups for various reasons did not stop there. Movements from north to south and vice versa continued, but the dominant direction was from west to east. Overpopulation was the driving force behind much of the migration. In the north, the Frisians and the Dutch set off towards the Polish territories and the Principality of Kiev, while further south, many of the Walloons and French began their migratory journeys. Many of them reached the Carpathian Basin, probably at that time already travelling along the Danube, or rather its valley. In time, these peoples were followed by the Germans. These foreigners with free status were called *hospes*, ‘guests’ or ‘guest settlers’ in Hungary, regardless of their social status, whether they were clerics, knights, craftsmen or peasants. Later, Hungarians and Slavs who migrated individually and in groups within the territory of Hungary were also called *hospes*.¹ Just one example from the Great Plain, a region rarely mentioned in this respect: a *hospes* named Imre Borsos arrived in Hódvásárhely in 1463.²

The *hospes* brought with them their right of origin (*lex originis*), which they had their landowners that settled them agree to during their negotiations and agreements. This right dates back to the 5th century, when in the Frankish Empire, for example, tribes intermingled and the principle of a right of descent

1 Fügedi 1981, pp. 398–418; Kubinyi 1994, p. 273

2 Hódmezővásárhely története 1954, p. 306

owned by the individual was established, which was only granted to a specific group of persons and protected the owners of the right wherever they lived. It was enforced by a declaration of the right, an adherence to the right of descent (*professio iuris*) before the judge, who had to rule on this basis.

As early as the Carolingian period, there was an increasing effort to transfer the scope of this right to the principle of territoriality, which is also reflected in the *capitularies*. However, it was not until the middle of the 13th century that the territorial principle replaced the right of origin and the *professio iuris*. Nevertheless, it still existed in Italy in the 13th century, and there are also cases referred to in the *Saxon Mirror*.³ The reasons for its disappearance can be traced back to slow social changes; but its influence did not fade easily, as it was vividly remembered by the *hospes* arriving in Hungary, and was also used in their new homeland.

The *hospes* came from the western part of the former Roman Empire, and must have lived for several centuries in the legal system they brought with them. Within the personal and material dependency linking them to their lord, they disposed of the former earlier. They were therefore able to undertake the migratory journey and to retain this freedom in their new homeland. It is known that medieval European law was essentially based on Roman and Germanic law. It presumably stemmed from the survival of the former law, and was closely related to town law, which continued to exist in a modified form in the towns, particularly in Italy and the German Empire.⁴

The Walloon, French and Italian (Neo-Latin) populations were called Latins by the contemporary Hungarian sources. Only some of them are discussed here, mainly groups of people living on royal estates, because, as the literature has already established, they were mostly settled on such estates⁵, presumably as a result of dynastic connections. In the royal town of Esztergom, the Latin part of the town was attached to the southern side of the market square. Here, a

3 Ruszoly 2011, p. 30

4 On Italian town law and its relationship with Roman law, see Parthenopeis 2021. Especially Book I, chapters 55-65.

5 Solymosi 1998, p. 14; Zsoldos 2010, p. 36

population of French, Walloon and Italian merchants and industrialists settled, who were granted the right to issue charters and use seals in 1255.⁶ The merchant “Italians” who arrived in Fehérvár (Székesfehérvár) in the 11th century probably received similar privileges to the people settled in Esztergom.⁷ The settlement that appears in the sources as *Franca villa* (Nagyolaszi, Mandelos), settled by a king in the Szerém region (today partly in Croatia and partly in Serbia, and called Srijem or Srem respectively) with French-speaking Walloons, became really important in the 13th century as one of the settlements of the famous Szerém wine region.⁸ The population of medieval Zagreb was made up of Croats (Slavonians), Hungarians, Germans and Latins (Italians or Walloons).⁹ As we have seen above, the Árpád-era *hospes* were made up of farmers, craftsmen and merchants, and from the 13th century onwards these groups played a significant role in the social and economic development of the country, establishing viticulture and wine production. The history of the priests and soldiers from the West, also *hospes*, who served in the royal town, is not considered part of this topic.

Walloons or Italians also arrived in Patak (Sárospatak). They received the first surviving *hospes* charter from King Imre in 1201. In the charter, the king granted the *hospes* public, private and economic legal privileges in accordance with the modern branches of law. He allowed the free election of judges, granting the *hospes* their own judicial and administrative freedom, and designated his own or his palatine’s court as the court of appeal. He thus removed the *hospes* from the jurisdiction of the castellan or the ispán (county head). The management of taxes and services, i.e. financial and in-kind contributions, was delegated to them in full, meaning the services arising from the material dependence were not performed individually, but jointly, which meant sharing burdens and collecting contributions. They were responsible for these not individually, but collectively, as a commune.

6 Györffy 1987, p. 256, p. 259

7 Zsoldos 2010, p. 18; Takács 1994 p. 477

8 Engel 1994, p. 595

9 Rokay, Takács and Wehli 1994, p. 739

A further privilege affecting the whole of the *hospes* commune is the one by which the king forbids any harm from the nobles and gentry of the country, which perhaps forbids not only any violence committed by these against the *hospes*, but also their accommodation, meaning the lodging and provisioning of the passing lords and their retinue, which was a great burden. However, this did not preclude the king and his entourage from taking up accommodation.¹⁰

In the field of private law, a more archaic form of inheritance was handed down to us by the charter, according to which only sons inherited; if there were none, the testators were free to leave their property to their daughters, their grandsons and granddaughters, or to whomsoever they had adopted. This is included in Italian town law. On this issue, Raymundus Parthenopeis writes: “According to the old law, female heirs have no right to paternal inheritance as long as the male heirs are alive.”¹¹

There is a dispute in the literature, which we will not discuss in detail, as to whether the king granted the privileges to the *hospes* of Patak or (Bodrog)Olasz. What is noteworthy for us is the legal status of the privileged. If the privileges were granted to the *hospes* of Olaszi, their descendants remained serfs, while if they were granted to those of Pataki, they became peasants in the market town. However, Raymundus’ assertion of the *hospes*’ Italian origins, also confirmed by the place name Olaszi, is unquestionable.

The charter issued to the *hospes* of Pataki contains the core of the *hospes*’ rights: the free election of judges, which, in the old expression, ensured the administration of justice within the commune, which went hand in hand with the right to appeal to the king, circumventing the authority of the ispán, the freedom of inheritance while maintaining the blood bond, which included the right to dispose of houses and land, and the right to pay taxes jointly, presumably in one sum. These freedoms were further extended, expanded and detailed by the more recent charters recording the *hospes*’ privileges. Subsequently, they were included in the town charters and town law books.

10 Blazovich 2018, pp. 389–392. On the provision of accommodation see Solymosi 1998, 55–57.

11 Parthenopeis 2021, p. 134

The castle *hospes*, who were settled by the kings on castle lands, occupied a special position among the *hospes*. Although they had previously enjoyed full personal freedom, the ‘public or golden’ freedom, they were still forced to give up some of it. Their ties were manifested in the fact that they were ruled over by a castle ispán or gaoler, had to perform military service for the castle ispán, and could be forced to pay certain lump sums. This made their status ambivalent, as they became bound *libers*. The way out of this situation led in two directions. Either they were sold by the king, along with their property, to a private landlord, against whom they were not always able to defend their former freedom and were reduced to serfdom, or they defended their freedom, were judged by their village chief and could appeal to the king or one of his officials, as in the case of other free royal *hospes*,¹² like in the case of the *hospes* of Patak.

Another distinct group of *hospes* were the Saxons (settled in Transylvania and the Szepesség – today partly in Slovakia and partly in Poland, called Spiš and Spisz respectively), who arrived in Hungary in various sized groups from the 12th to the 13th century. The name ‘szász’ meaning Saxon developed later, perhaps coincidentally, as did the uniform name of Swabian for the Germans who arrived in Hungary after the Ottoman period. The population known as the Saxons came from many corners of the German Empire.

The Saxons of Transylvania settled in larger numbers during the reign of King Géza II (1141-1162), and the *Andreanum* itself mentions the privileges they received from Géza II. The king granted privileges to those who settled in Altland, on both sides of the Nagyszeben-Újegyház-Nagysink axis, and the agreements, presumably oral, were added to the more recent ones in the *Andreanum* issued after 1214 by King András II, which contained all the freedoms that could be granted at that time. This ensured the Saxons the most complete *hospes* liberties, in the form of territorial autonomy, while the peasants in their villages and the craftsmen and merchants in their later towns, as the constituent elements of the towns, retained their privileges until the end

12 Szűcs 1981, p. 115; Kristó 1991, pp. 25–35

of the discussed period and even beyond.¹³ This is why it is worth reviewing this soon to be 800-year-old charter of privileges.

The charter of privileges¹⁴ first and foremost defined the territory of the Saxons, extending it to areas they had not previously occupied. It marked the western end at Szászváros (meaning Saxon town, today: Orăștia, Romania) and the eastern end at Barót (today: Baraolt, Romania). It also extended the territory to the land of the Szeklers, which was not the same as the later Szekler territories, Sebes (or Szászsebes, today: Sebes, Romania) and Daróc (or Honoróddaróc, today: Draușeni, Romania). The area was bordered by Hunyad County (today: Hunedoara, Romania) to the west, the border of the country to the south, Land of Fogaras (today: Făgăraș, Romania), Szeklerland to the east, and Küküllő and Fehér (today: Alba, Romania) Counties to the north. In connection with these the Saxons received forests and waters, which could be used by rich and poor alike. The king could not grant land from the donated territories to others.

The Saxons chose their own magistrate, who performed judicial and administrative functions, and the king appointed the Saxon ispán and himself as their appeal forum. They could choose witnesses from their own region for financial litigation. The charter returns to this theme at several points. They could also choose their own priests, or parish priests, which was important because the Church was present in the daily life of the people of the time. They were partially exempted from the burden of providing accommodation. What was new compared with the privileges of the *hospes* of Patak was the freedom to travel and to sell goods, with the right to buy and transport salt on certain days; this represented a step towards town privileges, as was the right to use their own seal, an important guarantee of their autonomy.

In return for the privileges received, the subjects owed something in return. They paid 500 marks a year to the chamber. They were also obliged by the king to

13 Blazovich 2007, pp. 509–526. In particular, pp. 509–514. For the relevant literature, see the bibliography of the study.

14 Reg. Arp. 1923, no. 413 Anjou-era archives 1996, no. 173. See there for a detailed bibliography. The Latin text was translated into Hungarian in the 18th century. It was rewritten and translated using today's spelling, but striving to preserve the original style, by Érszegi 1998, pp. 101–105.

ensure provisions for the collectors of the money. The mark was not a currency, but a means of payment for measuring the weight of gold and silver. The Saxons were also required to perform military service, which is mentioned in the town-founding charters too; namely, they had to provide 500 soldiers for the king's army within the country, 100 outside the country, but only 50 if the army was led by a chief officer. From these figures we can conclude that the number of Transylvanian Saxons at that time was around 10,000. The *Andreanum* has been discussed in more detail here because it provides a link between the law of the *hospes* and the law of the towns in respect of the rights listed therein. Its content replaces the town *hospes* privilege letters (e.g. Székesfehérvár, Pest), which formed the basis of the town-founding privilege letters. Before turning to this subject, let us look at another family of Saxon law, that of the Saxons of the Szepesség.

The Saxons of the Szepesség (*simpliceshomines*) came to their territory, the Szepesség (*Zips*), after the Mongol invasion. They were recruited from various places, but given that they later used the Magdeburg law in their towns, most of them must have come from Saxony, crossing the passes and straits of the Carpathians from Poland. Their rights and obligations were later put down in writing by King Stephen V (1270-1272) in 1271, and amended and confirmed by King Charles I in 1317. Their privileges included the free election of judges and parish priests, as well as free hunting, fishing and mining rights. They were free to choose their own ispáns (counts), who passed judgments together with the respective county head (*Burggraf*) of Szepes, which also ensured state supervision and control over the Saxons. The two judges ruled together because the Saxon ispán knew their rights. The Saxons of Szepes lived in their villages and towns. Lőcse (today: Levoča, Slovakia) was already mentioned in the charter of 1271 as the capital of the district (*civitas provinciae capitalis*). The Saxons could not be summoned to a judicial court by anyone outside their district. In exchange for these privileges, they paid 300 fine silver marks and were required to contribute 50 soldiers to the king's army. They also surely performed border protection duties.

The name 'Szepesség' derives from the genitival form of the Hungarian adjective 'szép' meaning beautiful, and the laws of the Saxon *hospes* of Szepesség

are contained in the *Zipser Willkür* (Szepesség laws), the law book of the province, written outside the discussed period in 1370, which contains rules on public law, property law and contract law, as well as the organisation of the law, procedural law, criminal law, and rules on industry and trade. The influence of the *Saxon mirror* can be seen in the *Zipser Willkür*. Kálmán Demkó and Heiner Lück have pointed out similarities between the two in several articles. After a systematic review, 37 rules can be found in which the influence of Eike von Repgow's work can be detected in whole or in part.¹⁵

As mentioned above, the charters and seals issued to the *hospes* were the forerunners and sources of the town privilege letters. Attila Zsoldos clearly demonstrated this using a study by András Kubinyi, when he explains that the first surviving charter of Fehérvár was issued in the name of “the judge of Fehérvár, his twelve jurors and all the citizens of the same fortress”, while the seal on the charter bears the inscription *S[igillum]Latinorum civium Albensium* (S[eal] of the Italian citizens of Fehérvár). The seal indicates that it was issued to the Latin citizens of Fehérvár as a *hospes* commune, and the formal elements of the seal also suggest this fact.¹⁶ Attila Zsoldos analyses in detail the fragments remaining of the privilege charter of 1237 issued in Fehérvár, and discusses what other parts it may have had. He is on the right track, given that contemporaries and successors who knew the original charter could only have referred to the law of Fehérvár on the basis of these items, and future generations can learn about the content of this law from them.¹⁷

As is well known, this is why the donor kings were able to refer to the law of Fehérvár – and later to the law of Fehérvár and Buda – in the subsequent letters of privilege of the towns, even though they were no longer familiar with their details. Towards the end of the pre-Mohács era, in 1498, when King

15 Kordé 1994, pp. 618–619; Blazovich 2005, pp. 43–70

16 Zsoldos 2010, pp. 35–36.; Kubinyi 1972, p. 152. There may have been similar phases in the use of seals in Pest-Buda: see Kubinyi 2009, 271–306. On the use of seals, also see Ladányi 1996, 155.

17 Zsoldos 2010, pp. 36–41. The Latin text and the Hungarian translation of the contents and transcriptions of the charter have been published by Tibor Neumann (Neumann 2010, 43–122).

Ulászló II confirmed the privileges of the people of Szeged, he still referred to the freedoms of Fehérvár and Buda.¹⁸ Towards the end of the period, the people of Szeged probably inscribed the law of Fehérvár because they wanted to emphasise the ancient nature of their privileges.

Attila Zsoldos had already raised the issue of the lack of town law systems in Hungary. This is despite the references to the law of Buda and Fehérvár. This is because the hierarchical system between certain towns, the essence of which was embodied in the borrowing of rights, did not play a role in the development of individual town rights, and those who moved out of a “parent town” took the rights of their town with them to their new settlement. Also, they often turned to the “parent town” for a decision in contentious disputes. Such was the case, for example, when, long after the end of the period, the people of Lőcse appealed to the Magdeburg jury in a case.¹⁹ However, a group of towns, the treasury towns, was established in Hungary. These towns, called free royal towns, used the treasury law based on the law of Buda, and the delegates of the individual towns (Buda, Sopron, Pozsony, Nagyszombat, Bártfa, Eperjes, Kassa, and, as the eighth, Pest) ruled as a joint court with the treasurer. Many of them possessed the Buda Code of Laws and the quoted work of Raymundus Parthenopeis. It was not by chance that Lőcse, with its Saxon-Magdeburg law, and Fehérvár, with its Walloon roots, were left out.

As we have seen, the Hungarian town law was rooted in *hospes law*, but the European town law itself developed from merchant law. In the old *gilde*, which appear in sources dating from the early 11th century, a different law from those applied at the time came into force. The development of town law and town communes went hand in hand.²⁰

Town development in Western Europe was a long process, but certain ‘moments’ stand out, such as the birth of the charter and the building of town walls to enclose the whole town. The town walls were not a romantic appearance for the townspeople of the time, but a defence against attacks. The increased

18 Reizner 1900, p. 88, translated by Gyula Kristó. Oltvai 1968, pp. 30–31

19 Reggow 2005, pp. 53–54

20 Dilcher 2006, pp. 37–50

population could not be contained within the narrow confines of the fortress, so the surrounding area was also walled. Thus the topographical dichotomy between the fortress and the town was eliminated. At the same time, the town walls enclosed a special legal area, the town, where the rights were very different from the rights of those living outside it. The stone wall not only provided a safer life for the town's craftsmen and merchants, but also enhanced the prestige of the civil order and marked intrinsic cultural aspects, such as symbolising the specific town legal system mentioned above. The wall building was the largest collective enterprise of the townspeople, often with the support of the town lord. Its construction forged a community, a commune, of people arriving from near and far, both in terms of local identity and local law. Besides, a particular intermediate form of freedom-endowed settlements also existed, that of freedom-endowed villages. These included the villages settled by the *Soltész* in the Szepesség, few of which rose to the town level. Many *hospes* settlements in Hungary enjoyed these rights, but they remained in the feudal environment, their inhabitants ultimately remaining serfs and forming the upper layer of the class.²¹

Thus the medieval town and its society and law were born, the analysis of which is facilitated by the clarification of four cornerstones: town peace, town liberty, town law and town constitution. These rights were brought to Hungary by the *hospes* that founded towns after arriving in our country. Town peace was different from national and provincial peace: it was characterised by permanence, violating it was punishable by law, and it applied to all the inhabitants of the town. All forms of private feud were excluded, and thus a special island of peace was created. This peace was further sub-divided, for example, with rules laying down the peace of the house and the peace of fairs in addition to the town order. Since it was widespread, this basic requirement is not emphasised in the letters of privilege, but it was included in more than one article of the town law books.²²

Town freedom can be understood in two senses. On the one hand, it means the constitutional status of a town as a legal entity (commune), which implied

21 Ennen 1987, pp. 78–110; Isenmann 2014, pp. 99–102; Teiszler 2007, pp. 39–45

22 Dilcher 1996, pp. 71–73, pp. 99–101

different content in relation to each town, while on the other hand it meant the personal freedoms of citizens. In accordance with the specific conditions of the Middle Ages, the freedom of citizens of large and small towns was varied, and the degree of freedom achieved by citizens in each town was different. These privileges, as we have seen, were already included in the *hospes* rights.

The freedoms of the town as a legal entity, the freedoms of the commune of citizens, included the independent election of judges and councillors, set out in detail in the town constitutional law, as well as the election of parish priests in many places, the building and defence of the town walls, and economic privileges: the right to hold fairs and exemption from customs duties. The freedom of citizens meant the ownership and inheritance of town land and the houses built on it without any obligation, and the right to marry freely. Citizens were subject to the jurisdiction of the town court. The freedom to choose their occupation (craftsman, merchant, farmer) was also part of the individual freedom of citizens. Ultimately, citizens were freed from the personal and material dependence of the town lord, and their freedom was exchanged for taxes. This was the meaning of the slogan “town air makes you free”. It should be remembered, however, that only citizens with full rights enjoyed these freedoms, while day labourers, servants and maids did not; also, the town lord and the nobles who lived in the town, as well as their officials and servants, enjoyed other rights. The freedom of the town’s commune and its members, the citizens, was not acquired by each town at the same time. A long road had to be negotiated to become the ideal town, and there were some towns that never reached it.²³

The religious life of the lay members of the church was primarily confined to the parish. Lay priests and monks lived under canon law. Canon law provided for the parish priest and parishes the right to perform baptisms, marriages and burials, a right that was not granted to the monastic orders. The parish was also the scene for the life of the lower clergy. From the acolytes to the ordained priests, and in the larger parishes from the chaplains to the altar servers and

23 Fügedi 1961, p. 44, 52, 57; Dilcher 1996, pp. 101–104

the various benefices, the parish priest was responsible for the spiritual care of the population that belonged to the parish. The parish and the church were also a forum for community life, where the population gathered for Sunday Mass and could get involved not only in the liturgy of the Mass, but also find out about the affairs of the town and the world, which provided an opportunity to influence the faithful, spiritually and mentally; this is why the town leaders considered it very important to have the right to elect the parish priest.²⁴

Town law is based on town peace and town freedom, and was born out of the dismantling and practical application thereof. It was based on the charter of the town's privileges, the recorded town laws and the decrees of the main town officials. Town law includes public law, private law, criminal law, enforcement law and procedural law, not in their classic modern form of division into branches of law, but often mixed in the various norms. Separating these laws is not an easy task on the basis of today's legal thinking. The rules are laid down in town law codes.

The *articuli* of family law, treated then in conjunction with personal law, define the duties of men and women, the position of children within the family, and even describe how they should be fed. In the law of succession, there are *articuli* on the forms of succession by law and by will, which were not always the same in the Hungarian towns. The town law contained building regulations, and provided for the maintenance of houses. Some rules of neighbour law are still in force today. Market law described the place where certain goods could be sold within the market, and set forth the order of the market. A number of rules were included to facilitate the exchange and movement of goods.

Town law responded to social changes in society, throwing off the shackles of tradition. It was developed by agreement between the parties concerned, expressed by a declaration of common will. It could be changed, nuanced and renewed by decisions of the council, despite its strong roots in customary law.²⁵

It was also based on town freedoms that the town constitution was drawn up as early as the 12th century, developed individually by each town. It

24 Kurze 1966, pp. 451–460; Isenmann 2014, pp. 631–633

25 Dilcher 1996, pp. 104–110

brought together the various groups in the town, the merchants' associations and the craftsmen's guilds, which also established their own organisational and administrative rules. The town constitution contained the forms of governmental power, which it described independently of personal power. First and foremost, it included a system for electing the judge and the council members, the notary and the parish priest, bringing together the above-mentioned occupational groups of the town as well as the inhabitants of the districts (streets, boroughs), who elected their officials initially by personal participation in the popular assembly and then by delegates. This custom ruled out any open power struggles that might have led to unrest.²⁶ While the town council and the court were headed by separate people in Western Europe, in Hungary the two offices were held by one person, the town judge, until 1848. This is why the name mayor is unknown in the period discussed.

Part of the town charter is a description of the administration and the organisation of the town chancellery, which can be described based on the *Articuli of the Buda Code of Law*. The town was governed by a judge and a council. They were in charge of administrative matters, town institutions and ecclesiastical matters relating to the town. The office (chancellery) was governed by the notary, who kept the council and court records. The notary was in charge of the clerks, who were paid by him, as well as of the minions of the law, jailers, the executioner and commercial agents. He controlled the treasurer, who in turn had treasurers and tax collectors as his subordinates. The town institutions were governed by a judge and a council. They managed the treasury, the seal, the town walls, the xenodochium, the market, the town scales, the slaughterhouse and other items as the town's own property, and had a say in the affairs of the parish, other churches and monasteries. The administration of the law was carried out by the council members under the leadership of the judge. The activity of the money judge, the deputy money judge and the market judge were also related to the administration of the law. In Buda, appeals could be made to the king, and later to the treasurer.²⁷

²⁶ Isenmann 2014, pp. 207–227

²⁷ Mollay 1959, pp. 12, 22, 51, 53, 54, 56, 62, 105, 153–154, 236 a, b, 238–243

The town constitution complied with the socio-economic structure of the town, to the flow of trade and traffic, and to social mobility. At the same time, it expressed the power relations within the town. This was achieved in a way that was adaptable to changes within the town. As a consequence, the town constitution can be seen as an important area for subsequent constitutions.

The four cornerstones of town law mentioned above persisted in towns until the beginning of the bourgeois era. In Hungary, all of these were established by *hospes* law. Even though they were no longer needed in the subsequent period with the advent of legal unity within individual states, they provided numerous examples of the legal organisation of civil states, and have therefore not been completely consigned to the dustbin of legal history.

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Installation imitating a cloister,
Exhibition “Kings and Saints - The Age of the Árpád Dynasty”