Acta Universitatis Christianae Partiensis – Studia culturale, 1 (2023), 15–23.

The Habsburg Family Statute as a Historical Forerunner of Family Constitutions

BALÁZS ARATÓ
Habilitated Associate Professor at Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law, Department of Commercial and Financial Law/ Department of Civil Law
arato.balazs@kre.hu

Looking at the historical antecedents of family constitutions, the Habsburg Family Statute hardly differs from the family constitutions of today. In terms of its purpose and its system of rules, it is a clear predecessor and historical antecedent of today's family constitutions. In general terms, it can therefore be said that the roots of today's family constitutions are to be found in the noble and ruling families, despite the fact that the latter also contained public law provisions in addition to the predominantly private law provisions. This paper reviews the development, function and content of the Habsburg Family Statute on the basis of archival research.
Keywords: *family constitution, Habsburg Family Statute, family law, family property*

Documents in archives confirm that the roots of family constitutions are not really to be found in family businesses but in historical monarchies. The family constitutions of the Habsburgs and the Wittelsbach Statute, for example, were documents that regulated property relations within the family and succession issues in a uniform and comprehensive manner, and were even family constitutions in name.[1] A further distinctive feature of these documents was that, since they were linked to rulers, they had both public and civil law attributes. To illustrate these points, it is now worth taking a closer look at the history of the Habsburg family statute, which is also rich in Hungarian aspects.

Whereas before the Napoleonic Wars, the individual German principalities had provisions on only certain details of legal relations within the ruling

1 The author's findings from research carried out in the Haus-, Hof- und Staatsarchiv in Vienna in the summer of 2019, supported by the Austrian-Hungarian Action Foundation (Stiftung Aktion Österreich-Ungarn). See for example the following documents: Kaiserlich österreichisches Familienstatut, anno 1839 and Bayerisches Königliches Familienstatut, anno 1819.

family, typically in wills, succession and other property contracts, following the Battle of Waterloo, all German ruling families in quick succession felt the need to consolidate the customary laws that had been established previously and to create a new complex system of rules in many areas of family relations.

Whereas the earlier documents had mostly been drawn up between the head of the family and the closest heirs or family members, or had taken the form of contracts within the family, from 1806, and even more so from 1815, a comprehensive legislative process was initiated which brought about the regulation of a very wide range of family relationships at the level of law. The aim of the German princely families in enacting family or house laws was to ensure the sovereign unity of the dynasties and the long-term order of succession.

The Bavarian Wittelsbachs were the first of the major ruling families to draw up a family law in 1819, which later served as a model for the Habsburg family statute. The Bavarian family law was followed in order by Würthenberg (1828), Hanover (1830) and Saxony (1837).

Although the Habsburgs had a well-developed system of succession which had been established over the centuries and which governed succession to the throne in common law sense, the codification practices of the German princely families had a clear influence on the Austrian Emperor Franz.[2] The main reason for this was that although Maria Theresa's consort, Franz Stephen of Lotharingia, thanks to his brilliant economic expertise, created a family property fund that was partially separated from the state property, it was not until the early 1800s that the family's private property was precisely and effectively separated from the state property.

It was Emperor Franz's intention to finally have a clear definition of what was private Habsburg family property and what was to be included in the state property. The question was therefore raised as to which of the monarch's expenses should be covered by private property and which by state property.

In addition, as the Habsburg family had become very extensive since Maria Theresa, the property issues between family members also had to be settled. This meant, of course, that the family law had to include - in addition to the long-standing customary arrangements - the newly created rules which were intended to settle legal relationships which had not previously been covered in a reassuring way.

On 28 March 1829, Emperor Franz addressed a letter to Minister Metternich, requesting that, since the Austrian House had no definite and consistent house law, the Chancellor should propose one, with due regard for the constitutions of the provinces, including Hungary and Transylvania. So

2 Franz I, Emperor of Austria and King of Hungary, who reigned from 1792 to 1835.

far, only the succession, the age of majority and the apanages have been regulated by the ad hoc and often contradictory provisions of the Habsburg and Lorraine ancestors. Emperor Fraz also instructed Metternich that the family law to be drafted should not only provide for the rights of family members, but also impose obligations on them, and even lay down the rules of succession to the throne, including the marriage, majority and appanage of archdukes and archduchesses.

It is clear from all this that Franz expected a family law to be drawn up which would take into account the Hungarian and Transylvanian constitutional order, would refer to the rules of family property law, both customary and written, and would also take as a basis the Lotharingian Family Act, which had existed since the 15th century, and the Wittelsbach Family Law of 1819.

The Emperor Franz thus ordered a comprehensive codification, calling for a family or "house law" which, precisely because of its all-encompassing nature, would have had to include both public and private law provisions, thus disproportionately prolonging the legislative process. Since Emperor Franz only wanted to promulgate the Domestic Law, even though it would have had to be approved in Hungary because of the public law provisions affecting the Hungarian constitutional order, or even in conflict with it, the comprehensive Family Law met with resistance from Hungarian jurists and failed.

Ádám Reviczky, the Hungarian Chancellor of the Court and a member of the Board of Directors of the Hungarian Academy of Sciences, suggested that instead of a family law it would be more appropriate to draft a simpler family statute, which would not concern public law issues and would only provide for the mutual private rights and obligations of the monarch and the other family members. This document would not have to be adopted by Parliament, as it would not function as a law.

It can be seen that, while in the German princely courts the terms house law, family law or family statute were essentially synonymous terms, Reviczky's argument led to the Habsburgs giving these terms different meanings.

This illustrates the marked difference between Hungarian and German public law thinking. According to Reviczky's argument, a law is something that is created or approved by the Diet. By contrast, the head of a family may at any time create a set of rules for himself and his family members, which, if they have no effect on public law, need not even be promulgated.

By contrast, in contemporary German public law thought, the monarch was a sovereign with unlimited legislative power. The main reason for this different public law approach can be traced back to the Hungarian historical constitution, according to which the sovereign did not have unlimited legislative power in matters of public law.

Emperor Franz accepted Reviczky's argument and his proposal with the restriction that family statue should include the long-discussed issue of the family fund. After such a background, by 1837 a draft of the family statute was ready for comment by both the Emperor and the family members concerned. As the members of the lateral branches of the family were only covered by the statute if they voluntarily accepted its provisions, including their successors in title, they were consulted on the draft. Because of the clash of views, a consensus was finally reached in 1839. The most controversial issue was the question, unresolved for decades, of how lateral relatives could share in the family fund. Eventually, this issue was also settled amicably, with mutual concessions between family members.

The family statute that was drawn up consisted of six chapters and sixty-one sections. The declared fundamental aim was to preserve the unity of the family. Chapter I, similar to the Bavarian Family Law, essentially defines the concept of family, and in this context provides who is a member of the family, who belongs to the royal house, and then goes on to discuss the rights and obligations of family members in general. The family consists of the head of the family, i.e. the monarch, his wife, the surviving widows of the monarch's ancestors, the archdukes and archduchesses who are descended from the monarch, descendants of one of the sons of Maria Theresa and Emperor Franz I as common ancestors, provided that they were born of a marriage approved by the head of the family at the time on the paternal side. Archduchesses were only considered family members until they married "in rank" outside the imperial family. The recognised wives and widows of the archdukes were also family members as long as they remained in the widow's line, i.e. did not remarry.

Thereafter, the Family Statute provides for the general rights of the head of the family in relation to the members of the family. This gives the sovereign the right of judgement and supervision over the other members of the family. The latter mainly concerned matters of guardianship, trusteeship and marriage, and in general also covered all the acts and legal relations of the members of the family which might affect the honour, dignity, tranquillity, order and welfare of the monarchy.

Article 3 deals with the rights of family members. In addition to any claim to the throne acquired by birth, they are entitled to be treated as members of the royal house, to enjoy the privileges of their rank, and to claim from the head of the family the care and maintenance due to their rank.

Chapter II has both private and public law implications, as it deals with reaching the age of majority, guardianship and trusteeship, which, because of the Hungarian institutional system of palatine, also have public law implications in the case of the heir to the throne.

It is interesting to note that the age of majority was set at a different age for the heir to the throne of the deceased monarch and for archdukes and archduchesses, the former at the age of 16 and the latter at the age of 20. Chapter III deals with marriages. It was an extremely strict restriction that family members could not marry without the consent of the monarch. This point of the Statute expressly provides that a marriage contracted without the written consent of the monarch is null and void. Chapter IV deals with the right of the head of the family to exercise custody over the members of his family. Exercising the right of supervision in this respect meant that the head of the family had to be informed about the training and education of the minor family member. Although the head of the family could not interfere in the methods of education, he could determine which family members should acquire which knowledge, which skills they should acquire and in which direction they should expand their knowledge. The aim was to ensure that the family members acquired knowledge that was important for the family as a whole, that the family could use to increase its wealth, influence and power.

Chapter V declares the judicial power of the head of the family over the members of the family.

According to the provisions of the statute, the high court of lords had jurisdiction in principle in all matters concerning the persons or property of the members of the imperial family. The high court of lords also had jurisdiction in matters relating to deaths and succession. In all cases, this court made its decisions on the basis of the laws in force.

The statute also provided for the rules governing the publication of the will of a deceased family member. Accordingly, the will could not be published and executed until the head of the family had established that the contents of the will were in the interests of the family as a whole and did not conflict with the provisions of the statute or any other contract concluded between the members of the family.

In practice, this meant that the members of the family sent their wills to the head of the family, who checked that their content did not conflict with a family document or jeopardise the unity of the family. If the head of the family considered that the will complied with these criteria, he signed the document approving it. Once the will had been approved, the probate procedure could be carried out without delay and without loss of time. The privileged status of the members of the family was also ensured by the fact that they could only bring an action before the high court of lords and that that court had exclusive jurisdiction in any legal proceedings brought against them. Family members were not exempt from this in their contractual relations with non-family members. However, the high court of lords did not have jurisdiction over disputes concerning immovable property, even if they concerned a

family member. In all cases, these disputes were brought before the general court. The Family Statute required the high court of lords to endeavour, as far as possible, to reach an agreement between the parties in proceedings before it involving a family member. The aim was clearly to ensure that the court would try to bring the case to a speedy conclusion so that the dispute would not damage the family's reputation. It is noteworthy that civil litigation between family members was removed from the jurisdiction of the high court of lords, apparently to prevent possible family disputes from becoming public.

The interest behind the measure is clear: to protect the family's reputation in all circumstances. The statute provided that civil disputes between family members should be settled by arbitration in the modern sense of the term.[3] This meant that the parties had to agree on the arbitrators who would take part in the proceedings, in the tradition of the old German princely law. The agreement on the composition of the arbitral tribunal had to be submitted to the head of the family, who had the right of veto. If the parties did not reach a consensus on the arbitrators, it was the duty of the head of the family to appoint the arbitrators. The arbitrators had to decide the case according to the substantive law in force. As a rule, the decision was the final settlement of the dispute. The arbitrators' decision had to be accepted by the parties. Only in exceptional cases could they appeal to the monarch as head of the family. In these special cases, the final word was given by the head of the family, whose decision was unquestionable to all family members. This dispute settlement mechanism achieved the main objective of reaching a decision on the dispute as quickly as possible, in accordance with the law and the 'overall interests' of the family, and without publicity.

Chapter VI of the Statute, the most extensive, deals with the rights and claims of family members and regulates their property relations. The basic idea behind this section is that family members are entitled to certain rights and privileges in return for the private restrictions they have to bear in the interests of the family as a whole.

The statute states that family members may acquire private property by savings, inheritance, gifts or other lawful means, which is separate from the family property and which they may dispose of independently, freely and with-

3 For details of how the institution of arbitration dates back to ancient times: Boóc, Ádám: Az arbiter fogalma a római jogban; in: Magyar Jog, 2020/4., 221-226. and Boóc, Ádám: Comments on the Concept of Arbiter in Roman Law; in: Journal on European Histroy of Law, 10 (2) pp. 133-138., ISSN 2042-6402, see also: Boóc, Ádám: Some Basic Questions of Hungarian Arbitration Law; Oradea, România; Partium Kiadó; 2023; ISBN: 9786069673508 138 p.

out restriction in accordance with the rules of civil law.[4] Under the statute, the legal inheritance of such private property was governed in principle by the rules of the Civil Code, except that only the male member of the family could inherit, and female descendants could become heirs only if all the male heirs eligible under the law had already died, leaving no living male descendants.[5]

However, as regards private property, family members had the right to make a free will and could also transfer their private property to their spouse, for example by marriage contract or gift. The statute ensured that female members of the family would receive a pension commensurate with their rank until marriage and a dowry commensurate with their rank on marriage.

The rationale behind the strict limitation on the inheritance of family property by women was that women would take the property out of the family when they married. Allowing women to inherit would violate the ancestral obligation of descendants that that family wealth must be enriched by each generation. This argument was, moreover, very common at the time, as the same sex-discriminatory provisions are to be found in the Bavarian Family Law.

Family property, consisting of so-called ancestral property and the family fund created by Franz Stephan, was declared to be in contrast to private property. Ancestral property also included the manor of Mannersdorf in Lower Austria and all the funds linked to Charles VI. As mentioned above, the family fund was backed up by the age-defying economic expertise of Maria Theresa's spouse. The fund was set up by Maria Theresa on the advice of Kaunitz in 1765 from her late husband's wealthy estate. It was also supported by Joseph II. Within the family, and between the various branches of the family, the question of which family members should be entitled to the family fund, or more precisely to its proceeds, and to what extent the fund should cover the costs of providing for family members, was a matter of debate for decades. The dispute was finally settled by the creation of the Family Statute. The document thus stipulated that the proceeds of the family fund should cover the reimbursement of expenses which the Sovereign, as administrator of the fund, would grant to family members in need, in addition to the benefits payable from the Treasury.

4 For comparison, see for example: Boóc, Ádám: Az ajándékozási szerződés néhány kérdése a magyar magánjogban; Állam- és Jogtudomány; 2005; 46:1-2.; pp. 53-76.
5 Compare this with some of the issues in modern inheritance law here: Boóc, Ádám: Quo vadis heredis substitutio?: Észrevételek az utóöröklés szabályaihoz Magyarország új Polgári Törvénykönyvében; in: Földi, András; Sándor, István; Siklósi, Iván (ed.): Ad geographiam historico-iuridicam ope iuris Romani colendam: Studia in honorem Gábor Hamza; Budapest, Magyarország: ELTE Eötvös Kiadó; 2015; pp. 77-87.

This provision precludes the family fund from financing the care of a family member, which had to be covered by the Treasury. It was also specified that the assets of the family trust could not be reduced, and that only the interest could be distributed among the various branches of the family in accordance with a fixed scale.

The importance of the separate family estate, separate from the Treasury, increased in the 1800s, mainly because of the French Revolution and Napoleon. Ruling families feared that the revolutions would deprive them, even temporarily, of their sovereign rights, with the direct consequence that the treasury would not cover their expenses. It was therefore considered essential to create a core of wealth that was not tied to the family's role as monarch, so that it could provide for the family members in times of revolution.

To give an idea of the extent of the Habsburg fortune, here is a snapshot of the family's separate wealth. In 1848, the separate family estate consisted of the following assets: securities: 8 120 379 Ft, real estate: 5 353 319 Ft, and the yield on the family estate was 276 000 Ft per year. The size of the assets and the wide-ranging and complex family relationships were strong reasons for the creation of a comprehensive family document, but the multiplicity and complexity of the situations to be regulated meant that the statute took an extremely long time to reach its final form.

The last part of Chapter VI summarises the claims that the archdukes and archduchesses could make on the State.

It may serve as a warning to the owners of family wealth today that, despite the Habsburgs' recognition of the importance of separate family wealth and the fact that they owed their enormous wealth to the clever decisions of the economic genius Franz Stephan, this wealth was almost entirely lost at the beginning of the 20th century. The reason was that the family's estates and properties in the Czech and Austrian territories, as well as securities held in Austria, were the main source of wealth, and after the defeat of the World War, both the newly-formed Czechoslovakia and the new Austrian parliament, invoking the Treaty of St. Germain, legally confiscated the family's property with a single stroke of the pen. When the statute was drawn up, no thought was given to diversifying their property geographically. This was the only way to ensure that they would have access to at least part of their wealth even in the most difficult times. Of course, no one at that time had thought, or could have thought, of the tectonic socio-political changes that occurred in the 20th century.

Summary

Archival research has also shown that the Habsburg Family Statute differs little from the family constitutions of today in terms of its provisions. In

terms of its purpose and its system of rules, it can be said that the document is a clear predecessor and historical forerunner of today's family constitutions. On the basis of the above, it can be concluded in general that the roots of today's family constitutions can be found in the statutes of noble and ruling families, including the Habsburg Family Statute described in detail above, despite the fact that the latter also contained public law provisions in addition to the predominantly private law provisions.