

NORBERT VARGA

ÖDÖN KUNCZ*

(1884–1965)

I. Biography

The internationally renowned professor of private law was born on 18 January 1884 in Arad to a family of intellectuals.¹ Ödön *Kuncz* recalled his years as a law student at the University of Kolozsvár as follows: in his memoirs, we read that he attended lectures on Roman law by Lajos *Farkas*, on Pandekta law by Mór *Kiss*, while the history of law was taught by Kelemen *Óvári*. “*With the eyes of a child, I could already see in Farkas, as a freshman, the scientist strongly influenced by the countryside who was ungracefully narcissistic, but otherwise exceptionally strong and talented; in Mór Kiss, the genius poseur, who was no longer seriously interested in science, and in Kelemen Óvári, the ungraceful bookworm with a civil appearance, who read and researched a lot.*”² It is also clear from his recollections that his professors (e.g. Ernő *Nagy*, Rezső *Werner*, Antal *Klupathy*, Adolf *Lukács*, Károly *Haller*, György *Jancsó*, Sándor *Vályi*, Sándor *Kolosváry*) who taught him from the second year onwards had a significant influence on his later academic work. “*As a sophomore law student, I also started to study law. Together with my colleague Gyula Frieheisz, we wrote a thesis on the matrimonial law of ius civile.*”³ For him, the fourth year was the year of the final exams. Regarding his daily schedule, he said: “*studying from 6-10 a.m. 10-11 (1/2 to 12) snack, office work, then study until 1 p.m.; lunch and rest until 1 to 3 p.m.; study from 3 to 6 p.m., walk from 6 to 8 p.m. [...] with diligent colleagues who were also preparing for the final exams.*”⁴ His determination and perseverance paid off. He graduated from law school as

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¹ The life of Ödön *Kuncz* can be known from the publication of his manuscript, which was redacted by Magdolna *Kuncz*. KUNCZ 2017.

² KUNCZ 2017, 29.

³ *Ibid.* 32.

⁴ *Ibid.* 44.

a doctor of law and political sciences with a king's ring (*sub auspiciis regis*).⁵ Albert Apponyi, minister of religion and public education, traveled to the doctoral ceremony on behalf of the king.⁶

After graduating from university, he worked briefly as a law clerk and later as a deputy notary at the Commercial and Exchange Court in Budapest from 1907. He passed the bar exam in 1908.⁷ Following his study trip to Germany (Berlin, Dresden, and Hamburg) (1908-1909),⁸ he worked as a notary-general from 1909. He was first a law clerk at the Royal Court of Appeal in Budapest from 1907,⁹ then appointed by the Minister of Justice as a notary at the Royal Commercial and Exchange Court in Budapest,¹⁰ and from 1910 he was a notary of the council for three years.¹¹ In 1911, he was appointed as a draftsman in the Law Preparation Department of the Ministry of Justice,¹² where he dealt mainly with commercial law and credit law. Ödön Kuncz was entrusted with the study of the so-called gold balances and the preparation of the relevant decree.¹³ In an interview with the *Új Nemzedék [New Generation]* newspaper, he said the following: “[...] I spent two months during the summer studying this issue. The purpose of my current trip is to see what has been done in this field in Germany and what experience has been gained in practical economics with regard to gold balances.”¹⁴

He was also involved in the preparation of several laws, as he is credited with the reasoning of the bill of exchange law in 1913/14,¹⁵ the private limited companies bill in 1917, and the major amendment of the Commercial Act in 1921,¹⁶ as well as the drafting of the bill on limited liability and silent companies. He also contributed to the codification of the Unfair Competition Act.¹⁷

⁵ *Hungarian Encyclopedia of Biography*. 1967, 1031-1032. News about graduates with honours from the Faculty of Law: Budapesti Hírlap 2 September 1906 8. <https://dt.ogyk.hu/hu/component/k2/item/310-kuncz-odon> (Date of download: 20.03.2020).

⁶ The inaugural ceremony was opened by Rector Gergely Moldoványi, where the dean read out the royal inscription that Ödön Kuncz “passed all his exams with distinction.” *Minister Apponyi in Cluj Napoca*. Pesti Hírlap 5 March 1907. 8. *Sub auspiciis inauguration at the Univ. of Kolozsvár*. Pesti Hírlap 1 March 1907. 10. Hungary, 21 December 1906. 12. Magyar Nemzet 21 December 1906. 5.

⁷ *Hungarian Encyclopedia of Biography*. 1031–1032.

⁸ KOZÁK PÉTER: *Kuncz Ödön*. <http://www.nevpont.hu/view/6828> (Date of download: 20.03.2020.)

⁹ Appointment: Hungary 23 June 1907.

¹⁰ Gazette of Budapest 15 October 1909.

¹¹ In his work as notary of the council, he presented the Ungro-Croata capital increase case. Pesti Napló 5 May 1912.

¹² On his appointment to draftsman: Hungary 6 April 1918. 16.

¹³ *The minister of finance ordered to study the procedure of gold balance in Germany*. Hungary, 31 August 1924. 13.

¹⁴ *University professor Ödön Kuncz is sent abroad to study gold balances*. Új Nemzedék 5 October 1924. 2. For the gold balance, also known as the pence balance, see: 7000/1925. MoF decree.

¹⁵ *Bill on Bill of Exchange Világ*, 29 March 1914. The draft decree set the value of the gold koruna at 1/5 of a dollar. *Success of former university professor of Kolozsvár*. Ellenzék 12 January 1925. 4.

¹⁶ *Shareholders organising against the Tèbe. The shareholders' defense association is formed*. 8 Órai Újság 25 August 1922. p. 4.

¹⁷ <https://dt.ogyk.hu/hu/component/k2/item/310-kuncz-odon> (Date of download: 20.03.2020.) Co-authored with Elemér P. Balázs the explanation of the law. Budapesti Hírlap 4 September 1924. 9. The practice of the Szeged Court of Appeal on unfair competition was analyzed: KRUSÓCZKI 2018, 249.

During his university teaching career, he was a private lecturer in commercial law from 1911,¹⁸ a public extraordinary professor from 1914, and a public ordinary professor from 1916 to 1919 at the University of Kolozsvár.¹⁹

During World War I, he was a soldier from 1914 to 1915 and, like the other professors, was forced to leave Kolozsvár after the end of the war in December 1919. He then taught for eight years at the Faculty of Economics of the University of Technology from 1920,²⁰ and from 1928 to 1949, he was a public ordinary professor at the Department of Commercial and Exchange Law of the Péter Pázmány University.²¹ He served as Dean of the Faculty in the academic years 1933/1934²² and 1943/-1944.²³ His academic career was ended by forced retirement in 1949.²⁴

In recognition of his academic work, he became a corresponding member of the Hungarian Academy of Sciences in May 1930.²⁵ He was recommended as a Corresponding Member by István Ereky,²⁶ Ferenc Finkey, Frigyes Fellner, and Ferenc Kováts, considering that he has been a recognized domestic scholar of commercial and bill of exchange law after his *sub auspiciis regis* doctorate, having participated in the drafting of the bill on private limited companies and the major amendment to the Commercial Law, having edited the journal *Kereskedelmi Jog* (Commercial Law) and having published numerous articles on commercial law. In the recommendation for membership, it was highlighted that “we must acknowledge that Ödön Kuncz [...] is generally very successful in combining his dynamic legal science method with a dogmatic analysis of the law.”²⁷ In this recommendation, it is also stated that his decades of research on securities have made him the foremost expert of his time. “The value of Ödön Kuncz's work on the law of trade and bills of exchange is greatly enhanced by the fact that Kuncz himself was involved in the drafting of the contract law section of the Civil Code and therefore takes into account the future law, the draft Civil Code when studying the law in force today.”²⁸ Ödön Kuncz was recommended as a full member of the Hungarian Academy of Sciences in 1944 as “[...] the most outstanding and most dedicated” cultivator “of Hungarian commercial law and especially of Hungarian private limited company law in Hungary at this time”, “[...] whose academic works are the size of a small library, - and are

¹⁸ Gazette of Budapest 12 October 1911.

¹⁹ *Hungarian Encyclopedia of Biography*. 1031–1032. He delivered a presentation on unfair competition at the Hungarian Academy of Sciences on 31 March 1921. *The issue of unfair competition*. Nemzeti Újság 1 April 1921. 5. His appointment to public ordinary professor was reported: Gazette of Budapest 27 June 1916.

²⁰ His appointment to the University of Economics. Köztelek 22 January 1921. 74.

²¹ *Reaffirmation in university positions*. Official Gazette.

²² On his election see: *New deans of the University of Péter Pázmány*. Budapesti Hírlap 2 June 1933. 8.

²³ As Dean, he delivered a lecture titled *The concretisation of good moral in credit law*, in the ceremonial hall of the St. Stephen's Society, in the framework of the Catholic Assembly of Lawyer. *The Catholic Assembly of Lawyers demanded the prevalence of pure morality*. Nemzeti Újság 6 December 1933.

²⁴ <https://dt.ogyk.hu/hu/component/k2/item/310-kuncz-odon>. *Kuncz Ödön*. <http://lexikon.katolikus.hu/K/Kuncz.html> (Date of download: 20.03.2020.)

²⁵ Budapesti Hírlap 11 May 1930. 3.

²⁶ PÉTERVÁRI 2014, 29–38.

²⁷ *Member recommendations of the Hungarian Academy of Sciences in 1926*. 16.

²⁸ *Ibid.* 17.

acknowledged to be the most valuable works of Hungarian commercial and private limited company literature. Our Academy elected him to its membership based on his tireless activity and his excellent literary qualities, and in the years since then Ödön *Kuncz's* work has, without a moment's pause, increasingly deepened the literature of Hungarian legal science."²⁹ It has been recommended by eminent jurists such as Károly *Szladits*, Géza *Marton*, Endre *Nizsalovszky*, László *Gajzágó*, Ferenc *Finkey*, Pál *Angyal*, Bálint *Kolosváry*, vitéz Gyula *Moór* and Móricz *Tomcsányi*.³⁰ Political developments also made his career more difficult, because in October 1949 he was reclassified as a consultative member of the Academy. His correspondence membership was only rehabilitated in 1989, following the political transition.³¹

Celebrating his 25 years of teaching, his friends, admirers, and students published a volume, the foreword of which gives the reader an idea of what "the Professor" was like. "The impact of the words spoken from the lips of the dedicated professor to his students of twenty-five years at the university department could not be estimated even if the untold masses of listeners could be gathered together to give their testimony. Those who have heard Ödön *Kuncz's* lecture once, who have been influenced by his suggestive power, which is a divine gift [...]", will never forget his greatness as a professor.³²

In his career, he held several important positions in professional organizations, such as Director of the Institute of Economic Law of the *Hungarian Lawyers Association*, President of the Credit Law Section of the *Hungarian Lawyers Association*, and President of the Arbitration Board of the German Hungarian Chamber of Commerce.³³ He was Vice-President of the Competition Law Section of the *Association of Industrial Property Rights* from 1935 to 1939 and became Co-President in 1965.³⁴ At the meeting of the Competition Law Section of the *Association of Industrial Property Rights* on 6 March 1925, Ödön *Kuncz's* speech also showed that he was a committed supporter of arbitration. At this meeting, the participants analyzed the jurisprudence of chamber juries and arbitration tribunals.³⁵ *Kuncz* reflected on the conditions of the time: "[...] *the economic life cured the feverish disease that had set in after the war and the revolutions, with the medicine called resolution. The illusions were dispelled, the era of the boom that had made sudden wealth possible ended, and the tiresome, sweaty but the only honest means of making a profit had once again regained its rights: productive work. This productive work, which is the lifeblood of the economy, is inconceivable without competition. However, it is in the public interest that this competition which saves the nation should be a noble competition.*"³⁶ After the *Association for the*

²⁹ *Member recommendations of the Hungarian Academy of Sciences in 1944*. 21.

³⁰ *Ibid.* 23.

³¹ <https://dt.ogyk.hu/hu/component/k2/item/310-kuncz-odon>. GLATZ 2003, 759–760.

³² COTTELY – MEZNERICS – PUSKÁS 1939, V.

³³ KOZÁK. He advocated the establishment of arbitration courts and emphasized the importance of their establishment. *The establishment of arbitration courts*. Pesti Hírlap 26 January 1926. 18.

³⁴ https://www.gvh.hu/pfile/file?path=/gvh/rendezvenyek/gvh25/jogtorteneti_kiallitas/kiallitasi_anyagok/gvh_tortenelmi_1000x2000_kygur_korr2_.pdf&inline=true (Date of download: 20.03.2020.)

³⁵ *Meeting of dispute of the Association of Industrial Property Rights*. Iparjogi Szemle 1 April 1925. 1.

³⁶ *Ibid.* 2.

Protection of Business Integrity was merged into the *Association of Industrial Property Rights*, elections were held in 1925, and Ödön Kuncz became the Association's Secretary-General.³⁷ Ödön Kuncz was also a member of the Cartel Committee.³⁸

Ödön Kuncz died in 1965 in Budapest and was buried in the Farkasréti cemetery on 26 March.³⁹

II. Academic work

Introduction to the science of law

The main field of Ödön Kuncz's academic work was commercial law, but this does not mean that he did not deal with the "realm of law" in general, since in his opinion "[...] *if I want to know a city in all its details, I act very wisely if I, first of all, go up to a higher point and there show myself the main parts of the city, its roads, its most notable buildings, etc. and only then start to study the details.*"⁴⁰

Therefore, I consider it necessary, before I present some of the areas of commercial law that he has worked on, and because an analysis of his entire scholarly work would be an almost impossible undertaking, to present his book *The Realm of Law*. Kuncz considered general information on the realm of law to be the task of a "legal encyclopedia". In his opinion, "[...] *the exclusive realm of law should be made accessible to everyone, but not by researching and criticizing abstract, speculative legal and general principles, not by dogmatic analysis of laws, but by systematizing the »legal institutions« that come to our attention all the time and by describing the exclusive realm of law in a way that is as clear as possible, based on economic, social and legal-political aspects!*"⁴¹ The book was essentially a summary of his lectures on the *Encyclopedia of Law*. His intention was to make the processes of economic law more accessible for the students of the Faculty of Economics and Business Administration and to draw their attention to the problems of contemporary public law. The *Realm of Law* was thus a textbook. At the Faculty of Law of the Péter Pázmány University, he was given the task of teaching the subject *Introduction to Law and Political Sciences*, so he revised his book in 1945. This revised edition also dealt with private law legal protection. It aimed to define general concepts and legal doctrines in relation to substantive law.

If we look at the structure of his textbook, it is clear that the private law section (general doctrines, personal law, law of properties, including property law, contract law, commercial law, war economic law, as well as inheritance law and private international law, private law

³⁷ Az Ujság 13 February 1925. 12.

³⁸ GOMBOS 2016, 103.

³⁹ Magyar Nemzet 24 March 1965. 6.

⁴⁰ KUNCZ 1946, 3.

⁴¹ Ibid. 3.

legal defense) were given a more prominent role than the public law section (constitutional law, administrative law, international law, criminal law, church law).

In addition to a detailed introduction of commercial law, which formed the backbone of his academic career, he placed emphasis on assessing the impact of war on law. He emphasized that “[...] *the law of normal economic life was established on the foundations of unrestricted private property and freedom of contract, the direct corollary of which was the abstention of the state from direct interference in the economic activities of individuals.*”⁴² The economic situation created by the war, characterized by the breaking down of a sharp barrier between private and public law, provided the opportunity for state intervention. One form of state intervention was to protect the public interest by preventing price rises for public necessities and keeping the distribution of available stocks within optimal limits. Those measures which provided mainly criminal law protection against price raise abuses, restricted the flow of goods.⁴³

A specific field of economic law: unfair competition and cartels

One of the most important stages of his life was his work in the ministry, including the codification of certain areas of commercial law. He was involved in the drafting of the Unfair Competition Act (Act V of 1923), and after it entered into force, together with his colleague, Elemér P. Balás (department adviser, Ministry of Justice), they published a commentary entitled *Unfair Competition (Explanation of Act V of 1923, supplemented by the executive decrees)*.⁴⁴ Ödön Kuncz wrote the introduction, which described the actuality of the topic, the legal protection, and the establishment of the law, and he also notes chapters I-II and IV of the book's section explaining the law, where he introduced some of the criminal law limitations of violations of business integrity.⁴⁵

Ödön Kuncz has compiled a monograph on the rules of commercial law and the bill of exchange law of his time, the knowledge of which is indispensable for the development of modern legal science if we wish to examine the given legal institutions in their historical context. A detailed presentation of his book on commercial law is the backbone of the present article. The monographic analysis meant that Ödön Kuncz dealt with certain areas of industrial property rights, including trade and company marks, patents and design protection, and unfair competition, in his book *The Hungarian Commercial and Bill of Exchange Law Textbook*. After studying his book, we can identify the areas of contemporary legal education and the teaching of commercial law that the professor focused on. These included the development of commercial law. The first chapter of his textbook can be divided into two large sections on the general part of commercial law, where he introduced commercial companies in general (e.g. the occasional merger, the cartel, the concern), while in the special part (the legal relations

⁴² Ibid. 104.

⁴³ Ibid. 109. Basically, this meant the regulation of usury, and usury courts were set up to settle such disputes.

⁴⁴ KUNCZ – BALÁS 1924.

⁴⁵ Ibid. 21–73.

of certain commercial companies) he provided a detailed analysis of the general partnership, the silent partnership, the private limited company, the limited liability company, the co-operative. In the second part of his book, he analyzed commercial transactions, introduced the trade law and bill of exchange law in rem, and gave an insight into securities law, banking and credit transactions, payment transactions, the regulation of bills of exchange and cheques. Finally, he concluded his textbook with an analysis of commercial purchase and publishing deal, insurance, and transport. In his opinion, the reason for such a complex analysis of the subject is that “[...] *these areas of commercial law not only cover a large and varied subject matter but are constantly and significantly expanding as a result of economic development.*”⁴⁶

His dedication as a professor and his desire to meet the needs of his students is exemplified by the fact that he did not want to write a collection of laws or a commentary or a handbook, but a textbook. The writing of a textbook is one of the most difficult genres, which is why I would like to draw the reader's attention to *Kuncz's* words that students “[...] *need a textbook. A textbook that explains the content of the rules of living law in a clear and lucid manner, that brings the mass of laws into a clear system and constructs clear and sharp legal concepts that enable them to find their way around. A textbook that makes it easier for them to study collections of laws, commentaries, handbooks, and monographs.*”⁴⁷

After reviewing the vast material, the author has chosen to focus on a field that is less often discussed when the name of Ödön *Kuncz* is mentioned. Professor *Kuncz's* name is intertwined with the study of classical commercial law. The analysis of unfair competition was the author's choice, and he aimed to introduce an area of law the actuality of which is indisputable and represents a less studied part of Ödön *Kuncz's* work.

The chapter on protection against unfair competition first seeks to define the concept of unfair competition itself. The freedom of contract, which is a general principle of private law, is the basis of free competition, which allows everyone to “*seek his own fortune as his strength permits.*”⁴⁸ According to *Kuncz*, the aim of commercial competition is nothing less than the conquest of consumers, the means of which can only ever be fair and honest. The use of unfair means is a public danger since it can lead the honest trader to use unfair means. In his opinion, it is impossible to say exactly when competition is unfair. Nevertheless, the author has attempted to define the concept which he considered elusive a few lines earlier and to resolve the resulting contradiction for his students. “*The inexhaustible imagination of commercial life is daily throwing up new acts which the moral sense of honest traders regards as contrary to business integrity. And in general, we can say no more than that we are faced with unfair competition when one uses for the purpose of competition an instrument which is against business integrity.*”⁴⁹ Ödön *Kuncz* himself quickly declared that it is for the courts to decide in a particular case whether the conduct is fair or unfair.

⁴⁶ KUNCZ 1938, III.

⁴⁷ Ibid.

⁴⁸ Ibid. 48.

⁴⁹ Ibid.

The author of the textbook seeks to improve the definition by distinguishing between acts that promote confusion and acts that attack competitors in the context of unfair competition. The confusion, in this case, may be subjective (e.g. use of another company's name or trademark) or objective (e.g. advertising fraud, enticement to buy).

Afterward, Ödön *Kuncz* deals with the issue of private law protection, which included injunctions, damages, publication of the judgment, and recompense. Private law protection could be conceived in the framework of the Unfair Competition Act (Act V of 1923) under the *generalis clausula*, while criminal law protection was provided in relation to the statutory facts. The *clausula* provided by Act 1.§ allowed the court to grant private law protection against any conceivable manifestation of unfair competition, which only protected business competition that was contrary to business integrity and morality.⁵⁰

The law considered it necessary to explicitly set out some typical cases of unfair competition, statutory facts, namely: advertising fraud (fake praising), usurpation and imitation, denigration (defamation of reputation or credit), snowball contract, breach of confidence (betrayal or misappropriation of a business or industrial secret) and business bribery. In this paper, I present the author's explanation of the snowball contract. “*One should not enter into a so-called snowball contract (hydra, check, avalanche), whereby the buyer or customer of a service will only acquire or receive the goods or services if a certain number of buyers or customers are acquired and if this is not achieved, the contract will be at a disadvantage according to its terms. Such a contract, and any further contract made on the basis of it by the buyer or customer with third parties, are null and void; the purchase price or consideration paid must be returned and the seller or the party obliged to supply the service is liable for any damage caused.*”⁵¹ The classic home of the snowball contract was Switzerland, where the seller, for example, would sell a gold watch to the buyer at a much lower price than the market price on condition that the buyer paid the purchase price in advance and received the watch only if he placed a certain number of coupons with subsequent buyers, who would also receive the watch on the same terms as the first buyer. In the analysis of *Kuncz's* example, he points out that the name of the contract refers to the avalanche-like process of acquiring and recruiting customers. In this case, the seller's calculation was immoral, since he gave the watch to the buyer who placed the coupons at a low price because he surely expected that the subsequent buyers would be unable to place the coupons and that he would thus make a huge profit on the remaining purchase price. “*The apparent cheapness of the purchase price and the apparent ease with which the coupons to be taken up can be placed, at first sight, are attractive to the public and lure them away from the competitors which market the goods at the normal market price.*”⁵²

In the fourth chapter on commercial companies, the characterization of cartels is presented as a continuation of the previous topic. He defined the concept of a cartel as follows. “*A cartel is an agreement between legally independent undertakings engaged in similar or related economic activities with a view to adapting production to*

⁵⁰ Ibid. 50–51.

⁵¹ Ibid. 56.

⁵² Ibid. 56–57.

*consumption, eliminating, or at least substantially reducing free competition (in short, regulating competition) and thereby obtaining monopoly-like advantages.*⁵³

In my opinion, the cartel was the “flower”⁵⁴ of the proliferation of unfair competition and free competition in the interwar period. Therefore the Cartel Act (Act XX of 1931) had to regulate state control and intervention against cartels, given that the economic policy of the time considered cartels a necessary good and the law accepted this. According to *Kuncz*, the difference between a cartel and a trust was that the cartel companies retained their legal independence from the trust and sought to monopolize prices. Moreover, permanence, or at least a fixed duration conglomeration, was an essential element of the cartel, since otherwise, we could have talked of a rather ad hoc merger. The Cartel Act did not define what a cartel was, which is why other forms of economic competition regulatory organization (e.g. trusts) in addition to cartels were also covered by the Act.

Ödön *Kuncz* focused on the introduction of the private law of cartels, concluding with a description of the procedural and public law of cartels as defined in the Cartel Act. In the present study, I intend to focus on the private law of cartels.

The organization of the cartels was very diverse. The form of a cartel was usually a private law company. There were three types of cartels: without quota, with quota but not centralized, and with quota and centralized. In the first case, a looser bond was established between the members, which was without a quota, and included the conditional cartel, the price cartel, the rayon (territorial) cartel, and the goodwill guarantee cartel. These cartels usually took the form of a private law partnership, with the result that the cartel contract is no more than a deed of partnership. There were usually no corporate assets. The contract exhaustively regulated the management of the business, termination, withdrawal, exclusion, consequences of breach of obligations, i.e. liquidated damages, among others. The quota cartel also fixed the quantity that the members could produce of the goods in question per period and the rate at which each member was entitled to market the goods. This agreement was often supplemented by the fixing of the price and the conditions of sale. The only restriction was on production; each member was free to sell. This cartel usually took the form of a private law partnership. The “*most perfectly organized form of cartels*”, as *Kuncz* stated, was the cartel with quota and centralization of sales, which not only determined the conditions of sale, price, and quota but also centralized the sale of the goods produced.

“*The cartel, as a form of organization, will sooner or later fight its way into a legal suit that meets its needs.*” *Kuncz's* statement suggests that the regulation of cartels, in particular the private law of cartels, still requires further steps. The Cartel Act focused primarily on cartel law, regulating the question of cartel law enforcement and cartel supervision (e.g. cartel court, cartel commission).⁵⁵

Cartel agreements were only valid in writing. The documentary constraint was a requirement for all cartel agreements, as opposed to the obligation to present, which had

⁵³ Ibid. 122.

⁵⁴ On the private law history of the cartel, see: HOMOKI-NAGY 2016, 39–53.

⁵⁵ KUNCZ 1938, 124. On the history of cartel supervisory organs: SZABÓ 2016, 64–84., STIPTA 2016, 53–64.

to be fulfilled if the cartel involved at least one commercial company or at least one industrial or commercial undertaking employing more than twenty employees.⁵⁶

Kuncz also dealt separately with three very important issues related to cartels: the legal status of cartel members, the protection of the interests of *outsiders* and competitors not included in the cartel, and finally the means by which the Cartel Act addresses cartels that have a harmful impact on the economy.

The cartel treaty was the basis for the private law of cartels. According to *Kuncz*, “[...] *the legal position of a cartel member is characterized not so much by its rights as by its obligations, because the cartel, for the purpose it pursues, is »binding« (aliquid non facere) on its members.*”⁵⁷ Therefore the treaties placed great emphasis on ensuring the members' obligations, for example by stipulating liquidated damages, depositing a security deposit, and, in the case of a legal dispute, involving an arbitration clause. An important question of the private law of cartels was how a member could be released from the obligation he had voluntarily undertaken and withdraw from the cartel. In *Kuncz's* view, this would be for the ordinary courts to decide. The cartel tried to force *outsiders* out of competition or even into the cartel by price-fighting and by business isolation (boycotts, exclusion). This is where the role of the Cartel Act was crucial, as it had to protect the public interest and the common good. Against such conduct of cartels, which was dangerous to the public interest, *Kuncz* considered self-defense and the initiative of economic life to be a more effective means than judicial protection, and the public anti-cartel enforcement, which left action primarily to the administrative authorities. In the first case, the most effective counter-organization is the co-operative movement. In the second case, the anti-cartel enforcement, based on the protection of public interest, provided administrative and judicial legal protection against abuses. Administrative protection was provided by the Minister for Industry, the Cartel Committee, the Price Analysis Committee, the Royal Hungarian Legal Directorate, and the Cartel Court.

The law also introduced the protection of branded goods, which meant goods put on the market by the manufacturer with the same quality, the same appearance (packaging), and the same marking (e.g. trademark), setting the same retail price. In this case, the producer endeavored that the trader marketed the goods at the price he had set because this price ensured the profitability of production and the stability of the consumer base. The price set was also appropriate for the retailer because a fair profit was considered in setting the price. The Branded Goods Decree (Decree No. 5999/1935 M.E.) accepted the Curia's statement that the scope of the Cartel Act also covered the protection of branded goods, except that “[...] *they apply to agreements concluded to ensure that goods marketed under a particular shape and name (so-called branded goods) are sold at a set price.*”⁵⁸

⁵⁶ Ibid. 125.

⁵⁷ Ibid. 125.

⁵⁸ Ibid. 130.

Minor studies on commercial law

It cannot be said that *Kuncz* examined only the changes of commercial law, economic law, on the contrary, he summarized the rules and practice relating to companies in the book *Contracts in personal and property relations*, which was published as the eighth chapter of the *Hungarian Private Law* handbook, Volume IV (*Special Part of Contracts*), edited by Károly Szladits.⁵⁹ In this chapter, he introduced in detail the specific characteristics of companies, contrasting them with associations; the definition and purpose of the company, the background to the regulation of *societas* and *Gesamthand*, and the articles of incorporation. While introducing and analyzing the rules, he considered the contemporary practice and the relevant provisions of the Hungarian Private Law Bill of 1928. The application of both legal comparison and historical method can be discovered in his study.⁶⁰

Ödön *Kuncz's* academic work was not only enormous in terms of its physical size but also extremely wide-ranging if we look at his smaller studies. In 1939, on the occasion of his 25th anniversary as a professor, a collected volume entitled *Struggle for Economic Law* was published, about which István Antal, Tihamér Fabinyi, and Endre Nizsalovszky wrote the following in the foreword: “[...] Ödön *Kuncz's* quarter-century of university lecturing coincides with a period of serious events in the history of mankind. The works collected in this volume reflect this quarter of a century in the powerful work of this eminent academic, law-editor, and lecturer.”⁶¹ I do not undertake to present these studies in detail in this study, but I would like to provide a comprehensive picture of the scope and volume of Ödön *Kuncz's* professional activities.

Ödön *Kuncz* dealt in his studies with the current issues of the law of credit, its reform, especially with regard to the legal status of commercial employees, and the establishment of a Central Court of Registration.⁶² In commercial law, he published studies in which he analyzed the general reform of this field of law, the commercial labor law, the company law rules of the MTJ (1418. and 1440.§§), the introduction of the gold balance or the Swiss commercial law. In several of his minor writings, he has returned to the regulation of unfair competition and cartel law. In most of the papers of this volume, he analyzed what he called problems of stock corporation law, supporting his arguments with domestic and international examples. He has dealt with issues such as the continuation of a dissolved private limited company, the increase of share capital, the nullity of a private limited company, the regulation of the contribution, the pre-emption right of shares, the remuneration of board members. The volume concludes with his studies on co-operative law.

In 1941, after the publication of the first volume, the second volume of his studies was published, mainly on the law of shares and co-operatives. “In this present volume,

⁵⁹ KUNCZ 1942.

⁶⁰ Ibid. 709–746.

⁶¹ COTTELY – MEZNERICS – PUSKÁS 1939, V.

⁶² His work titled *Legislative Tasks in the Field of Credit Law and The Reform of our Credit Law*. In: COTTELY – MEZNERICS – PUSKÁS 1939, pp. 43–63.

too, the lion's share is taken up by essays dealing with the reform of the law of shares and the fundamental questions of co-operative law. But in addition to these, a whole range of actual issues are also highlighted, always with the thoroughness of a scholar, the wisdom of a Hungarian, a sense of social justice and an artistic hand.”⁶³ In his studies, written in Hungarian, German and French, he dealt with the right of shareholders to challenge the location of domestic branch companies, German law of shares, the law of shares reforms, among other things.⁶⁴ Regarding co-operative law, he has written on such topics as the principles of Rochdale and the concept of co-operative law, and the reform of the cooperative law of Transylvania and Germany.⁶⁵

I would like to conclude my study on Ödön Kuncz with the words of the professor, quoting from a work in which he spoke about the role and task of the young lawyers, words that can serve as a guideline for the 21st-century reader of law. “*You can see the far-reaching, difficult, important, and noble tasks that must be carried out by one who dedicates himself to the true profession of a lawyer. And yet I say that the task of the young Hungarian lawyers is easy. The pantheon of Hungarian lawyers is full of such illustrious names, such great intellectual and moral treasures have been bequeathed to you by your legal predecessors, that your task can only be one: to be worthy of them.*”⁶⁶

III. His selected works⁶⁷

A jog birodalma bevezetés a jog- és államtudományba. [The realm of law, introduction to the law and political sciences.] Grill Könyvkiadó Vállalat. Budapest, 1946.

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A korlátolt felelősségű társaság szabályozásának alapelvei. [The principles of the regulation of limited liability company.] Jogállam (27) 1928/6. 270–288.

A magyar bankjog problémái. [The issues of Hungarian bank law.] Gazdasági jog 1941/7. 385–396.

A magyar kereskedelmi és váltójog tankönyve. [The textbook of Hungarian commercial law and bill of exchange law.] Grill Károly Könyvkiadóvállalata. 1938.

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A részvény-bevonás /amortizáció/ és az élvezeti részvény tanulmány a részvényjog köréből. [Retirement of shares /depreciation/ and beneficial share study in the field of law of shares.] Grill Könyvkiadó Vállalat. Budapest, 1914.

A részvényjog reformjáról. [On the reform of the law of shares.] Franklin. Budapest, 1927.

⁶³ Ibid. V.

⁶⁴ Ibid. 3–395.

⁶⁵ Ibid. 395–533.

⁶⁶ COTTELY – MEZNERICS – PUSKÁS 1939, 24.

⁶⁷ His minor studies: COTTELY– MEZNERICS– PUSKÁS 1939, and COTTELY– MEZNERICS– PUSKÁS 1941.

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- A rochdale-i elvek és a szövetkezet jogi fogalmának körülírása.* [The description of the principles of Rochdale and the legal concept of co-operative.] Athenaeum. Budapest, 1935.
- A szövetkezet és a törvényhozás.* [The co-operative and the legislation.] Magyar jogi szemle (1) 1920/5. 301–308.
- A társasági jog egyenlősítésének egynehány problémája.* [Some issues on the equalization of company law.] Gazdasági jog 1943/7. 385–390.
- A tisztességtelen verseny (Az 1923: V. törvénycikk magyarázata, kiegészítve a törvényt végrehajtó rendeletekkel).* [The unfair competition (The explanation of Act V of 1923, supplemented by the executive decrees.)] (co-author: BALÁS P. ELEMÉR). Politzer Zsigmond és fia kiadása. Budapest, 1924.
- A tisztességtelen verseny problémája.* [The issue of unfair competition.] Kereskedelmi jog (18) 1921/11-12. 84–88.
- Alaptőkefelemelés tanulmány a részvénytársasági jog köréből.* [The increase of share capital study in the field of private limited company law.] Grill Könyvkiadó Vállalat. Budapest, 1911.
- Az állam és a biztosítás.* [The state and the insurance.] Kereskedelmi jog (14) 1917/21-22. 205–209.
- Az aranymérleg problémái és rendelettervezet a kereskedők mérlegének aranykoronában készítéséről.* [Issues of the gold balance and a draft decree on the preparation of traders' balance sheets in gold koruna.] Athenaeum. Budapest, 1925.
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- Az ötvenéves kereskedelmi törvény.* [The fifty-years-old Commercial Act.] Magyar jogi szemle 1926/1. 1–9.
- Az új kereskedelmi jog problémái.* [The issues of the new commercial law.] Kereskedelmi jog (15) 1918/21-22. 213–217.
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- Hiteljogunk reformja.* [The reform of our credit law.] Magyar jogi szemle (3) 1922/4. 200–212.
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