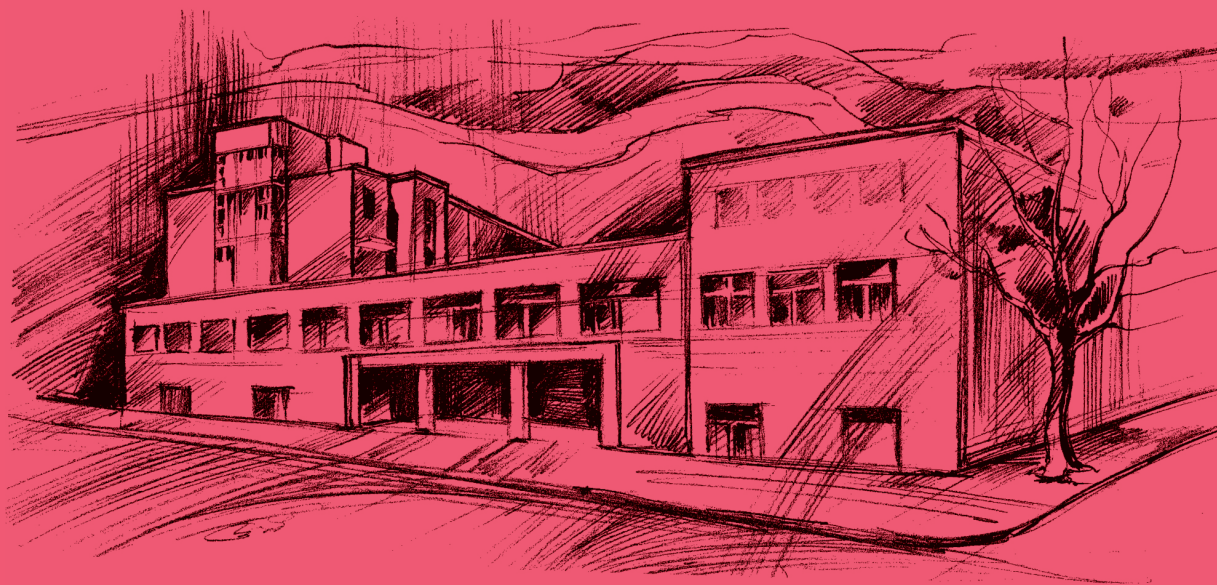


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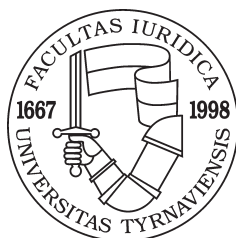
Legal-Historical Trends and Perspectives VII



Právno-historické trendy a výhledy VII.

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From Feudal Censorship to Freedom of the Press in Hungary in 1848 Through the Work of József Irinyi

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Eötvös Loránd University, Faculty of Law

Abstrakt: Jedným z hlavných cieľov uhorských reformátorov v 18. storočí bol boj proti feudálnej cenzúre. Namiesto predchádzajúceho skúmania obsahu textu chceli reformisti zaviesť jeho následnú kontrolu, v dôsledku ktorej by bolo možné postihovať len nezákonný obsah. Kľúčovou postavou tohto zápasu bol József Irinyi, ktorý sa vo viacerých svojich prácach zaoberal otázkou zrušenia cenzúry a pravidlami tlačového zákona, ktorí reformné kruhy chceli vytvoriť. Tento článok popisuje cestu od feudálnej cenzúry k slobode tlače v roku 1848 v Uhorsku prostredníctvom jedného z diel spomínaného Józsefa Irinyiho.

Kľúčové slová: cenzúra; József Irinyi; Uhorsko; tlačový zákon; zodpovednosť; tlačová sloboda.

Abstract: In Hungary, the struggle against the feudal censorship of the 18th century was one of the central wishes of the reformers. Instead of prior examination of the published content, they wanted to introduce *ex-post* control, whereby only illegal content could be punished. A key figure in this struggle was József Irinyi, who in several of his works addressed the question of the abolition of censorship and the rules of the press law they wanted to create. This paper describes the path from feudal censorship to freedom of the press in 1848 in Hungary through the work of József Irinyi.²

Keywords: Censorship; József Irinyi; Hungary; Press Act; Liability; Freedom of Press.

1. Introduction

Every era has its anonymous or lesser-known characters, those who are not remembered in the historical memory, those who are not the subject of plays in theatres, those who are less talked about, and those whose lives are less researched. József

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Irinyi is just such a person because few people know how much influence he had on the events of March 1848 in Hungary and what his role was in the struggle for the freedom of the Hungarian press.

József Irinyi was born in 1822 when feudal censorship was in its heyday in Hungary. In 1793, Francis I declared the establishment of a printing press and censorship a royal right. When the public would have started to get information from the early libraries, he banned them in 1798. In addition, „the subscription of cafés to journals was prohibited.”³ In addition, eight years later, in 1806, he made the establishment of bookshops subject to royal authorisation, so it is clear that the monarch did everything he could – given the technical standards of the time – to control the content that could be available to the public. When a publication was allowed to appear, it had to be submitted for “preliminary auditing”, i.e. preliminary censorship by the Book Audit Department of the Privy Council, which worked based on the *Index Librorum Prohibitorum*⁴ issued by the Imperial Censorship Office.⁵ This repressive system culminated in the regulation of printing and censorship by decree, which resulted in only five political newspapers operating during the period: one in Hungarian, one in Latin and three in German.⁶

2. “Freedom of the press is not outlawed.”⁷

The situation remained the same in legal terms after the turn of the century. In 1820, a royal ban was imposed on importing literary and scientific journals into Hungary, which meant that the country was closing its borders from knowledge. At the same time, by the 1820s, several progressive counties had raised their problems: the county of Bars had written a petition against censorship.⁸ Their arguments were twofold: on the one hand, they claimed that censorship was contrary to the noble liberties enshrined in the *Tripartitum*,⁹ i.e. the right to communicate their ideas freely; on the other hand, they stressed that censorship of the content to be published was an obstacle to the progress of the country and was explicitly harmful to the spread of culture.

³ KELEMEN, R. Sajtószabadság vagy hadiérdek? – Az első világháború dilemmája. *Katonai jogi és hadijogi szemle*, 2, 2014, č. 2, pp. 70–71.

⁴ On the history of the various Indexes, see GOSZTONYI, G. *Cenzúra Arisztoteléstől a Facebookig*. Budapest: Gondolat Kiadó, 2022, pp. 45–49.

⁵ RADY, M. *The Habsburgs: The Rise and Fall of a World Power*. London: Penguin Books Ltd, 2020, pp. 234–243.

⁶ DEZSÉNYI, B., NEMES, G. *A magyar sajtó 250 éve*. Budapest: Művelt Nép Könyvkiadó, 1954, pp. 32–34.

⁷ IRINYI, J. *Német-, francia-, és angolországi úti jegyzetek*. Halle, 1846, p. vi.

⁸ BOTH, Ö. Az 1848. évi sajtótörvény létrejötte. A sajtószabadság problémája Magyarországon a reformkorban. *Acta Universitatis Szegediensis. Sectio politico-juridica*, 1, 1956, č. 4, p. 42. o.

⁹ RADY, M. *Customary Law in Hungary: Courts, Texts, and the Tripartitum*. Oxford: Oxford University Press, 2015.

In the reformist Parliament of 1825,¹⁰ several similar speeches were written onto the pages of history. Still, they did not essentially express the intention to abolish censorship but instead to regulate the issue by acts, not decrees. Likewise, some suggested that the censors should not be only Catholic, but this was not heard at the time. The government's position was clear: politics should be closed to the public.

However, this position did not last long: in the Diet of 1832–1836, the position of the progressive counties was clearly that the press should be free, but they also wanted to introduce a system of *ex-post* responsibility instead of *ex-ante* control. At the same assembly, the need to create a newspaper in Diet was also raised,¹¹ which was seen as a way of satisfying the needs of interested *citizens* for information.

Not independently of the changing political and historical situation in Europe, a new strategy of government control can be identified in the Parliament of 1839–1840: “it was recognised that politics could no longer be kept away from the press and that the newspapers, once they had spoken, should be made to speak in the government's interest.”¹² In this spirit, newspapers were allowed to report from the Diet, albeit still without the names of the speakers.¹³ The issue of censorship was constantly on the agenda during the whole period. At the Parliament of 1843–44, Lajos Batthány highlighted as one of the main problems that too much depended on the censor, i.e. the same content could get caught up in one of their filters and slip through another, thus pushing valuable ideas awaiting publication into the realm of total unpredictability. At the same Diet in the House of Lords, however, it was argued – in an interesting argument for posterity – that censorship was a legitimate content-limiting measure since some of the county's documents might be illegal.¹⁴ A characteristic feature of these few years was that while in Hungarian-language works published abroad, the institution of censorship itself was attacked, in works published in Hungary, to avoid direct confrontation with the government, the censors were the focus of the attacks, rather than the institution.

The heated situation forced most counties to reconsider their position, so “even the conservative counties changed their position (...) In 1843/44, almost the whole country wanted freedom of the press.”¹⁵ The two major parties of the time, the *Konzervatív Párt* (Conservative Party) and the *Ellenzéki Párt* (Opposition Party), disagreed on what the principal objections against the government should be: the Conservative Party did not take an open position on the issue and seemed content with

¹⁰ HALMOS, F., KUSZÁK, Á., MÉZES, M. (eds.). *A magyarság kézikönyve*. Budapest: Pannon Könyvkiadó, 1993.

¹¹ DEZSÉNYI, B. Politikai hírlapok. In: PÁNDI, P. (ed.). *A Magyar Irodalom története III*. Budapest: Akadémiai Kiadó, 1984, p. 556.

¹² ERDŐS, A. P. A sajtószabadság ügye a reformkorban. In: *Újkor.hu* [online]. 18 May 2018 [cited on 29 Oct 2022]. Available at: <<https://ujkor.hu/content/sajtószabadsag-ugye-reformkorban>>

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ HOMOKI-NAGY, M. A sajtószabadság kérdése Both Ödön munkáiban. *Acta Universitatis Szegediensis: Acta juridica et politica*. 37, 1987, č. 1–22, pp. 357–358.

some kind of partial exemption for certain works from prior control and censorship, the Opposition Party considered the freedom of the press to be the minimum of constitutionalism. Two bills were drafted within the Opposition Party: one of these was by László Szalay and Lőrinc Tóth, while the other – which wanted more radical changes – was by József Irinyi. At the same time, we must remember that, according to Ödön Both, our reformers did not wish for unrestricted freedom of the press since “there is a no more dangerous enemy of freedom than the freedom of the press when abused by the rightful.”¹⁶

How did József Irinyi become a champion of press freedom? One step was undoubtedly to prevent the publication of his travel notes. As was the practice at the time, Irinyi made extended visits to Germany, France and England, and he wanted to report his experiences to the public in writing. Censorship, however, would have mutilated the work for publication to the point where it would have been almost incomprehensible. As the censor put it, “neither its direction, nor its purpose, nor its mode of discussion, nor its principles, nor even its ideas in general, can be published”. The reason for censoring the work was undoubtedly the comparison of the situation at home and abroad. Still, the fact that Irinyi did not merely offer the usual real travelogue but that the work was, in his view, “a collection of several political articles, not exactly closely related to each other.”¹⁷ As Mihály T. Révész put it, “his writings were political snapshots of the public events of the capitals, which were also offered as models for the Hungarian home, but at least presented as such.”¹⁸ István Fenyő quotes a review from that time in the *Irodalmi Ór* (Literary Guard) that the work “contains so many unusual, courageous, new, radical ideas and views that the reader who is not used to such things here will almost tire of it ... genius, sharpness and precision cannot be denied from the author.”¹⁹

All this annoyed Irinyi to such an extent that a year later, in 1847, he published the book under his own name and at his own expense in Germany. Publishing the volume under his own name was also risky because he put an open letter at the beginning, addressed to Count György Apponyi, the Hungarian Chancellor of that time, in which he spoke out clearly and scratchily against all forms of censorship. “As I am forced to send this present work, after more than eleven months of trial and waiting, and unable to get it through the censorship, to Leipzig²⁰ for investigation, I have the courage, with all due respect, to raise a voice of complaint before your Excellency, the head of the government of our country at this time, against the censorship which is

¹⁶ BOTH, Ö. ref. 6, p. 31.

¹⁷ IRINYI, J. ref. 5, p. 5.

¹⁸ RÉVÉSZ, T. M. Irinyi József (1822–1859). In: *JOG.történet. Az MTA–ELTE Jogtörténeti Kutatócsoport (ELKH) blogja* [online]. 21 March 2022, p. 1 [cited on 29 Oct 2022]. Available at: <<http://mtajogtortenet.elte.hu/blog/revesz-t-mihaly-irinyi>>

¹⁹ FENYŐ, I. Tájékoztató a nagyvilágban: Útirajzirodalom. Irinyi József. In: PÁNDI, P. (ed.). *A Magyar Irodalom története III.* Budapest: Akadémiai Kiadó, 1984, p. 578.

²⁰ The place of publication finally was Halle.

practised in our country with an absurd excess”.²¹ Irinyi’s bitterness, however, is perhaps best expressed in these lines: “Elsewhere the collegium of censorship is a body from which one can expect something, but at us, it is the death of a work that comes before the collegium.”²²

3. “A truly complicated machine of arbitrariness”²³

Irinyi’s work – perhaps it can be said that it was not necessarily the travel descriptions but the open letter that made it so famous – received a great response, and the author was invited to contribute to the *Ellenőr* (Inspector) edited by József Bajza, in which the colourful Hungarian reform opposition was represented.²⁴ The book was published by the *Pesti Ellenzéki Kör* (Pesti Opposition Circle), a merger of the *Nemzeti Kör* (National Circle) and the *Pesti Kör* (Pesti Circle). It was intended to be published as an art-scientific-political *almanach* instead of the art album it had previously planned. The volume, also printed in Germany in 1847, included an article by Irinyi entitled “On Press Act”.

The text is almost a love letter to freedom of the press: it seems clear to Irinyi that sooner or later, freedom of the press will be achieved in Hungary, the same way as the use of the Hungarian mother tongue has been achieved, but it is also clear to him that the freedom of the press cannot be delayed: “The sooner we hurry with the time, with the introduction of freedom of the press, the sooner we will get used to it. If we had had it half a century before, everything would have been fine. If we get it today, we will sooner emerge from the pains of transition.”²⁵ His argument is based on constitutional law: he considers preliminary censorship of the content to be published to be incompatible with constitutional life since, in his view, restricting this most important fundamental right would undoubtedly work against social participation. In addition, unlike many of his contemporaries, he is not willing to concede on this issue since, as he writes, “preliminary censorship is incompatible with real constitutional life. As certain as two times two; four. Any bargaining on this part is incompatible with the idea of constitutionalism.”²⁶

There is also an appealing idea in the text, based on 21st-century logic, as Irinyi argues at length for the question of *ex-post* responsibility rather than prior investigation. For him, this means that the content already published would be subject

²¹ IRINYI, J. ref. 5, p. iii.

²² *Ibid.*, p. iv.

²³ IRINYI, J. Sajtótörvényről. In: BAJZA, J. (ed.). *Ellenőr. Politicai zsebkönyv a' Pesti Ellenzéki Kör megbizásából*. Germany, 1847, p. 101.

²⁴ As Róbert Hermann notes, “of the big names, perhaps the only ones missing were Eötvös and Wes-selényi, who by this time had retired from the daily political battles.” HERMANN, R. Az „Ellenőr” – egy ellenzéki zsebkönyv születése. *Századok*, 144, 2010, č. 3, p. 520.

²⁵ IRINYI, J. ref. 21, p. 95.

²⁶ *Ibid.*, pp. 100–101.

to scrutiny, and if it is found to be illegal, the person responsible for its publication would be subject to legal proceedings. As Irinyi puts it: “For it is said, and this is the main defence: press laws may be strict, but what is the point of punishing someone if he has already published something; one could say that he must be prevented from doing harm, so there must be a prior investigation. This is a somewhat pleasing statement, it is true, but it is not enough. Constitutional life requires that a man should be given a chance to act, and if he makes a mistake, he should be punished, not that he should be deprived of the chance to act, so that he may not make a mistake.”²⁷ The *ex-post* responsibility would have been embodied in a graduated system in which the author, the newspaper and/or magazine editor, the publisher, and the printing press owner could have been held liable. In addition, Irinyi envisaged a joint²⁸ liability system, with the exception of the owner of the printing house.²⁹

This is further complicated, in Irinyi’s view, by what we would now identify with the question of self-censorship: if the author knows in advance that, on the one hand, the institution of censorship itself exists, and on the other hand, that the behaviour and decisions of individual censors cannot be calculated in advance, then “a truly complicated machine of arbitrariness” is created, where the author tries to adapt to it and to invent in advance the uninventable. In this way, with the whole machinery of arbitrariness, „the creative mind becomes the censor of its own work!”³⁰ If we examine in detail what Irinyi wishes to achieve in connection with the above, it is clear that his whole train of thought is based on the complete prohibition of preliminary auditing, i.e. prior censorship. Irinyi considers that to be “a real massacre of the mind.”³¹

It should also be emphasised that Irinyi considered it essential not only to settle substantive law issues but also to examine and regulate procedural issues since substantive law rules can be useless if procedural law does not help them to be implemented. In this context, the text refers to the establishment of a jury in press trials, which is described as a “court capable of guaranteeing civil liberty, following the examples of England, America and France”³² and „because it is impossible to define each case of press misdemeanour in the law.”³³ Irinyi notes, however, that if the – at that time non-existent – Code of Criminal Procedure could not be drafted in a sufficiently short time, the establishment and operation of an *ad hoc* press jury would be acceptable to him, since “in no case can a press case be tried by less than a jury.”³⁴

²⁷ Ibid, pp. 99–100.

²⁸ Ibid., Art. 17, p. 112.

²⁹ In the context of joint liability, it is worth quoting Ödön Both, who criticised the idea, saying that “this elevates the publisher or editor to the position of censor of the writer.” BOTH, Ö. ref. 6, p. 35.

³⁰ IRINYI, J. ref. 21, p. 101.

³¹ Ibid., p. 94.

³² BOTH, Ö. ref. 6, p. 37.

³³ IRINYI, J. ref. 21, p. 106.

³⁴ Ibid., p. 108.

It should be pointed out, however, that he sees offences committed against the King or a member of the royal family through the press as being dealt with not by a jury trial but by a Parliamentary Court, proposed by the House of Commons. Irinyi took a rather strict stance on the complete reform and restructuring of the judicial process in relation to press offences: the *de lege ferenda* proposal at the end of the text is a twenty-five-point press bill, a significant part of which deals with offences committed and punishable through the press. The maximum penalties are set at between 4,000 Forints and five years imprisonment,³⁵ which is much stricter than the legislation adopted later.

Irinyi mentions the deposit for the establishment of a newspaper only once, but he does not oppose it: “*I find it consistent with requiring from the political newspapers a certain amount of deposit, out of which, in case of offence, the fine imposed may be paid, and, being mutilated, it may always be replenished.*”³⁶

It is fascinating to note that in certain cases, despite his constant advocacy of the fight against censorship, he considers its use acceptable, namely against persons who “with uncharacteristic fury, are perpetually passionate in their agitation, spreading baseless and malicious slander.”³⁷ Against such persons, as a judicial sanction, he sees the imposition of a preliminary censorship acceptable “for a certain period of time.”³⁸ But he also feels that this concession does not fully coincide with his thinking, so he indicates that “if this form of punishment is, as I believe, incompatible with freedom of the press, it can be abolished later.”³⁹

The text published in the *Ellenör* (Inspector) is not short of *bon mots* that still make the reader laugh, and it is easy to imagine the impact these pictorial descriptions might have had in the pre-Internet age. One such sentence is “censorship is to a constitutional government as murder is to a chivalrous man,”⁴⁰ while another is a caustic criticism of the censors themselves, stating “there are censors who are a real insult to be entrusted with the judgement of intellectual works, as who could only be employed to lead a herd of sheep.”⁴¹ The same ironic overtone appears in the section where Irinyi polemicises that even the government would gain by abolishing the preliminary censorship since it would no longer have to pay for its secret spy network, as “we would say out of all our desires, wishes, thoughts, hopes ourselves.”⁴²

³⁵ Ibid., Art. 12, p. 111.

³⁶ Ibid., p. 109.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid., p. 110.

⁴⁰ Ibid., p. 100.

⁴¹ Ibid.

⁴² Ibid., p. 106.

4. “I am perfectly free from the claim that nothing can or should be done about it.”⁴³

As we know from history, József Irinyi was also at the centre of events in March 1848. “It was his hand that gave final shape to the famous *Tizenkét Pont* (Twelve Points),”⁴⁴ the first point of which called for freedom of the press and the abolition of censorship. On the morning of 15 March 1848, the crowd arrived at the printing house of Landerer and Heckenast with the *Nemzeti Dal* (National Song) and the *Tizenkét Pont* (Twelve Points), but without censorship permission, where (probably) József Irinyi uttered the famous words: “We at this moment seize this press in the name of the people and demand the printing of our manuscripts.”⁴⁵ The pathos of the events and the patina of history does not diminish the fact that Alajos Degré – according to Gyula Illyés – recalled the events in a slightly different way:

*“When the young people marched into the printing house to print the Nemzeti Dal (National Song) (which, by the way, the censor could find nothing wrong with), Landerer said dryly: Impossible; it doesn’t have permission. We looked at one another; we didn’t know how to do it. Landerer whispered: Seize the press.”*⁴⁶

The youngsters of the events in March and the celebrating crowd behind them thus *de facto* won freedom of the press, which was *de jure* confirmed the next day, 16 March 1848, by the provisional decree of the Council of the Governor. According to the first point of the decree, „the press shall operate freely without any prior censorship.” The decree was communicated to the printing press owners on the same day and was read out the next day, 17 March, at the Pest City Assembly.

A few days later, on 20 March 1848, Bertalan Szemere submitted a draft press law to the Parliament, the first version of which would have required a substantial deposit for establishing a newspaper and in which the definition of press offences was not listed. Therefore the citizens could hardly have considered it sufficiently well-founded. As Antal Csengery put it the following day in the newspaper *Pesti Hírlap* (Pest Gazette):

*“The press bill has just arrived in our capital from the Parliament.”*⁴⁷ *We don’t know if it is a proposal or a binding law. It was read today in the Pest County Commission before a large audience. The excitement it caused is indescribable. It has spread like lightning throughout the capital. The dissatisfaction was general.”*⁴⁸

⁴³ Ibid, p. 110.

⁴⁴ RÉVÉSZ, T. M. ref. 16, p. 2.

⁴⁵ KOSÁRY, D. A pesti forradalom és a sajtószabadság. In: KOSÁRY, D., NÉMETH, G. B. (eds.). *A magyar sajtó története. II/1.* Budapest: Akadémiai Kiadó, 1985, p. 39.

⁴⁶ ILLYÉS, G. *Petőfi Sándor.* Budapest: Szépirodalmi Kiadó, 1963, p. 182.

⁴⁷ The Parliament was held in Pozsony (Bratislava).

⁴⁸ Pesti Hírlap, 23 March 1848, p. 247.

The deposit for political newspapers would have been 20,000 Forints, while in all other cases, it would have been 10,000 Forints, to which András Koltay notes that “this was an increase compared to the actual legal deposit of 15,000 Forints.”⁴⁹ It was mainly because of the problems with the deposit that Irinyi spoke against the draft at the Pest City Assembly. When the proposal officially arrived in Pest on 22 March, after being read out in the Pest County Public Committee, the outraged audience – with Irinyi’s tacit support – burned the text.⁵⁰

Szemere changed his mind due to the above, and the original bill was modified. It was re-submitted to the Parliament, which adopted it on 28 March, and presented to the Emperor, Ferdinand V, on 11 April. In the amendment, and thus in the adopted text of the law, which became the first Hungarian Press Act, the scope of press offences was clarified, and the deposits were cut in half.⁵¹ And although Mihály T. Révész rightly identifies the “middle way solutions”⁵² of the law, the preamble states the most crucial thing for contemporaries: “the previous investigation was abolished forever, and freedom of the press was restored.”⁵³

5. Concluding thoughts

József Irinyi played a significant role in the drafting of the first Hungarian Press Act: Szemere, who – some say – had been working on the draft press law since early 1848, was familiar with his article in the *Ellenőr* (Inspector), and although he did not use all of it, we can certainly take this text into account as a source of inspiration. However, it is also certain that in the eyes of the general public Irinyi’s name is not commonly associated with the legislative questions in Hungary but rather with the image of the dynamic youngsters of the events in March. However, everything Irinyi did in the period before the Press Act – as we now know it – had a noticeable influence on the events. Irinyi is an undeservedly marginalised figure in the struggle for freedom of the press in Hungary and one who deserves to have his name inscribed on the golden pages of the annals of history.

To conclude these processes, it is worth turning again to Szemere, who – as the Minister of the Interior – issued a decree of 28 April 1848 to the heads of the local administration,⁵⁴ in which he describes the tasks he expects after the adopted Press Act. Nothing says it better than the preamble (“The press is free in our country

⁴⁹ KOLTAY, A. Sajtó és jog 1848/49-ben. In: HORVÁTH, A., HAJDÚ, G. (eds.). *Magyar jogtörténeti tanulmányok – pályakezdő dolgozatok*. Budapest: Neolife, 2004, p. 67.

⁵⁰ BOTH, Ö. ref. 6, p. 63.

⁵¹ On the regulatory solutions of the adopted law, see RÉVÉSZ, T. M. *A sajtószabadság érvényesülése Magyarországon, 1867–1875*. Budapest: Akadémiai Kiadó, 1986, pp. 15–16.

⁵² RÉVÉSZ, T. M. Sajtójogi felelősség kérdése a magyar jogban. *Jogtörténeti Szemle*, 4, 1992, č. 1, p. 49.

⁵³ Act 18 of 1848.

⁵⁴ Pesti Hírlap, 7 May 1848, p. 409.

too.”⁵⁵) that for a brief moment in 1848, the long struggle for freedom of the press may have felt like it had finally come to a turning point, and that two times two is really four. In this, Joseph Irinyi had outstanding merit.

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⁵⁵ Ibid.

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