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### Family Ties from the Perspective of Property Division Deeds<sup>1</sup>

*The basic unit of Hungarian private law relations before 1848, especially from the point of view of the nobiliary private law, was not so much the individual as the family. Although the person who acquired the right could be the individual, the right over the property acquired by him usually extended beyond his person to other members of his family living in a blood relationship with him, to his relatives whom he had to divide his property, such as his (mainly male) children, brothers and sometimes sisters, and, where appropriate, to his more distant collateral relatives.<sup>2</sup> This study attempts to present family law relations in the early modern Hungary through a special group of documents, the wills and property division deeds. The basis of the investigation in the present study are the wills and division deeds of some Hungarian noble families from the 17th-19th centuries, which played a decisive role in national politics, but due to the scope of the study these are only arbitrarily selected, without aiming for completeness.*

**Keywords:** *Hungarian aristocracy, nobiliary private law, will, property division deed, family relations, parent-children relations, marital relations*

#### 1. The Hungarian aristocratic family in the early modern era

To understand the decisive role of the Hungarian nobility (aristocracy) and its familial ties, it is essential to get acquainted with the concept and composition of the noble family, which was the basic unit of the aristocracy. In the period under study, the noble family was a basic legal, economic and social unit which was in the focus of most private legal relations and sometimes also became a participant in political power.

The concept does not immensely differ from the notion of today's family. Looking at the concept of the family today, sociology has identified the family as one of those social institutions which, in addition to the norms, are underpinned by the values that hold the institution together.<sup>3</sup> In line with this, it defines family as “*a small group living together whose members are linked either by marriage or by descent, in other words by blood (or, exceptionally, by adoption).*”<sup>4</sup>

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<sup>2</sup> Werbőczy refers to this as ‘per eum’ clause included in the donation deeds. Tripartitum Part I. Title 43. KOLOSVÁRI – ÓVÁRI, Werbőczy István Hármaskönyve 110–111.

<sup>3</sup> ANDORKA, Bevezetés a szociológiába 351.

<sup>4</sup> ANDORKA, Bevezetés a szociológiába 353.

Family is not a new concept, not even a Christian concept, it has existed since pre-Christian times and, by its very existence, there were rules governing family relations even before Christianity.<sup>5</sup> As family was the basic unit of the Hungarian kingdom as well from the year of its establishment in the year 1000, the decrees of our kings sought to regulate family relations from the earliest period of Hungarian history.<sup>6</sup> Even before the time of the foundation of the state, clan affiliation based on blood or fictitious consanguinity, and then their organization into tribes, formed the basis of the emerging tribal state. The clan was based on the small family under the authority of the father. Moral norms, which grew increasingly important with the establishment of Christianity, brought new rules for family relations. According to moral norms, family was much more than an economic - blood - protective community; it had to be characterized by love and obedience, combined with a duty of care towards one another. With the rise of Christianity and the changes in social circumstances, the functions of the family were extended, and the doctrines of Christianity permeated the concept of family.<sup>7</sup>

In addition, the framework of the legislation governing family relationships has changed significantly for today. Whereas previously international protection for families was provided by the canon law of the Catholic Church and the Protestant ecclesiastical laws that developed from it after the Reformation and which defined the scope of marriage and the family in almost all European states until the secularization of the 19th century, today the protection of families is governed by international law.<sup>8</sup> In the past, the Church was the protector of orphans and widows, and thus for centuries disputes relating to widows and orphans in Hungary fell under the jurisdiction of the ecclesiastical courts, and so did the marital jurisdiction. Family protection today is one of the most important constitutional tasks of the state, as it was earlier the duty of the church. In the period covered by the study, family was defined as a much broader group than it is today. In addition to the close spousal and parent-child relationship, family also included entitled relatives, who had property rights and obligations in relation to the current family member. Moreover, although irrelevant to the subject under examination, in Hungary before 1848 servants were also considered to be part of the family household.

Due to the above definition, family and property relations of the Hungarian aristocracy were determined inwardly by descent by birth and blood, and outwardly, in its relations with other families, by marriage. Legal relations within the family were thus based on the same (birth or marriage) that were the basis of paternal authority, tutorship, guardianship, marriage and the resulting obligations of care and property, but family relations also determined the legal basis of

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<sup>5</sup> The family was the basic unit of every society we know today. Roman law, which influenced the development of European law, distinguished between cognate and agnate families. Family was “*a community of certain persons, based on a blood relationship, essentially moral and emotional, but also in its external aspects legally recognised, protected and regulated*”. The members of the cognate family were those persons who were linked to each other by blood. In a broader sense, the agnate family was a community of those who were under the authority of a father. MARTON, A római magánjog 241–242.

<sup>6</sup> Mention should be made here of the St Stephen’s provisions on the rights of widows, which aimed to abolish the institution of the levirate. On widows and orphans. Saint Stephen II. 24.

<sup>7</sup> According to the Catholic Lexicon the Church’s definition of family is: “*the community of parents, their children and their closest relatives, the basic cell of society and the Church.*” <http://lexikon.katolikus.hu/C/Család.html> (19. 03. 2023.)

<sup>8</sup> The UN Charter states that “*Family is a natural and fundamental component of society and has the right to the protection of society and of the State.*” The Universal Declaration of Human Rights, the United Nations Charter (New York, December 10, 1948.) 16. (3).

inheritance. Moreover, at a time when the state was not protecting its ‘citizens’ through social measures, when family responsibility rather than individual responsibility was at the heart of private legal relations, family had an even greater role and responsibility to care about each other.

Several research groups both in Hungary and abroad are now studying the inner life of noble families. Historians have been working on the subject for a long time and have uncovered a great many interesting documents. Also, the number of excellent works already published on the subject is extremely large.<sup>9</sup> Due to their results we know more about the families in early modern Hungary too.

## 2. Wills and property division deeds as sources to family relations

While affection among between family members can be best detected from family correspondence, the property relations can best be examined on the basis of wills and deeds of property division.

From the practice of drawing up wills, it can be concluded that Hungarian nobles generally tried to arrange their property appropriately in the event of their death. Although they often had privileges in which the ruler granted them the right to dispose freely of their property for life and death, if they had legitimate descendants, they usually disposed of it in their favor. Sons who carried on the family name usually had priority over females in the inheritance of land.

It was also common for the testator to make a provision in his will for all his property, including his hereditary property (*bona avitica*), which generally fell under intestate succession. In these cases, he indicated the rules of the intestate succession in his will. If the testator wished to deviate from the intestate succession in the case of the inherited property, he usually stated in his will that he had previously agreed on this with his kinsmen.

All provisions in wills served to preserve and increase family wealth, as did the private law institutions of the time, whether in rem (inheritance, donation system) or in contract (declarations and testamentary vows, in particular pledge contracts and marriage property contracts), or succession law (*aviticitas*, testamentary succession, *fideicommissum*), ensuring the maintenance and stability of property, going beyond the interests of the individual brothers in the family affected by the law. But besides provisions about the future of the property, wills often contained provisions related to the education of children, to the marrying out of the daughters and other expressions of affection towards the family members, while the property division deeds described in the following merely contained provisions for property matters.

As soon as the testator died, their wills had to be implemented by the executors of the testament and property matters had to be resolved in property division deeds. If not so, and problems arose around the implementation this could also delay the burial of the testator as well.<sup>10</sup>

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<sup>9</sup> Without the aim of completeness: SIPOS – KRÁSZ, A női kommunikáció; PÉTER, Házasság a régi; ERDÉLYI, Anyák és apák; ERDÉLYI, Özvegyek és árvák; ERDÉLYI, Érzelmek és mostohák.

<sup>10</sup> See more about the case of *Maria Fugger* widow to *Miklós Pálffy*, who died June 1643 and wasn't buried for three years, because the executor of the testament refused to handle her will to the heirs in the family. FUNDÁRKOVÁ, Fugger Mária 44–45.

Formally wills of the nobles could be private wills issued under their own seals signed and sealed by proper witnesses, or documents authenticated by the King himself, or other officials, such as the Palatine of the Lord Chief of Justice.<sup>11</sup>

The other type of documents showing how property relations proceeded during this period were the property division deeds. They usually followed the entry into force of the will after the death of the testator and served as proof of the division of the estate, representing a new status quo in property matters, but they could also take place before the death of the testator, usually when the father divided his property with his sons as soon as they married.

As a rule, every change in the property conditions had to be entered into a new division deed. These deeds could also be a declaration useful for the creditors who knew based on these deeds who is the one in the family they can claim the father's debts from, especially due to the fact that most of the loans were ensured by pledge burdening the property.

Sometimes it happened that the heirs deviated from the inheritance rules declared in the testator's will and these changes had to be described in detail in the division deed, because the value of the inherited share had to correspond to the original will of the testator, only the specific piece of land belonging to the share in nature could be changed.<sup>12</sup>

The Hungarian customary collection of Stephen *Werbőczy*, the *Tripartitum* described in detail how a division should be made.<sup>13</sup>

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<sup>11</sup> Usually, the form of the document and the authority issuing the will depended on the status of the testator. It was also common to make several samples of wills of which some could be private documents, others issued in official documents by some authorities. The latter were authenticated copies of the original private wills for more authenticity.

<sup>12</sup> In his will of 22 March 1783, *Kristóf Festetics* established two fideicommissa to the exclusion of the female heirs, the Keszthely one for his first-born son Pál, while his house in Sopron and other estates in Somogy County, including Böhönye and Toponár, together with the land belonging to them, were established as first-born line fideicommissum for his second-born son *Lajos*. The fact that Toponár later fell under division and was not given to *Antal Festetics*, the first-born son of *Lajos Festetics*, as a feudal tenure is due to the fact that he agreed with his brothers to liberate Toponár and to place the equivalent castle of Dég and its lands under fideicommissum tenure instead. The will is published by KOMÁROMY, A gróf Festetics 563–582. and ERDÉLYI, Régi magyar 331–354. The exchange of property in the feudal tenure is confirmed by the deed of division drawn up between *Antal Festetics*, *Lajos* and *János*: “*We three brothers on the male side, considering that the majorate of the deceased Honorable Kristóf Festetics of Tolna, established by our Grand Father for the primogeniture, would be for the maintenance and glory of our family, and therefore we do not wish to share in the goods of the majorate: and that the other goods to be divided among us should not be made useless by dividing them into three parts and for the sake of easier and better management, we have agreed among all of us, with equal will, namely I, Antal Tolnai Festetics, that the town of Toponar and the villages of Toponar should be divided into three parts, and the deserts which are situated in Zselitz, and also the town of Sziget, to the extent that in accordance with the will of the deceased Lord Kristóf Festetics, as the property acquired at fifty thousand forints and given to the majorate, I would be entitled to the majorate's share, I will perpetually change it with my dear brothers, Lajos and János; we also Tolnai Festetics Lajos and János with similar perpetual exchange for the powers above Toponár, for the lands belonging to the majoratus of Zselitz and Sziget, we would grant and give to our dear brother the place called Dég, with the Dég, Etsi and Fekete deserts belonging to it, as well as the cattle and buildings instructed, and we would also give to him the Sopron manor acquired by our dear brother, with the condition that the lands belonging to it, with all the land, deer and all other cattle, horses in the stables of Szilaj and Szélid, is entitled to hold as property of the Majorate, together with Library and the arms, and to let his successors in the Majorate hold it, as we have in fact also provided and exchanged the property to each, having no other claim to them, but only to that which, according to the will of the deceased Lord Kristóf Festetics of Tolnai, may be transferred to us in respect of the lands of Majoratus.*” Property division deed issued on 13, March 1797. MNL OL P236. A Festetics család keszthelyi levéltára. A család egyetemét illető iratok. Lad. 16. A. III. Családi egyezségek (1696-1896) Fol. 249 B. in this case Fol. 156 A-B. translation provided by the author.

<sup>13</sup> *Tripartitum* Part I. Titles 40–56. KOLOSVÁRI – ÓVÁRI, Werbőczy István Hármaskönyve 106–127.

In the absence of state-regulated inheritance procedures, these property division deeds were of immense importance, as they contained the most recent and up-to-date information about the family assets and could be presented as evidence in legal disputes.<sup>14</sup>

Formally, these documents could be private deeds sealed and signed, or deeds authenticated either by the royal chancery or by another body that had the privilege of issuing authenticated documents (*loca credibilia*), it was up to the partners to the contract to decide which form they would choose. In practice, these deeds were usually issued under the seal of the nobles as a private deed, with a clause at the end stating that the deed could be authenticated before an authority whenever necessary.<sup>15</sup>

Most important were the clauses at the end of the document stating that if the parties' interests are harmed, they may seek justice in a court named in the document, or simply reoccupy the portion they were deprived of without involving any judges into the procedure.<sup>16</sup> In addition, the costs of the proceedings should be borne by those who have caused damage to the offended party.<sup>17</sup>

### 3. Parent-children relations through the perspective of wills and property division deeds

One important family relation was the relation of the parents to their children. The approach to children, was very different from today, just as extension of the age-related capacity to act differed a lot.<sup>18</sup>

Frequent infant mortality, low life expectancy and poor health conditions affected the way children were treated. Numerous diary entries show that parents very often lost their children shortly after their birth.<sup>19</sup> This also contributed to families trying to have as many children as possible, and the period of widowhood due to the death of a spouse was often shortened, as well as the fact that it was not uncommon for a person to marry three or more times, as a stepmother or -father was needed to care for the existing children and ensure the birth of new, additional

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<sup>14</sup> State regulation for inheritance procedure was first introduced in Hungary, despite the short-term effect of the Austrian Civil Code (1852-1861), by Act 54 (Chapter VII.) of 1868 about the civil procedure.

<sup>15</sup> *Werbőczy* in the Tripartitum Part I. Title 45. says that in case the property is located in one county, the division shall be made before a county authority such as the lieutenant, his deputy or the official called "szolgabíró", on the other hand, if the property is located in several counties, before a judge called prothonotaries.

<sup>16</sup> See PERES, *Der Ehevertrag von Christoph Erdődy* 195–203.

<sup>17</sup> PERES, *Der Ehevertrag von Christoph Erdődy* 195–203.

<sup>18</sup> With regard to age, in medieval Hungarian customary law, unlike the ages defined by the Church, two ages had legal significance: the legal age (*aetas legitima*) and the full age (*aetas perfecta*). ARIÉS, *A gyermek és a családi élet* 24. According to Part I, Title 111 of the Tripartitum, both boys and girls are considered to be of legal age from the age of 12 (previously the legal age for boys was 14 and for girls 12), while full age was attained for women at the age of 16 and for boys at the age of 24. This did not mean, however, that they became emancipated. *József Holub* believed that it may have been *Werbőczy* himself who unified the age of 12 as the legal age for boys and girls, since this distinction had no significance in secular law, but only in canon law, in the case of the attainment of the capacity to marry. HOLUB, *Az életkor szerepe* 15.

<sup>19</sup> „Anno 1631. 3. april születik Agnes leányom Trebosztón, mely az nap meghal; temettem el 11. maii szentgyörgyi templomban.” (The year 1631. On April 3 my daughter Agnes was born in Trebosztó and died the same day; I buried her on May 11 in the church of Szentgyörgy.) – wrote in his diary *László Révay*. Details of the diary were published by: DUALSZKY, *Révay László* 251.



legitimate heirs.<sup>20</sup> Thus the mosaic families that are fashionable today were extremely common in early modern Hungarian society, as they were in other European countries.<sup>21</sup>

This different attitude did not mean, of course, that the birth of a child was not welcomed in the same way as parents do today, since reading family correspondence shows that the parents-to-be were looking forward to the birth of their children and sometimes referred to them even in the womb, usually with the term ‘new guest’.<sup>22</sup> “*As for your condition, my dear beloved, in it God, by his holy majesty, is the supreme and first provider [...] may God grant that I may return home before then. For it seems to me that even to this coming newness this our expected guest will come; who, though he come in peace[...]*”, wrote Miklós Esterházy to his wife, Krisztina Nyáry on December 2, 1626, after his previous letter written on November 30th in which they were guessing the possible date of birth of their child: “*As for your condition, my dear beloved, I do not know how you count the months, but in my judgment there are still three weeks to go [...]*”.<sup>23</sup>

Despite the fact that regular birth registration of children was not common and even church registers sometimes have rather incomplete entries, if we look at the aristocratic family documents, we find surprisingly accurate records of births and deaths, as they were of particular importance for inheritance. Although the literature on the pre-Mohács period suggests that it was often impossible to determine the exact age of children, since the date of birth was not recorded, but an age test was used to determine whether the child had reached the legal age, this was rarely the case among the noble families of the post-Mohács period.<sup>24</sup>

The records of the early modern aristocratic families are already accurate, and several family trees can be found among them. These were important for inheritance matters as well.<sup>25</sup> The reason why the literature prior to the WWII do not contain accurate genealogy for noble families is that the family archives were relatively late (in the 20th century) transferred to the state archives, also complicated by the fact that detailed church registers spread throughout Europe and Hungary only by the 18th century.<sup>26</sup>

Within families, the key element in the relationship between parents and their children was paternal authority over the children, which did not automatically cease with the aging of children, but by the death of the father or the division of property, or in the case of girls, by marriage.<sup>27</sup> The

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<sup>20</sup> Just to mention few examples, Miklós Esterházy remarried soon after his first wife’s, Orsolya Dersffy’s death with Krisztina Nyáry, a young widow, mother of two minor children. Paul Esterházy, his son married twice, and his second marriage was celebrated within a year after his first wife’s death. While women gained full power of disposal over their property and full liability after the death of their husbands and could therefore, if not pressed, choose never to marry again, men with young children or in need of heirs very often soon sought another wife. FUNDÁRKOVÁ, Fugger Mária 43.

<sup>21</sup> ERDÉLYI, „Nem leszzen mostoha anya...” 347–364.

<sup>22</sup> Katalin Péter wrote in detail about it: PÉTER, A gyermekek első tíz esztendeje 22.

<sup>23</sup> “*A magad állapotját édes fiam a mi illeti, abban Isten ő szent fölsége legfőbb és első gondviselő. [...] talán Isten adja, hogy én is hazamehetek még addig. Mert nekem mind úgy tetszik, hogy még e jövendő újságra fog ez a mi várandó vendégünk eljönni; ki jöllehet csak jöjjön békével [...]*”; „*A magad állapotját a mi nézi édes fiam, nem tudom mint számláljátok a hónapokat, de az én ítéletem szerint még majd három hét volna ide hátra [...]*” MERÉNYI, Esterházy Miklós levelei. 34–35.

<sup>24</sup> HOLUB, Az életkor szerepe 64–74.

<sup>25</sup> FUNDÁRKOVÁ, Fugger Mária 40.

<sup>26</sup> ARIÉS, A gyermek és a családi élet 10.; HOLUB, Az életkor szerepe 56–58.; Iván Nagy, who claims to have written the largest genealogical work on family history to date, also faced this problem, stating at the time of writing his work that “*the most exhaustive data could only be provided by the unbiased and authentic communications of individual families, but the knowledge of our race does not allow us to hope for this.*” SZAKÁLY, A Nagyvíván 8.

<sup>27</sup> Tripartitum Part I. Titles 51. and 56. KOLOSVÁRI – ÓVÁRI, Werbőczy István Hármaskönyve 120–123, 126–127.

children of illegitimate age, while their father was alive and in power, were represented by him in all transactions.

The father made a declaration of rights on their behalf, and in ancestral property he secured the unimpaired continuance of the minor children's rights by the setting of a burden clause. The burden clause was the extended legal warranty whereby the father assumed responsibility for the future claims of his adolescent children on the property disposed of in the contract of sale.<sup>28</sup> A man even if being major of age but living in an undivided community of property made a similar commitment, when he promised his future wife alimony or dos from his undivided property in advance of his marriage.<sup>29</sup>

Part of paternal authority was to ensure that children received a proper education, appropriate to their rank, which meant different things for each one. After their birth, in the field of education, until the schooling of boys began, no distinction was made between male and female children, who were brought up together with the same care.<sup>30</sup> However, for the future, the father generally determined how his children, especially his sons and daughters, were to be properly educated, according to his future aims for his family. The purpose of upbringing especially in the case of sons also meant proper preparation for the careful management of the family's property that needed some legal knowledge as well.

Diary entries and paternal wills are our main sources of information on upbringing. For example, *László Révay* remembers his own education in his diary as follows: *"I was born to this world between the hour 1 and 2 in the afternoon in the Year 1600, on the 7th of February in Madocsa (today: Madočany, Slovakia), in County Liptó. In 1606 I was sent to school in Szentpéter (today: Liptovský Peter, Slovakia). In 1610. I was sent to school in Szent Márton (today: Martinček, Slovakia). In the Year 1614 to Körmöc (today: Kremnica, Slovakia). On the 25th November in the Year 1615, my poor father took me and my two brothers to Bártfa (today: Bardejov, Slovakia). On 23rd July in the year 1618, I was taken to my home, and I had to quit studying. In 1619, on Ash Wednesday my poor father and mother took me to Zólyom (today: Zvolen, Slovakia) to the court of his greatness Nicholas Eszterházy to be his servant; and his greatness appreciating me more than I deserved promoted me in that very moment."*<sup>31</sup>

It was common for children to be placed with other children of a similar age at their relatives' homes to ensure that they were properly educated. In his will, for example, Palatine *Paul Pálffy* asked his wife, *Francesca Khuen*, to: *"I am asking my beloved spouse and their graces the tutors of my children to educate my already mentioned children according to the Catholic Religion [...] And because my yet uneducated children do not know the Hungarian language I beg my dear spouse to send them to school in Szombat*

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<sup>28</sup> Tripartitum Part I. Title 59. KOLOSVÁRI – ÓVÁRI, Werbőczy István Hármaskönyve 130–133.

<sup>29</sup> In his marriage contract, *Kristóf Erdődy*, who was still living in undivided community of property with his relatives, promised his future wife maintenance, whereby he undertook to vouch for the future claims of his relatives. PERES, Der Ehevertrag von Christoph Erdődy 195–203.

<sup>30</sup> PÉTER, A gyermekek első tíz esztendeje 39.

<sup>31</sup> *"Anno 1600. 7. i' ebr. születtem ez világra Liptóba, Madacsánt, 1–2 óra közt délután. 1606. adtak szentpéteri iskolába. 1610. adtak szent- mártoni iskolába. Ao 1614. adtak Körmöcre. Ao 1615. 25. 9-bris vitt szegény atyám együtt két öcsémmel Bártfára. Ao 1618. 23. jul. Bártfáruł hazá hoztak, és az tanulást elbogyatták velem. 1619. Húsbagyó szerdán vittek szegény atyám és anyám Zólyomba, az úr, Eszterházy Miklós uram ő nga udvarába inasságra; de ő nga érdemem fölött megbecsülhén? azonnal jóállapatra vitt."* DUALSZKY, Révay László 247.

(today: Trnava, Slovakia) for learning Hungarian and my younger brother Thomas Pálffy to take care of them by taking them to him [...].<sup>52</sup>

Similar care can also be observed in the case of *Nicholas Eszterházy*, another Hungarian nobleman of the period with great wealth. In the case of his son *Stephen*, born from his first marriage with *Orsolya Dersffy*, he made provision for: “[...] my wish is to be sent to the school of the [Franciscan] *Paters in Szombat* [today: Trnava, Slovakia] to be educated there until he is 16 years old, if God keeps him. He is to be with twelve others, that is, there is to be a *Hofmeister* or a good serving priest with him [...] and a preceptor, two servants and eight other noble children from similar families of his age or a little older, if it is possible, they are all to be relatives of the family, with decent maintenance and clothing [...] and after the education in *Nagy Szombat* they are to go or be sent to *Vienna* to continue their school studies there for three or four more years at His Majesty’s court. After that, if he wishes, he can leave the school [...] but remain at the court in *Vienna* for two more years with two good men to accompany him [...] and if his health permits, I would also like him to spend some time in *Italy* and *Germany* with company, but not stay there long, returning soon to his country[...].”<sup>53</sup> In one of his later wills he disposed otherwise about his other sons: “[...] my son *Laczkó*, the eldest of all my sons, is to be brought up until he is 21 together with the sons of my brother *Dániel Esterházy*, with those who are with him now, or perhaps with others whom my brother would send instead, but in any case they are to be three together; and when he is 22 he can marry [...] but I do not want him to marry a foreigner, but because it is foreign families I despise, or for fear of uniting foreign customs, which seldom proves good [...] he should marry from his own nation with the consent of relatives. As long as he is at school and growing up, he can go to the court and meet His Majesty and other lords, but after he is released from school, I do not want him to spend time at the court, not because of the court, but because of the company of others.”<sup>54</sup>

It is particularly noteworthy that both testators devoted attention to the study of Hungarian language and culture, in an era when knowledge of Latin and German, and sometimes French in correspondence, was much more necessary for political life.<sup>55</sup>

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<sup>52</sup> “Kérem az én szerelmes házastársomat és tutor uramekat ö k[e]l[e]g[ye]lmeik hogy meg irt Giermekimet uj neveliek á Catholica Religioha [...] Mivel penig fiaim neveletlen állapotban lévén á magyar nyelvet nem tudják, kérem az én kedves házastársomat, hogy a magyar nyelvnek meg tanulása kedvijért jártassa Szombatban Iskolában őket, és Eochém Pálffy Tamás Uram magához vévén viseltessen gondott rájok[...].” Pálffy Pál nádor végrendelete. 1653. szeptember 3. ÖStA, HHStA, F.A. Pálffy, Arma I. Lad. 9. Fasc. III. Nr. 21.

<sup>53</sup> “[...] kívánom hogy az szombati Paterok iskolájában adassék és ott neveltsék ha Isten meg tarttya mind tizenhatt esztendő koráig. Kítt tizenkeetöd magával köl ott tartani, az az, hogy legyen edgy Hoffmester avagy edgy jó példaadó pap [...] és egy praeceptora s kétt szolgáló inas és nyolcz magához hasonló avagy valamentén öregeb nemes Ember Gyermeki s ha lehet legyenek az atyafiai közül azok, kiknek hogy illendő asztalok és köntösök legyen...Azután a szerént valamint Nagy Szombatban tanultanak, menjenek avagy vitessenek Bécsben és ott is bárom vagy négy esztendőtt continuálván az Eö Felségek udvarában való járással az oskolákban. Azután ha úgy fog tetszeni néki, el hadhattya az oskolát ugy [...] két esztendeig marudgyon az Fejedelmek udvarában Bécsben, ott is két jó öregh ember lévén mellette [...] ha hozzája állapottya és egészsége enged, kívánám Töle, hogy valami megérth emberekkel edgy kevésse olasz országban, és német országban futamodniék az hollot jollebet keveset késsék, hanem hazájában igyekezzék [...]” Esterházy Miklós nádor végrendelete. 1624. szeptember 22. MNL OL, F.A. Esterházy, Rep. 4. Fasc. E. Nr. 44.

<sup>54</sup> “[...] Laczkó fiam mivel ezek között ö öreghik mind huszon egy esztendő koráig Eszterházi Dániel öcsém uram fiaival, az kik most is mellette vannak, vagy valamelik heliet mást akar eö kegyelme meléje rendelni, de mindenkor hármon legyenek mellette, s tanollion együt velek az meg nevezet ideig; azután 22 esztendő korában ha meg akar házasodni, [...] házasságra adhattia magát, [...] de idegen nemzetben nem akarom hogy cöltezzék nem az más nemzetségekkhez való idegenségből, avagy azoknak meg vetéséért hanem az idegen erkölsöknek öszve elegyítésének el távoztatásáért, az ki igen ritkán hoz jot [...] vegye maga nemzetét az attiafiak jó teccéséből. Az még penig tanóságban lészén föl nevelkedvén adégh gyakorolhattya az udvart is néha és ösméretséget vehet mind eö Fölségeknél s mind egyéb uraknál, de maga szabadságára jutván, nem akarom hogy udvart gyakorollya ifjúságában, nem az udvart, hanem az külső társaságért.” Esterházy Miklós nádor végrendelete. 1641. augusztus 14. MNL OL F.A. Esterházy, Rep. 4. Fasc. E. Nr. 37. illetve MERÉNYI, Herceg Eszterházy Pál 265-276. IVÁNYI, Esterházy Pál nádor 21.

<sup>55</sup> LOBENWEIN, Adelige Briefkultur 322.



The education of Hungarian aristocrats changed significantly in the post-Mohács period. Following the European trend, the children were required to know everything that was an essential to the courtly life, and they received rhetorical, logical and, above all, legal training. After home education, they went on to secondary school and then university. They could go to secondary school in Nagyszombat, Znióváralfa (today: Kláštor pod Znievom, Slovakia), Vágsellye (today: Šaľa, Slovakia) or Homonna (today: Humenné, Slovakia), to the Jesuits, or to the Evangelical grammar school in Bártfa (today: Bardejov, Slovakia), or abroad, to Vienna or Graz. As a university, any European university was an option.<sup>36</sup> However, it was just as important for their education to get to know European countries, if their parents could afford to pay for it, where they were usually accompanied by an inspector on their parents' costs. It was the inspector's job to teach them the most important things to know about each country en route. Such trips gave the young gentlemen the opportunity to acquire the knowledge of etiquette, dancing, fencing, and riding that was important in their time.<sup>37</sup>

Girls' education was much simpler than that of boys and there are fewer documents proving their education, while boys' education was really well documented. For girls, the emphasis was on proper religious education, and in the post-Mohács era due to their duties as housekeeper while their husbands were at war. Therefore, they were increasingly required to be able to read and write.<sup>38</sup> When home education was considered complete, girls were often placed with wealthy families or even employed at the royal court as ladies-in-waiting. In the latter case, the girls had to be educated more carefully and were more expensive to maintain. For example, *Miklós Pálffy* the Younger was forced in his will to spend 600 forints a year on his first-born daughter *Maria Eleonora*, because as a lady-in-waiting at the Viennese court she spent much more on clothing, maintenance and household goods than her second-born daughter, whom he married off with a dowry totaling 10,000 forints.<sup>39</sup> The most important for the girls was to prepare them for the future marriage.

Sometimes the testator thought of the case that his wife would die or remarry soon after him and arranged for his children to go to other relatives. *Ferenc Nagymihályi*, for example, in his will written on April 20, 1656, ordered that his children be taken to different relatives: “[...] *Because only God knows what my wife's condition will be, in the event of her death I leave my son Ádám of my orphaned and defenseless children under the guardianship and care of Gáspár Hölgy or István Mórócz to be brought up together with his own son in good discipline and the true Catholic faith, my eldest daughter I leave to Mrs. Héderváry and my daughter Eviczka to Countess Gáborné Erdődy. And the youngest, whom God will soon give us, I leave to God and Mrs. Eperyesi shall be the guardian of him and the mother [...]*”<sup>40</sup>

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<sup>36</sup> FAZEKAS, Batthyány I. Ádám és gyermekei 107, and FAZEKAS, Katolische Adelige 51–52, KHAVANOVA, Official Policies 95–115, RADVÁNSZKY, Magyar családélet és háztartás 375–379; The most recent collection of essays issued on this subject KÖKÉNYESI, Nemesi oktatás.

<sup>37</sup> TOMA, Nádasdy István európai tanulmányútja 192–214; SIKORA, Der Adel in der Frühen Neuzeit 106–113.

<sup>38</sup> See more about women's education in the early modern era LENGYEL, A kora újkori női műveltség 21–33.

<sup>39</sup> Testament of Miklós Pálffy the younger. January 14, 1679. ÖStA HHStA F.A. Pálffy Arma I. Lad. 9. Fasc. 4. Nr. 30.

<sup>40</sup> “[...] *Mivel penigh feleségemnek is allapatya csak az jó Isten tudgya merre fordul, ha nekysis holta történnék gyámoltalan árva szegény apró gyermekim közül hagyom Ádám fiamat Hölgy Gáspár avagy Mórócz István uram eő kegyelme gondviselése alá, hogy a maga gyermeke mellé vegye jó disciplinába tartván és nevelvén ötet az igaz catholica religióban, eöregbik leányomat hagyom Héderváriné asszonynak, Eviczkámot hagyom Groff Erdődy Gáborné Asszonyomnak. Az kisebbiket penigh az kit ad Isten, Istennek s Asszonyom Annyának Eperyesiné Asszonyomat melle gondviselőül [...]*” Will of Ferenc Nagymihályi. April 20, 1656. ÖStA, HHStA, F.A. Erdődy, Lad. 3. Fasc. 2. Nr. 18.

In summary, although there was no difference in parental affection between sons and daughters, members of the Hungarian aristocracy were more careful about the education of sons, given that boys were more likely to hold public office than girls. In the case of girls, parents or guardians were more careful in the area of marriage. In fact, the right of decent maintenance and marrying off was a right for unmarried girls.

The maintenance and education of the children was usually the responsibility of the parents, mainly the father. In the event of his death, when the children were still minors, guardians until the age of 12 and curators until the age of 16 (or earlier in the case of marriage) for women and until the age of 24 for men had to fulfill the task according to the father's wishes.<sup>41</sup> Although it happened in general that mothers became tutors to their children with the help in property matters of the closest male kins of the father, who would inherit in case of the child's death, it could also happen that the testator instead of providing tutorship of his children to his widow in his will, named his mother as tutor that forced the widow to give up authority over her children.<sup>42</sup>

With regard to the property division deeds, it should be noted that the surviving children usually shared the father's property with their mother and that the mother's usufructuary rights were usually stipulated in the same deed.<sup>43</sup> If there were minor children, they usually stayed with their mother in the paternal home in an undivided state. At the time of gaining full power of disposal over their property share, they usually inherited - as indicated by *Werbőczy* - their father's house, but if this house was "built of stone", i.e. had an excessively high value compared to other dwellings, he had to pay a reasonable part of the value of the house to his brothers.<sup>44</sup> Women were

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<sup>41</sup> According to canon law, the age limit for marriage remains 14 for boys and 12 for girls. However, it was possible to make a promise of betrothal from the age of 7. The separation between the ages of 7 and 14 (12 in our case) was universally established according to Church teaching: "*The first age is the age of infancy (enfance), which is the age of the teeth, and this age begins with the birth of the child and lasts until the seventh year, and whoever is born at this age is called a child, which means a non-speaking being, since at this age man cannot yet speak well and form words well, because his teeth are not yet set and firm, according to Isidore and Constantine. After infancy comes the second age ... which is called puerity, because at this age man is like an eye-bearer, according to Isidore, and this age lasts until the fourteenth year.*" ARIÉS, *A gyermek és a családi élet* 17-18. This may also explain the fact that under the canon law rules in force in our country, the promise of betrothal was allowed from the age of 7. HOLUB, *Az életkor szerepe* 45, 48-49.

<sup>42</sup> Such provision happened in the will of *Imre Thurzó*, who named his mother *Erzsébet Czobor* as tutor of his two children (one born after his death). After he died, his mother took over the administration of the children's inheritance and their education, so the widow mother, *Krisztina Nyáry* gave up the authority over her two daughters and moved back to her mother's estate leaving her two daughters of minor age behind. DUCHONOVÁ, *Női családi szerepek* 47-58.

<sup>43</sup> On 31 March 1596, *Miklós Pálffy* made a will under the title of royal consent, in which he made provisions for the fate of the Vöröskő estates. The will was confirmed by Rudolf II on 6 June 1600. Under the terms of the will, *Miklós Pálffy* granted his wife, *Maria Fugger*, a beneficial interest in all his property until death or remarriage, and she also became the guardian of their children. *Mária Fugger*, out of maternal love, later renounced her right of usufruct in exchange for 40,000 Hungarian forints, and let the inheritance to her sons. A half of the amount, i.e. 20,000 Hungarian forints, she was free to dispose of, but the other half she returned in her will to her male descendants, and in the event of their death to her female descendants. OStA HHStA FA Pálffy Arma II. Lad. 21. Cap. 2. Fasc. 1. Nr. 1.

<sup>44</sup> When Royal Councillor *Lajos Festetics* died in 1797, his estates were inherited by his 5 children, *Antal*, *Lajos*, the then still minor *János*, and their two sisters *Mária* (wife of *Pál Czjndery Nagy Atádi*) and *Krisztina* (wife of *Anton Franz Wratisslaw von Mitrowicz und Schönfeld*), with all the estates originally being in the usufruct of their widowed mother, *Krisztina Nagy-Jókai Farkas*. As the widow did not want to bear the burden of the remaining estate in her old age, she divided it with her children on 13 March 1797 and retained her widow's rights only to the house and the property in Toponar. The eldest son, *Antal*, as his father's heir by entail, received Böhönye and Dég, while *Lajos* received the Hárságy estate. The youngest, *János*, who was still under the guardianship of his mother, would, if the inheritance should take place, receive Toponar, among other things, with the obligation that when he received it, he would have to pay his brothers 2/3 of the public value of the estate. Although *János* had in the meantime become of age and had been released from his mother's guardianship and custody, and, according to the documents, had taken over her inheritance of some 20,000

usually named as those who have already received or will receive a certain amount of money as a dowry, which includes their share of the inheritance.<sup>45</sup>

It is interesting to note that if there were children of a previous marriage, usually they acquired their share of the paternal property at the time they got their mother's bequest the father managed until they to come to an age, mostly when these children got married. If it was so, they had to be content with their share for the future and couldn't ask for more at the death of the father.<sup>46</sup> A new division could be made only if one of the dividing brothers lost his share for some unavoidable reason, but not through his fault.<sup>47</sup>

The division could be made inherently for each piece of land - which was not at all reasonable - or it could be made so that each of the sons received a fair share of the bequest.<sup>48</sup> If someone violated the terms of the division deed, the dispute could end up in court.<sup>49</sup>

The children shared not only the assets and income, but also the debts inherited from the father. Those who did not want to pay for the debts had to give up their share from their father's inheritance. The same happened if some of the children had already acquired so much wealth that a division would rather have meant a loss for them.<sup>50</sup>

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acres with the centre of Gálosfa, the Toponár manor, being in the widow's benefit of his mother, remained undivided. Thus, neither the two-thirds share was paid nor János's entry into the Toponári castle. MNL OL, P236. A Festetics család keszthelyi levéltára. A család egyetemét illető iratok. Lad. 16. A. III. Családi egyezségek (1696-1896) Festeticsek Toponári birtokperének anyagai. Fol. 158.B. – 162.A.

<sup>45</sup> "Az én szerelmes leaniomnak pedig Theresiának ki háziasítására és minden jussaiért két boltom után javaimbol kívánhatna hagiok kész pénzt negyven ezer forintot, melyet a két fiaim eggyenlőképpen tartozzanak meg fizetni. Hol pedig meg nevezett leaniom Apaczával lenne, tíz ezer forintot és ne többet tartozzanak néki adni." (For my beloved daughter Theresa for her marriage and her share of the inheritance after my death, I provide forty thousand forints in cash, which my two sons shall pay for her in equal shares. If my daughter becomes a nun, she shall receive ten thousand forints and no more.) – wrote Paul Pálffy in his testament in 1653. ÖStA HHStA F.A. Pálffy Arma I. Lad. 9. Fasc III. Nr. 21.

<sup>46</sup> "Ezeket így értvén se magadat ne faraszd ezek miatt se mások bizelkedő beszédinek helt ne adj annyival inkább minket s Anyádat és Atyámfiait s kívált képpen az kikkel egy vagy, meg ne busítsad, se valami kedvetlenséget hozzájuk ne visell, [...] alkalmazgassd mind ezeket, s mind az mostani Instructionok szerint magadat [...]" (Having thus understood these things, neither trouble thyself about them, nor give place to the flattering speech of others, but rather do not afflict us, and thy Mother and thy brethren, and especially those with whom thou art one, nor bear any displeasure towards them, [...] applying all these things, and thyself according to our present Instruction.) MNL OL, F.A. Esterházy Fasc. A. Repos. 7. Nr. 3. – 1639. Declaratio Comitum Nicolai Eszterházy super Bonis Maternis Erga Filium suum Stephanum Primogenitum facta, nominatim vero de Bonis Munkács, Zólyom, Sztrechen, Beczko, Also Lyndva et Lánsér partim in alienas manus deventis, partim possessis adhuc.

<sup>47</sup> Tripartitum Part I. Title 46. KOLOSVÁRI – ÓVÁRI, Werbőczy István Hármaskönyve 114–115.

<sup>48</sup> An example for the division of every land in nature was the division of János Antal and Károly Pál Pálffy. According to this, János Antal and János Károly Pálffy received in kind the whole front of the Vöröskő Castle from the northern bastion to the western bastion opposite the main entrance, with stairs leading to the northern and western bastions, on the upper floor of which there were four rooms with a spacious heating chamber or furnace, with an adjoining atrium and a living room in the western area, and below, a kitchen to the west of the main entrance, and a hall immediately to the west of the main entrance, which was used to house the carriages. The dungeon and wine cellars belonging to the castle remained in common use. The rest of the castle was occupied by other heirs. ÖStA HHStA FA Pálffy Arma I. Lad. 10. Fasc. 1. Nr. 12.

<sup>49</sup> See FUNDÁRKOVÁ, Károly Pál Pálffy and the Dear "Familia" 68–96.

<sup>50</sup> That is how Miklós Eszterházy renounced to the paternal and maternal share for the benefit of his brothers Gábrriel, Pál and Dániel. "Ita et nunc solenni fassione praesenti mediante; universis bonis paternis et maternis ac aviticis in quibusvis Regni hujus Hungar. Comitatus existen, spontanea sua voluntate cessisset et renunciasset, totumque et omne ius suum, in ejusmodi bonis paternis maternis et aviticis habitum, in praenominatos fratres suos, ac ipsorum haeredes transtulisset, pleno jure et cum effecti; reservando solum pro se et suis universis haeredibus ex propriis lumbis procreato vel procreandis iuxta dispositionem suam, bona hactenus per se acquisita, vel in posterum, Deo iuvante acquirenda;" MNL OL, F.A. Esterházy Repositorium 7. Fasc. A. Nr. 1. – Anno 1617. In festo S.

#### 4. Marital relations according to wills and property division deeds

The other relationship of legal importance was the one that connected families: marriage. As soon as a son entered into a marriage, he usually became independent in terms of property (so his father avoided taking care of his sons' family), and married women were transferred from their own family to the family of their spouse. Documents prove that marrying off in accordance with rank was a mandatory requirement for the nobility.<sup>51</sup> Of course, if some of the children decided to enter the church service, they received a decent amount of money (but never real estate) as their share from the inheritance.

Moreover, the marriage not only depended on the decision of the two parties to be married – it could not have been, since the parties had little opportunity to get to know each other before the marriage – but also depended to a large extent on the consent of the family, otherwise children were excluded from inheritance.<sup>52</sup>

Before the wedding, negotiations about the property rights of the spouses, such as the dowry, the counter-dowry (*dos*) and especially the usufruct rights of the future widow in case of the husband's death, were an important part of the marriage procedure. Especially considering that the family from which the future wife came always wanted to secure the future of the offspring who left the family. For this reason, marriage contracts were usually concluded, the content of which was usually repeated in the future wills and property division deeds at the time of division or inheritance. After marriage, the management of the woman's property rights became the responsibility of the husband, which did not mean that women could not own property. But the dowry they brought to the marriage was handled by the husband. Women could reach full authority over their property during the time of their widowhood.

Widows' position usually depended on whether they gave birth to children, or their marriage remained childless. In both of the cases they had usufruct over their husband's properties, but they had a weaker position if they depended on the kinsmen of the husband than their children.<sup>53</sup>

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Bartholomei Apostoli renunciatio et cessio super juribus patrimonialibus per Comitem Nicolaum Eszterházy fratribus suis facta.

<sup>51</sup> Several documents prove the importance of the decent marriage. e.g the testament of Gundacker von Dietrichstein: „[...] daß sye Töchter sich mit solchen Cavalieren welche Standts und herkommens halben Ihnen gemäss seind, verehelichen, in nidrigen fall sye dieser Ihnen zum beyrath guet und außsteürung außgeworffenen fünff und dreyßig tausendt gulden unfähig und verlustigt seyn sollen.” ÖStA, AVA, Salbuch Nr. 85. Blatt 287. -307. Testamentar und Fideikommiss Disposition. 2. September, 1689. Fürst Gundacker von Dietrichstein. Or the testament of Richard von Stahremberg: „[...] meine töchter, [...] ibrem Standt gemäß mit Ehrm verehelicht, [...] auch für haltung der hochzeit gegen ordentlicher verzicht) die Sie nach altem löbl[lichen] gebrauch undt herkommen der herrn von Stabremberg auf den ganzen Mannßstamben der herrn von Stabremberg [...].” ÖStA, AVA, Salbuch Nr. 69. Blatt. 407–418 Bestätigung des Testaments. 11. Juli 1669. Richard von Stahremberg.

<sup>52</sup> DEMKÓ, Felső-magyarországi városok 167. LESEMANN, Liebe und Strategie 193. FEJES, Az Esterházyak 115–167.

<sup>53</sup> „[...] de szívem fájdalommal érzem, az ifjú Erdődi urak szerint ballom, nem is kételem, sűrűn és nyilván beszélnek az kegyelmed maholnap való haláláról, s ha én tovább találnék élnem, mi móddal minden nélkül bagynak, s hogy bánnak velem.” Erzsébet Rákóczi also mentions in a letter to her husband, György Erdődy, that in the event of her husband's death, the heirs are already discussing how to make her part of the estate. “[...]but I feel it with sorrow in my heart, according to the young Erdődi gentlemen, I hear, I have no doubt, that they speak frequently and obviously of the danger of your grace's death on the morrow, and if I were to live longer, how they would leave me without everything and how they would treat me.” BENDA-VÁRKONYI, Rákóczi Erzsébet 214, 217.

## 5. Summary

With regard to the family circumstances described in the previous subchapter, most property distributions concerned the sons and daughters and the widow of the decedent. If there were no children in the family, the next of kin inherited and had to take care of the widow's interests. In some cases, if the widow had brothers, they were the ones who helped the widow with the husband's relatives.

The most common provisions for these divisions were to list in detail the property associated with each of the inherited shares. These documents listed and described the most important features, such as the value of the property, its legal status, whether it was hereditary property of the family or whether it belonged to a fideicommissum or passed into the widow's usufruct for life. The division could be made in any way, either by dividing all the assets in nature according to the number of heirs or by combining them into one part according to an equal value. In addition to immovable property, the deeds also disposed of movable property, especially money, and the settlement of debts.

It is true, and it was true even then, that there is no better opportunity to know one's family when there is a dispute about money matters.

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