COMPARATIVE LAW 1978. Imre Szabo and Zoltan Peteri (Ed.). 1978. Akademiai Kiado, Budapest. Pp. 438. Price $ 38.

IT HAS by now become an established practice for the Hungarian Academy of Sciences to bring out in book form the papers presented by the country's scholars at the International Congresses of Comparative Law. This commendable practice started with the publication of *Studies in Jurisprudence*, a collection of papers presented at the congress held at Hamburg. This was followed by *Essays in Comparative Law*, *Hungarian Law—Comparative Law* and *The Comparison of Law*,[1] after each successive international congress. The present volume comprises twenty-six papers presented at the Congress at Budapest in 1978. As the foreword to the volume states, by publishing these volumes, the academy attempts "to pave the way towards the gradual progress of this discipline in the socialist countries".[2]

Comparative Law 1978 covers a wide range of subjects, starting with an appreciative appraisal of the contributions made by an eminent Hungarian scholar Elemer Balogh to the cause of comparative law. In a learned paper Kalman Kulcsar discusses ethnological research in the law today. He points out :

> Ethnic features in the historical development of a society, manifesting themselves in the culture as a whole, create a specific context, one could call it a system of conditions, for the law[3].

The degree to which the norms, values, states of mind, specific features of a culture, *etc.* can influence the life of the law, and its realization, in addition to the effects of the earlier law, is also sought to be assessed. He concludes by stating that :

> As a result of historical factors, early legal ethnology, which tended to turn into legal anthropology in the course of this century is becoming part of the sociology of law, a trend that will predictably continue and be strengthened in the future.[4]

There are no less than three papers related to arbitration or conciliation proceedings in Hungarian law. In "Phenomena Related to Conciliation in Hungarian Law" Jozsef Farkas refers, among other things, to the

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1. This was reviewed in the pages of this Journal, see 17 *J.I.L.I.* 657-662 (1975).
2. Szabo and Peteri, *Comparative Law* 7 (1978). (Hereinafter referred to as Szabo and Peteri).
3. *Id.* at 33-34.
4. *Id.* at 34.

compulsory preliminary procedure in relation to press-rectification. The provision for press rectification in Hungarian law gives special, quick protection to those about whom the press has published "an untrue fact or placed a true fact in a false light." The object of this preliminary procedure is to settle the dispute relative to press rectification in amicable manner out of the court with the result that a correct announcement is published without judicial intervention. The law compels the press to rectify. The press (which means all news media) is obliged to publish the rectification in the same manner as the original article was published and in the case of an announcement on the radio or the television, broadcast in the same hours of the day as the original programme was transmitted.

It may be mentioned that the right to reply (*droit de reponse*) is provided for in the legislation of several countries which follow the civil law system.[5]

Dealing with techniques of arbitration in the procedure for revision of contracts, Attila Harmathy traces the evolution of the admissibility of arbitration in contractual disputes and concludes by stating that :

> It is not enough to investigate the proper sphere of arbitration techniques, but it is indispensable to examine the general theory of contracts and also the changes ensuing in this area. It is not in the least doubtful that a socialist state under Hungarian conditions, which endeavours to run the process of economic events in a planned direction, will not, in the future, be indifferent to see whether or not the relation between enterprises that are important for the national economy are brought about and after being established, how they develop. The question is only whether the intervention requires an action on the part of the courts, or whether it would not be much more practicable to work out a particular system of arbitration.[6]

The third paper on conciliation proceedings is contributed by Laszlo Nevai who writes about what he calls "action-preventing judicial compromise" in the Hungarian civil procedure. It deals with a category of conciliation proceedings in which parties to a dispute attempt at effecting a compromise in the court before commencing action. In this category of cases the party proposing to be plaintiff may request the court of competent jurisdiction to issue a summons for the purpose of an attempt at conciliation provided that the summons can be served at the seat of the court or within the territorial limits of its jurisdiction. If the parties attend the hearing on the date fixed and a compromise is effected, the court will

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5. See J. Minattur, *Freedom of the Press in India* 115-116 (1961) where a strong plea is made for adoption of similar legislation in India.

6. Szabo and Peteri, *supra* note 2 at 148.

approve it, provided the conditions laid down by law are fulfilled. This approval secures for the compromise the same validity as a final judgment. The parties may also appear before the court for an attempt at conciliation without making any previous request for the issue of summons and may proceed to effect a compromise in accordance with the rules.[7]

One great benefit, among others, of this procedure is that it helps reduce the workload of the courts. In fact, the overburden of the Supreme Court and its remedy is the subject matter of one of the papers in the volume. G. Verga in his paper makes several suggestions to reduce the workload of the Supreme Court. A few of them may be adverted to here. One of them obviously relates to the increase in the number of judges. A second suggestion favours the appointment of auxiliary personnel such as assistants and secretaries who are in fact lawyers but are not authorised to adjudicate the disputes. But Verga is of the view that when increasing the number of personnel priority should be given to those who are entitled to handdown judgments as opposed to those who are not.[8] When suggesting simplification of the rules of procedure, he says :

> In Hungary—as in other socialist countries—the one-grade appeal system dominates, both in civil and in criminal cases. The two-grade appeal system increases the workload significantly. The combination of one-grade appeal system, together with the institution of *ex officio* revision (protest for legality) satisfies the interest of the parties and the rule of law and decreases the duration of the law suits significantly[9].

Discussing manufacturer liability in Hungarian law, Emilia Weiss argues in favour of increasing the liability of the manufacturer and shifting the 'risk of production' to him to a greater extent than at present, but within reasonable limits. She says that the increased liability and the risk of the manufacturer should not be limited to inherently dangerous products. She argues that the manufacturer should not be permitted to plead the following in his defence : (*i*) that the sale of defective products was due to the default of the machinery in the production or of the control-line, possibly beyond his powers of supervision and control, and (*ii*) that despite all possible care, occasional mistakes are inevitable, at the present level of technological development.[10]

In his discussion of a comparative law theory in developing private international law, Ference Madl criticises the stand on *renvoi* taken in the new Hungarian draft Act on private international law. Madl says that

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7. *Id.* at 165-56.
8. *Id.* at 229.
9. *Id.* at 233.
10. *Id.* at 117.

the aspect of 'reality-science thinking' endorses the admission of the principle. He, however, points out that this does not mean that there would be "an endless shuttling from pillar to post".[11] According to him, the principle of flexibility

> does not stretch so far as to allow a senseless vicious circle; it just means that we give a reasonable elbow room for the judge. Among others : we enable him by the possibility (not obligation !) of the reasonably limited *renvoi* (e.g. limited to remission or trasmission just once) to pass a decision which is best suited to up-to-date domestic legal policy aims.[12]

In his "Notion of Positive Law", Zoltan Peteri emphasises a point, not unfamiliar in civil law countries, that judicial activity is viewed in Hungarian juristic thinking as belonging to the shpere of interpretation of law and not that of legislation. He points out that owing to the development of codificatory tendencies, the notion of unwritten law has become a matter of historical interest only and that written sources of law cover almost all fields of life and conditions.[13] He points out that the constitutional prohibition of legislative activity includes the Supreme Court also.[14]

The papers included in the volume not only give insight into substantive and procedural rules relative to several branches of the law in Hungary, but also induce one to think of useful solutions to problems similar to those faced in that country. The interest in the reduction of workload of the courts is something that Indian lawyers, judges and legislators share with their counterparts in Hungary.

Comparative law, in spite of its being included in the curriculum of legal studies in Indian universities, is accorded the status of a Cinderella. In the context of our developing closer relations with various countries of the world, one may reasonably hope that the delightful destiny that was in store for Cinderella will be vouchsafed for comparative law in the near future. Towards that objective, a reading of the present volume may hopefully lead the Indian lawyer as also many other common lawyers, not to speak of compratists in general.

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11. *Id.* at 105.
12. *Ibid.*
13. *Id.* at 70.
14. *Id.* at 71.

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