

János Bruhács – Remembering the Scholar

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Abstract

We, the new generation of the University of Pécs, Faculty of Law's International Law research hub would like to express our utmost respect towards the late János Bruhács, professor emeritus of international law with this short article, the purpose of which is to remember Professor Bruhács, the scholar. In this article, we present the prestigious life path of Professor Bruhács, alongside some of our fondest memories of him (Section 1). Furthermore, we dive into some of Professor Bruhács's favourite subjects within international law, namely the responsibility of states for internationally wrongful acts, with an emphasis on the pollution of international rivers, and the sources and overall nature of international law (Section 2). Finally, we conclude (Section 3).

Keywords: János Bruhács, in memoriam, University of Pécs, international watercourses, responsibility of states

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1. Professor Bruhács the Scholar, the Doktorvater and the Practicing Professional

János Bruhács was born on 23 September 1939, in Pécs, where he later completed his secondary and higher education. In 1964, he was awarded his doctorate with the distinction *Sub auspiciis Rei Publicae Popularis*. He began his teaching career in 1963, initially at Janus Pannonius University of Pécs, and later at its successor institution, the University of Pécs. He started as an assistant lecturer, and later he was appointed as a senior lecturer in 1969, associate professor in 1979, and professor in 1994. A *professor emeritus* since 2009, he remained actively involved in academic and teaching activities at the University of Pécs. In 1977, he earned the title of Candidate of Sciences (CSc), and habilitated in 1994. Professor Bruhács was the head of the Department of International and European Law and its predecessors at the University of Pécs, Faculty of Law, between 1988 and 2004. Simultaneously, he served as vice-dean of the Faculty of Law in 1989, and between 1990 and 1993, he served as the dean of the Faculty. Besides Pécs, he also taught at the Faculty of Law of the Károli Gáspár University of the Reformed Church between 2001 and 2009 and continued to participate in the work of the latter institution as *professor emeritus* as well.¹

Professor Bruhács was deeply committed to mentoring future generations. He placed emphasis on mentoring and supporting young scholars specializing in international law. He served as the head of the sub-program “International Legal Issues of Territory and Space” within the Doctoral School of Law at the University of Pécs and he was a member of the Doctoral School of Law at Károli Gáspár University as well. On numerous occasions, he acted as an opponent and as a member of the evaluation committee at public doctoral defences. Under his supervision, 8 researchers were awarded a Ph.D. degree, among them prestigious Hungarian international and European law scholars and – thus far – one high ranking public

1 See at https://almanach.pte.hu/oktato/573?from=http%3A//almanach.pte.hu/oktatok%3Fdirection%3Dasc%26f1%3Dff%26o1%3Din_any%26page%3D1%26sortBy%3Dnev%26v1%255B0%255D%3DPTE%252FJPTE%2520%25C3%2581JK.

official.² Throughout his nearly sixty-year-long teaching career, he authored a widely used textbook, published in multiple editions, which introduced generations of law students to the fundamentals of international law.

Professor Bruhács was among the most highly regarded international legal scholars in Hungary. His research interests prominently included the law of international watercourses, international environmental law, space law, and the law of international responsibility. One of his most significant works is a monograph titled “The Law of Non-Navigational Uses of International Watercourses.”³

Due to his expertise on the law of international watercourses and international environmental protection, Professor Bruhács represented Hungary in the activities of the Danube Commission (1979). As a member of the Hungarian delegation, he participated in the Hungarian-Czechoslovak negotiations concerning the Gabčíkovo-Nagymaros Waterworks project. Subsequently, he was a member of the Hungarian legal team in the *Gabčíkovo-Nagymaros Project Case* before the ICJ (1993–1997) and took part in the negotiations aimed at implementing the ICJ’s judgment. Professor Bruhács represented Hungary in the negotiations leading up to the adoption of the Danube River Protection Convention (1991–2001) and participated in the Pan-European Environmental Conference (2003). He served as head of the Hungarian delegation in a working group of the UN Economic Commission for Europe on environmental liability (2000–2003). Professor Bruhács was actively involved in the work of several prestigious organizations, in different capacities. He was a member of the Permanent Court of Arbitration in The Hague. Additionally, he participated in the work of the International Institute of Space Law, the Hungarian Branch of the International Law Association, and the International Water Law Association. He was a member of the Pécs Academic Committee, serving as the chairman of one of its specialized committees between 1993 and 1999. Furthermore, he was a member of the Hungarian Atlantic Council, the Governing Council of the UN Association of Hungary, the Hungarian UNESCO Committee, the Hungarian Foreign Affairs Society, and the Hungarian Astronautical Society.⁴

2 See at https://doktori.hu/index.php?menuid=192&lang=HU&sz_ID=2710&show=1.

3 See at <https://pte.hu/hu/hirek/gyaszhir-elhunyt-dr-bruhacs-janos>; <https://portal.kre.hu/index.php/2581-elhunyt-bruhacs-janos-egyetemunk-professor-emeritusa.html>.

4 Melinda Szappanyos & Zsuzsanna Csapó, ‘Bruhács János Életpályája’, in Zsuzsanna Csapó (ed.), *Ünnepi Tanulmánykötet Bruhács János Professor Emeritus 70. születésnapjára*, Pécsi Tudományegyetem Állam- és Jogtudományi Kar, Pécs, 2009, pp. 14–15.

Throughout his decades-long teaching career, Professor Bruhács introduced thousands of students to the complexities and beauty of international law. His lectures were always outstanding— precise, thought-provoking, and highly informative. His students consistently showed exceptional attentiveness and deep respect for both him and his teaching. In recognition of his contributions, the University of Pécs, Faculty of Law awarded him the *Pro Facultate Iuridico-Politica Universitatis Quinquecclesiensis* gold medal of merit. As a guest lecturer, he also participated in the academic activities of the Panthéon-Assas University in Paris. In addition to his lectures on international law, he conducted specialized seminars on topics such as the law of international watercourses, international environmental law, the jurisprudence of international courts, and the international law of the Cold War. His contribution extended to postgraduate education as well, including teaching in the Environmental Law Specialist program at the Institute for Postgraduate Legal Studies at ELTE Law School, Budapest, and the COPENICUS program established by the European Rectors' Conference.⁵

Professor Bruhács's distinguished career and professional achievements were recognized by the government of Hungary with the Officer's Cross of the Order of Merit of Hungary (2011) and the Commander's Cross of the Order of Merit of Hungary (2023).⁶

Professor Bruhács was an extraordinary man, whose academic and professional career serves as an example for anyone who wishes to start their own journey in this field. One of our fondest memories of him is when he demonstrated that he could stay up to date with what was happening in the world, despite the fact that he *literally* never used a computer. It was almost comical how well informed he was despite the limitations inherent in the analogue technologies he used and was so fond of. Professor Bruhács wrote all his manuscripts by hand, with pen and paper, and his memory was also excellent. Somehow, he could instruct us to find him an article that was published roughly 40 years ago that he read at that time in a particular journal. He not only knew the name of the journal and the decade, but often the exact issue in which we later actually found the article he was looking for.

⁵ Id. pp. 15–16.

⁶ See at https://almanach.pte.hu/oktato/573?from=http%3A//almanach.pte.hu/oktato%3Fdirection%3Dasc%26f1%3Dff%26o1%3Din_any%26page%3D1%26sortBy%3Dnev%26v1%255B0%255D%3DPTE%252FJ%2520%25C3%2581JK.

2. Selected Fields from the Research Interests of Professor Bruhács

2.1. International Responsibility

International responsibility is a compelling and at the same time an ever-current topic of international law. It is therefore not a coincidence that Professor Bruhács was also especially interested in this field, and published extensively on it, in particular, on the responsibility in connection with environmental damages.⁷ Professor Bruhács pointed out that international responsibility was for long not considered as one of the key problems of international law – besides enforcement of obligations.⁸

Due to his long career, Professor Bruhács was one of the first Hungarian scholars who commented on the International Law Commission's codification efforts on the responsibility of states for internationally wrongful acts, already in the 1980's, when only the first half of the preliminary draft was available to the public.⁹ In this early work, Professor Bruhács observed that international legal practice even in the early 1980's already relied on the provisionally adopted chapters of the draft articles, referring to the *Tehran Hostage* case.¹⁰ This process finally culminated in the adoption of the *Draft Articles on the Responsibility of States for Internationally Wrongful Acts* (hereinafter: ARSIWA).¹¹ The ARSIWA is not a treaty, however it can be

7 See e.g. János Bruhács, 'Az államok nemzetközi felelősségéről szóló végleges tervezet', *Acta Universitatis Szegediensis: Acta Juridica et Politica*, Tomus LXI, 2002, pp. 117–132; János Bruhács, 'International Legal Problems of Environmental Protection', *Questions of International Law*, Vol. 4, 1988, pp. 31–45; János Bruhács, 'A környezeti károk miatti nemzetközi felelősség', in *Az államok nemzetközi jogi felelőssége – tíz év után. In memoriam Nagy Károly (1932–2001)*, Pólay Elemér Alapítvány, Szeged, 2013, pp. 57–66; János Bruhács, *Nemzetközi jogi felelősség a nemzetközi folyóvizek szennyezéséért*, Budapest, 1983.

8 Bruhács 2002, footnote 35.

9 See Report of the International Law Commission on the work of its twenty-fifth session, 7 May – 13 July 1973, A/9010/Rev.1; Report of the International Law Commission on the work of its twenty-sixth session, 6 May – 26 July 1974, A/9610/Rev.1; Report of the International Law Commission on the work of its twenty-seventh session, 5 May – 25 July 1975, A/10010/Rev.1; Report of the International Law Commission on the work of its twenty-eighth session, 3 May – 23 July 1976, A/31/10; Report of the International Law Commission on the work of its twenty-ninth session, 9 May – 29 July 1977, A/32/10; Report of the International Law Commission on the work of its Thirtieth session, 8 May – 28 July 1978, A/33/10.

10 *United States Diplomatic and Consular Staff in Tehran (United States of America v Iran)*, Judgment of 24 May 1980, ICJ Reports 1980, p. 3; See Bruhács 1983.

11 56/83. Responsibility of States for internationally wrongful acts, adopted on 12 December 2001, A/RES/56/83. (hereinafter: ARSIWA)

characterized as a compilation of customary international legal norms,¹² binding upon the members of the international community as such. Professor Bruhács considered ARSIWA to not be that different from a multilateral treaty,¹³ since the UN General Assembly has taken note of it and commended it to the attention of states.¹⁴ We respectfully contend on this point, that it is not possible to put an equation between a treaty and customary international law. This is true even in a field where rules are generally accepted as binding norms for the international community. The constant need to establish the existence of a customary norm, and the possibility of persistent objection¹⁵ makes it much harder to operate based on customary international law, than on the basis of an international treaty.

Professor Bruhács regularly emphasized that the state is not responsible for the conduct of private persons and individuals, save for those situations where it failed to comply with its obligations of prevention.¹⁶ Of course, this statement is true in essence, especially when it comes to transboundary environmental pollution, however it needs to be noted, that the ARSIWA clearly establishes those situations, in which the state is responsible for the conduct of private individuals as well. To name a few examples, the conduct of persons or entities exercising elements of governmental authority (Article 5), or those who are directed or controlled by the state itself (Article 8). We realize that these are rarely the cases when it comes to environmental harm, however, other use cases might still be relevant *e.g.* conduct in the absence of, or default of the official authorities (Article 9).¹⁷

Another important aspect of Professor Bruhács's work is the underlining of the role and purpose of culpability in the law of international responsibility. Professor Bruhács noted that culpability is not a condition of responsibility, rather it is typically regulated by primary law, meaning that culpability should be examined at the level of primary obligations of states and not in connection with secondary – responsibility related – obliga-

12 Mirka Möldner, 'Responsibility of International Organizations – Introducing the ILC's Dario', *Max Planck Yearbook of United Nations Law*, Vol. 16, 2012, p. 286.

13 Bruhács 2002, p. 121.

14 ARSIWA, para. 3.

15 *Fisheries Case (United Kingdom v Norway)*, Judgment of 18 December 1951, ICJ Reports 1951, p. 116.

16 Bruhács 2002, p. 121; Bruhács 1983, p. 199.

17 It could be noted that even Professor Bruhács accepted that, in a socialist state (such as Hungary was for the majority of his career) a State-owned enterprise's conduct might be attributable to the state. However, Professor Bruhács paid excessive attention to the provisional-ARSIWA Article 5. See Bruhács 1988, p. 44.

tions.¹⁸ Professor Bruhács also opined, that culpability is nevertheless part of some secondary obligations.¹⁹

From the regular mention of the transformation of international crimes and international delicts (Article 19) in the ARSIWA (provisionally adopted)²⁰ to serious breaches of obligations under peremptory norms of general international law (Chapter III),²¹ it is evident that he truly lamented this change from the provisional text to the final version.²² For example, in one of his pre-ARSIWA works he stated that Article 19 of the provisional ARSIWA was of great importance, since it designates as international crime among others, the serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as the pollution of the atmosphere and of the seas. Professor Bruhács deduced from this, following an *a maiore ad minus* logic, that other cases of environmental pollution should be seen as ‘simple’ violations of international legal obligations.²³

In one of his last publications, Professor Bruhács also touched upon the issue of the responsibility of international organizations and attempted to draw a picture of the relations between the ARSIWA and its ‘younger brother’, the *Draft Articles on the Responsibility of International Organizations* (hereinafter: ARIO) as adopted by the UN General Assembly.²⁴ The starting point of Professor Bruhács on this issue is the fact that the ARIO is an adaptation and analogy of the ARSIWA, therefore, it requires further analysis whether the ARIO – despite the lack of a binding treaty – also reflects customary international law as did its predecessor.²⁵ Professor Bruhács’s answer to this question is negatory: he does not characterize the

18 Bruhács 2013, p. 63. Cf. ARSIWA, Article 2, which stipulates that there are only two conditions for establishing state responsibility: breach of an international obligation and attribution.

19 Bruhács 2013, p. 64.

20 Report of the International Law Commission on the work of its forty-eight session, 6 May – 26 July 1996, A/51/10 and Corr. 1, pp. 125–151.

21 ARSIWA, Articles 40–41.

22 János Bruhács, *Nemzetközi jog I. Általános rész*, Dialóg Campus, Budapest-Pécs, 2011, pp. 213–214.

23 Bruhács 1983, p. 48. It should be noted that Professor Bruhács also considers the prohibition of ecocide as a potentially *jus cogens* norm. See Bruhács 2013, footnote 41.

24 Report of the International Law Commission. Sixty-third session, 26 April – 3 June and 4 July – 12 August, 2011, A/66/10; János Bruhács, ‘Az államok és a nemzetközi szervezetek felelősségének kapcsolatáról’, in Ágoston Mohay *et al.* (eds.), *A nemzetközi szervezetek felelőssége – elmélet és gyakorlat határán*, Publikon, Pécs, 2023, p. 26.

25 Id. p. 27.

ARIO as part of customary international law,²⁶ however, he does argue that its adoption indicates the stabilization of the legal regime of international responsibility at its core (responsibility for internationally wrongful acts, requirement of attribution, conditions precluding wrongfulness, reparations and countermeasures).²⁷ We would like to note, that beyond these norms, we consider the International Law Commission's codification as a law development effort.²⁸ Professor Bruhács also emphasizes that at least some of the problems of ARSIWA were inherited by ARIO due to the close connection between the two systems,²⁹ although at the same time the crucial differences between the ARIO and ARSIWA need to be emphasized as well.³⁰

All in all, we would like to end this segment with a recurring statement in Professor Bruhács's responsibility-related works: if the establishment of international responsibility is not possible, the cooperation of states (and international organizations) in this field, especially when it comes to environmental damages, is pivotal.³¹

2.2. The Nature and Sources of International Law

As part of his extensive *oeuvre*, Professor Bruhács has, time and time again, reflected upon the nature, overall characteristics and sources of international law. His relevant works exude a certain duality: as a scholar of international law, Professor Bruhács was naturally mindful of the significance of the emergence of new international rules; however, as a follower of the sociological approach to international law, he was never one to stray from the reality of international relations and their effect on the implementation (and thus the overall effectiveness) of the norms of international law.

Among other things, this is true of his views on the peremptory norms of international law, also known as *ius cogens*. It should be noted at the outset that Professor Bruhács considers peremptory norms to be a separate category of the sources of international law. He positions said norms hierarchically above other sources of international law, including customary interna-

26 Id. p. 28.

27 Id. p. 30.

28 András Hárs, 'Felelősség/vállalás – Az ARIO 9. cikkének alkalmazhatósága az ENSZ békeműveleteire', in Mohay *et al.* (eds.) 2023, p. 78. Cf. Ágoston Mohay *et al.*, 'Bevezető: A nemzetközi szervezetek felelősségének alapproblémái', in Mohay *et al.* (eds.) 2023, p. 22.

29 Bruhács 2023, pp. 30–31.

30 Mohay *et al.*, 2023, p. 21.

31 Bruhács 1988, p. 45.

tional law, and notes that *ius cogens* plays a formative role in shaping international law into a legal order, as opposed to a mere assemblage of juxtaposed norms.³² His point of view on what *ius cogens* is *not* is also quite clear: bearing in mind that the 1969 Vienna Convention on the Law of Treaties (hereinafter: VCLT) posits peremptory norms as capable of amendment (even if only via peremptory norms),³³ a clear distinction can (and should) be made between peremptory norms on the one hand, and the concept of natural law on the other; the latter being, by its very nature, unchangeable.³⁴ He does however note that, by adopting an axiological approach, one can come to the conclusion that *ius cogens* represents the values of the current (i.e., post-1945) regime of international law, although this statement does not enjoy complete consensus neither in theory, nor in state practice.³⁵ This statement is further accentuated by the fact that the application of peremptory norms is an area of international law where actual examples of application are rather scarce – increased importance must however be given to instances where the ICJ and the UN Security Council have indeed engaged with the concept of *ius cogens* in earnest.³⁶ Thus his analysis leads Professor Bruhács to a conclusion similar to that of Brownlie's, who compared *ius cogens* to a car that does not leave the garage too often.³⁷

In the later years of his career, Professor Bruhács often commented on the overall tendencies of the development of international law in the era of the Cold War and afterwards. As he himself remarked, the fact that his career in teaching and research essentially overlapped with this period gave his observations on the topic a personal touch.³⁸ As a starting point, he often noted the anachronism observable in the fact that the creation of the UN (1945),

32 János Bruhács *et al.*, *Nemzetközi jog I*, Ludovika Egyetemi Kiadó, Budapest, 2023, pp. 32, 106 and 171.

33 Vienna Convention on the Law of Treaties, 1969, Article 53.

34 Bruhács *et al.* 2023, p. 172.

35 János Bruhács, 'A nemzetközi jog doktrínáiról', in Tibor Nochta & Gábor Monori (eds.), *IUS EST ARS: Ünnepi tanulmányok Visegrády Antal professzor 65. születésnapja tiszteletére*, Pécsi Tudományegyetem Állam- és Jogtudományi Kar, Pécs, 2015, p. 106.

36 Cf. the detailed analysis of the application of peremptory norms in Bruhács *et al.* 2023, pp. 174–177.

37 Ian Brownlie, 'Comment', in Antonio Cassese & Joseph H. H. Weiler (eds.), *Change and Stability in International Law-Making*, De Gruyter, Berlin, 1988. Professor Bruhács references this metaphor himself, although refers, instead of a mere vehicle, to a Rolls Royce. This unintentional enhancement of Brownlie's metaphor suits Professor Bruhács's elegant and eloquent style rather well. See János Bruhács, 'A nemzetközi jog átalakulása', *Jogtörténeti Szemle*, Vol. 17, Issue 3, 2015, p. 27.

38 János Bruhács, 'A nemzetközi jog tegnap és ma', *Állam- és Jogtudomány*, Vol. 54, Issue 3–4, 2013, pp. 9–10.

the Charter of which envisioned a peaceful, united world based on cooperation, coincided with the start of the Cold War (1945–1989).³⁹ The period of the Cold War was characterised by antagonistic opposition between the two opposing centres of power (often portrayed as a battle between “good” and “evil”, or between democracy and totalitarianism), but this – perhaps somewhat surprisingly – did not prevent the 1960s from being regarded as the most successful period of the codification of customary international law.⁴⁰ Professor Bruhács noted how the newfound ‘dynamic’ nature of international law-making spearheaded by the UN reinforced the relevance of multilateralism in international law, but underlined that none of these multilateral ventures – not even ones as fundamental as the VCLT or UNCLOS – achieved truly universal status.⁴¹ Commenting on the end of the Cold War, he often pointed out a paradox: namely that the end of this historical period did not, in fact, improve the conditions for the further development of international law: on the contrary, the adoption of ‘grand’ multilateral agreements seemed to have slowed down, and many treaties did not enter into force.⁴²

One cannot help but wonder how Professor Bruhács would have evaluated the current turbulent state of international relations. As regards the prohibition of the use of force, at least, this can be inferred from his earlier works. Commenting on the state of international relations throughout and following the Cold War, Professor Bruhács noted the Janus-faced attitude of states towards this core tenet of the post-1945 international order: states do not dispute or denounce the prohibition of the use of force *per se*, but instead focus on *legitimizing* their external action via international law, albeit interpreting the exceptions to the prohibition of the use of force rather extensively or, one could also say, creatively⁴³ – a practice of interpretation Professor Bruhács preferred to describe as ‘rabulistic’.⁴⁴ This aforementioned practice even characterises Russia’s behaviour in the context of its ‘special military operations’ (or more appropriately: aggression) against Ukraine initiated in February 2022: a so-called Article 51 letter was indeed addressed

39 Bruhács *et al.* 2023, p. 71.

40 Bruhács, ‘A nemzetközi jog átalakulása’, 2015, p. 30.

41 Bruhács 2013, p. 14.

42 Id.

43 János Bruhács, ‘Jus contra bellum – glosszák az erőszak nemzetközi jogi tilalmához’, in László Blutman & Mária Homoki-Nagy (eds.), *Ünnepi kötet Dr. Bodnár László egyetemi tanár 70. születésnapjára*, Szegedi Tudományegyetem Állam- és Jogtudományi Kar, Szeged, 2014, pp. 72–73.

44 Bruhács, ‘A nemzetközi jog doktrínáiról’, 2015, p. 112.

by Russia to the UN Security Council⁴⁵ – on its own, of course, the sending of the letter does not prejudice the legality or lack thereof of Russia's action, but clearly illustrates the aforementioned trend. (The fact that the letter consisted entirely of a speech by Vladimir Putin is also irrelevant in this regard.)

3. Concluding Thoughts

It is an honourable, but quite difficult task to write an article in remembrance of a former colleague. In the foregoing, we have concentrated on his achievements and scientific findings. The authors have – to varying degrees and for varying periods, but – known János Bruhács first as students, later as Ph.D. students, and finally as colleagues, and have thus collected many cherished memories about his character as well. To round off our commemoration, let us recall two anecdotes that showcase his sense of humour.

During his career, he took part as an expert in the drafting of two multilateral treaties, both relating to the international environmental law: the 1993 Council of Europe Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment⁴⁶ and the Draft Protocol on Civil Liability and Compensation for Damage caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters (elaborated in the framework of the UN Economic Commission for Europe and finalised in 2003).⁴⁷ In his very last conference presentation⁴⁸ in 2023, János referred to this fact with the following witty remark: “In my career I have participated in the drafting of two multilateral international treaties. The significance of my work is demonstrated well by the fact that neither of these treaties entered into force.”

János was also a well-travelled man of culture and good taste, a quality that occasionally clashed with the inadequacy of reality. He once described

45 Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General (S/2022/154).

46 Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (ETS No. 150).

47 UNECE MPWAT/2003/1. The protocol would have supplemented the 1992 Helsinki Convention on the Transboundary Effects of Industrial Accidents, UN Treaty Series, Vol. 2105, p. 457.

48 At the conference entitled “The Responsibility of International Organisations: Theory and Practice” organised at the University of Pécs Faculty of Law on 28 April 2023. And edited volume based on the conference presentations, including a contribution by Bruhács was later published.

a holiday in a smaller Hungarian city where he and his wife wished to enjoy a cocktail in the sun. When the waiter appeared to take their order, János asked if they could have two daiquiris. “I’m sorry sir – the waiter replied – but I don’t speak English.” This rather aptly reflects the conflict between certain principles of international law and the often harsh world of international relations, which János Bruhács often described in his works.