SIC ITUR AD ASTRA

VII

Collection of papers on Hungarian and Croatian legal history 2024

EDITORS
GERGELY GOSZTONYI
IMRE KÉPESSY
DUNJA MILOTIĆ

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Eötvös Loránd University / Faculty of Law / Department of the History of Hungarian State and Law / 2024

Croatian–Hungarian Legal History Summer School

The Croatian–Hungarian Legal History Summer School was organised for the first time in 2016 in Budapest as a result of the cooperation of the Eötvös Loránd University, Faculty of Law and the University of Zagreb, Faculty of Law. The two History of State and Law Departments of these universities published the best articles in the Sic itur ad astra series:

- *Sic itur ad astra I* (ISBN 978-963-284-935-5, Eötvös Loránd University Faculty of Law, Budapest, 2017, 64 p.)
- *Sic itur ad astra II* (ISBN 978-953-270-116-6, University of Zagreb Faculty of Law, Zagreb, 2018, 105 p.)
- *Sic itur ad astra III* (ISSN 2631-181X, Eötvös Loránd University Faculty of Law, Budapest, 2019, 134 p.)
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- *Sic itur ad astra VI* (ISBN 978-953-270-165-4, ISSN 2631-181X, University of Zagreb Faculty of Law, Zagreb, 2023, 164 p.).

Our seventh summer school was organized in Budapest in 2023 where master and PhD level students held their presentations. The broad topic was „The development and the progress of the civil law's institutions".

We hope that our students will actually reach the stars and that we will find their names and achievements in similar scientific publications in the future as well.

Budapest–Zagreb, 2024

The Editors

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Eötvös Loránd University, Faculty of Law

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1. Introduction

King Stephen laid the foundations for the beginnings of a thousand years of legal development in Hungary. The most important figure in the legal system of the Kingdom of Hungary was the later István Werbőczy, who also held the office of Chief Justice. His Tripartitum, published in print in 1517, became a collection of "...the established and approved customs and decrees of all the laws, laws and ordinances of the country". From 1541 onwards, with the division of the country into three parts, the centralised curial jurisdiction of the courts declined and was replaced by local, religious jurisdiction.

The reorganisation and reorganisation of the Curia began at the Diet of 1723/24. Acts 24-26 of 1723 stipulated that the Curia was a high court of fixed jurisdiction, sitting regularly, with its seat in Pest and two sections, the Royal Chamber and the Seven-Person Chamber. Following the suppression of the 1848-49 War of Independence,[1] the role of the latter was taken over by the Supreme Court in Vienna, and the Royal Court (and the Court of Variation) was succeeded by five higher district

* I was assisted in the preparation of the article by Steindl Imre Nonprofit Zrt., and I would like to thank Andrea Kita for her enourmous help.

[1] GOSZTONYI, Gergely: Freedoms in the Hungarian April Laws of 1848. *Journal on European History of Law*, No. 1., 2024.

courts. In the manuscript accompanying the October diploma, Franz Joseph declared that he would restore the Curia. The Conference of the Judiciary, chaired by György Apponyi, was responsible for the provisional organisation of the judiciary. Until 1882, the Curia consisted of two branches, the Court of Cassation, which dealt with nullity cases, and the Supreme Court, which decided on applications for judgments on the merits. Act 59 of 1881 unified the two divisions of the Curia. The political changes after the Reunification and the forthcoming Millennium led to the construction of the Palace of Justice. The judiciary did not yet have a building imposing enough to represent the system and to serve as a venue for trials.

2. The building

The architect of the building, Alajos Hauszmann, was commissioned by Dezső Szilágyi, Minister of Justice.[2] The Palace of Justice is Hauszmann's most outstanding and internationally acclaimed building, and is clearly his magnum opus.[3] According to the design specification, the building is entirely made of stone. It was not until 1878 that the property was legally registered in the land registry, on the basis of the deed of conveyance of 33 April 1878, that the Imperial and Royal Military Treasury became the de jure owner of the 5,232 square metre property.[4] In 1879 the streets were also renamed and the buildings were given new house numbers. The plot's identification number from that time onwards was: 8 Alkotmány Street- 8 Honvéd Street 6- 37 Nádor Street- 5 Szalay Street.[5] Construction began on 16 August 1893 and the building was completed and handed over 3 years later in 1896. The total cost

[2]A significant part of the 1,120 linear metres of the Ministry of Justice archives – some 9,000 bundles – were burnt during the 1956 revolution. Ministry of Justice Archives. Repertory. Compiled by Iván Bognár, Archives Inventories 17, Budapest, 1962, manuscript; Records of the Palace Administration – K-582 – materials concerning cleaning and maintenance, which are indifferent to the history of building.

[3] On 17 December 1894, the Royal Institute of British Architects elected Hauszmann an honorary and associate member, together with Steindl. ÉI, 2 January 1895, p. 10.

[4] BFL VII. 12/d. Budapest Central District Court. Collection of land registry documents of the Danube Basin. File 1017.

[5] Index book of new and old parcel numbers in the Danube Basin (former Pest) part of Budapest. Bp., 1879, p. 62.

of the construction was HUF 2454851.

The exterior of the building has four facades, the main facade facing Kossuth Square. It has Baroque and Renaissance features. Hauszmann said: „no matter how bright the modern Renaissance architecture, it would not have been possible to achieve anything here; it would always remain small and would dwarf the Parliament; that is why I chose the Roman Baroque style."[6] Hauszmann also submitted an entry for the Parliament building, but the building was designed by Imre Steindl. Hauszman was worried that the Palace of Justice would not stand out next to the Parliament, so he chose the Roman Baroque style, as it used strong cornices and barely visible roofs, unlike the tall towers and domes of the building opposite. It is not intended to overpower the light of the Parliament, but it should stand out sufficiently. The group of sculptures on the tympanum, familiar from Greek architecture, is attributed to György Zala. In the centre of the triangle is a trial, and in the two corners sit the law-giver and the law-seeer. Above it is the triad, or triple carriage, of the goddess of justice, the work of Charles Senyei, which, unlike other ancient depictions, is not four but three chariots on horseback.[7] The horses were given to the statues by a circus every day until they were finished. The attic of the main façade shows 12 figures. These are not the work of famous sculptors, as they could not be commissioned due to the millennium building works and the shortage of funds. Instead, Hauszmann turned to Alajos Stróbl and offered students at his sculpture school a 300 forint scholarship for the sculptures. The 12 works symbolise human labour under the protection of the law.

Above the main entrance there was once a Latin inscription, "Iustitia regnorum

[6] Plans and buildings of Alajos Hauszmann. In: GERLE, János: *Hauszmann Alajos.* Budapest, 2002, Holnap Kiadó.

[7] OBH, contract of Károly Senyei. *A triumphal chariot (Driga) with a genius and three horse figures,* for 4500 forints, 6 m high, made of copper - *the copper plates weigh at least 5 kg. per square metre*; Other works: *a seated figure representing the turmoil, 3.60 m ... and the two Sphinxes, ..two seated figures 2.50 m long*. The first is the main figure in the pediment, the two seated statues are by Fadrus, the Sphinxes are not mentioned elsewhere. The required weight of the statue could not be determined by the reception committee.

fundamentum", meaning "Justice is the foundation of the countries". This was also written above the gate of the Vienna Castle, as it was the motto of Francis I. Entering the building, we are greeted by a huge hall after the foyer, where we look up and are greeted by a fresco painted in tempera by Charles Lotz. The artist was already a great success at the time, having painted many frescoes in Budapest. The works in the palace were judged by a committee including Hauszmann and Stróbl. The committee unanimously accepted Lotz's sketch and wrote the following report.[8] The fresco, on the theme of 'State and Law', was based on the ceiling of the church of St Ignazio, but did not aim to be a perfect copy. The main figure in the composition is Justitia, who is shown in clouds above a parchment, a law book and palm branches. In her left hand is a balance held aloft, in her left hand a sword. The painting can be divided into two main large sections, connected by the glowing figure of the goddess, which stands out in the painting. On one side there are allegories of the protective power of the law, on the other of the power of the scourge. The figure of Jusitia appears several times within the building. this is no coincidence, since the figure of the goddess is an allegorical representation of justice.

3. Ceremonial Hall

The foyer is adjacent to the banqueting hall. In the hall's foyer, you can see rose-patterned over-lighting shafts, whose light enhances the space even more. The walls of the banqueting hall are made of polished marble, richly gilded[9] and painted to enhance the hall's solemn atmosphere. The second floor is accessed from the galleries on either side, and in the centre of the hall was a semi-circular floor, which is no longer in the hall. On the walls were paintings,[10] which have been removed from the building over time and are now replaced by mirrors. Hauszmann wrote of the paintings in the

[8] *Ibid.*, pp. 281–282.
[9] The gold was applied using the so-called gold smoke technique. This has stood the test of time and is left in its original form during the renovations.
[10] The portrait of the King and Queen of the Banqueting Hall was painted by Lajos Bruck in the coronation costume and life-size by the Order of St Stephen.

Banqueting and Council Rooms: „I followed a similar procedure to that for the statues in obtaining the 16 royal paintings in the Council Rooms: in view of the good results achieved there, I turned to the School of Painting. Gustáv Keleti, the director, and Lajos Ebner, the teacher, undertook to have the best portraits of His Majesty copied by their qualified pupils. The result was successful here too, as we obtained well-painted portraits for the halls."[11] The artistic creations accounted for about 5% of the building's expenditure. Why was it important to have so much artwork in the building? Also quoting the designer: „The architect's task is not only to provide an opportunity for the sister arts to decorate the building with their artistic creations, but monumental architecture is also a requirement and a significant prerequisite and means of doing so. Since most of our public buildings are treated badly by the sister arts, [...] I have included painting and sculpture in the decoration of the Palace of Justice, so that they can go hand in hand with architecture."[12] The pathos associated with the judiciary, which surrounds the judicial system, a kind of liturgical ritual, can be an important element of the site, its representative role, and the works of art that can be found there will complete the overall picture.

4. Meeting room

In addition to the Curia, the building also houses the Budapest Court of Appeal, the Budapest Chief Public Prosecutor's Office and the Crown Prosecutor's Office, so the palace also has several courtrooms. In the courtroom of the Prosecutor General's Office, the podium bench system has been preserved to this day. The furnishings in the courtroom and throughout the building were shared between Endre Thék[13] and

[11] GERLE, *op. cit.*, pp. 282–283.
[12] *Ibid.*, pp. 275–276.
[13] Contract for the Endre Thék Furniture and Crafts Woodworking Factory, 30 December 1895, 74351 forints. Quantification of the furniture for representative rooms (banqueting rooms, conference rooms, library), judge's chambers, corridors, tables, chairs, cabinets, railings, stone chests, etc. In 1896 a contract for the supply of cabinets and 21 leather upholstered soundproof doors was concluded.

Samu Kramer.[14] The former made the oak and leather-clad items, the latter made more noble, mahogany-wood furniture, in addition to oak, with silk weave or tapestry, granite-topped cupboards, etc. The frame on the wall once held a portrait of Franz Joseph, now empty. Behind the door, which used to stand behind the judge's bench, is now walled up, but it too is being restored to its original function. It will obviously not have the same significance in the present proceedings as it did 100 years ago, but its representational role is worth mentioning.

5. Justice

The first depictions of the goddess of justice date back to ancient Egypt. Maat, the goddess, is shown with wings adorned with ostrich feathers in hieroglyphics, but the feather itself may also have represented her. However, the Romans probably modelled their goddess on Themis, who appeared in ancient Hellas. Her daughter Dik is often mistaken for her mother. However, in Greek mythology there are numerous deities associated with law and justice, such as Eunomia, the goddess of justice, or Nemesis, the goddess of righteous retribution, so it is difficult to say exactly how their Roman counterparts evolved. As we move through time, the number of attributes associated with them has expanded. In Europe, from the 13th century onwards, the goddess appears in various works of art, here with a globe and scales. The scales, as a symbol of justice and justice, first appeared in ancient Egypt.[15] The scales also have several legal meanings. It represents equality before the law, independence, that everyone is judged on their merits. In the depictions, the two scales are placed on the same level, referring to the equal treatment of the parties, equality before the law.

[14] OBH, Kramer Samu csász. 17 January 1896, 20892 forints. Detailed list of furniture for the room, with the use of materials. More than 130 window sashes were ordered from Kramer the following year.

[15] Here, the soul could only enter the world of the gods if it had first been judged. If he lived a righteous life, he could enter. But the souls of the rejected were eaten by the crocodile-headed, lion-maned, hippopotamus-footed female demon, the Death Eater.

Also associated with it is the sword as a symbol of the punishment of the guilty, of justice. In Hungarian history, it was given to the king at his coronation, along with the other coronation symbols, and was also used during the knighthood ceremony and the sword ceremony. It is also associated with the covered eye, the most widely accepted idea being that the blindfold symbolises objectivity, impartiality, impartiality, impartiality and non-prejudice.[16]

The statue of Justitia, modelled by Alajos Stróbl, stood on a high pedestal in the axis of symmetry of the eastern side of the central hall. The most famous statue of a goddess in our country cost 14,000 forints, measuring 4 square metres, 3 metres high and weighing 12 tonnes. The statue was made in Carrara, in the Paolo Triscornia di Fernando workshop, in bluish-white marble.[17] A very similar sculpture of Justitia had been made by Alajos Stróbl in 1882, but it was made of silver and was only 46cm high.[18] Stróbl's design was unanimously accepted by the committee and was 'present' at the inauguration of the building in 1896. During World War II, the bombing of the Curia building was avoided, but at the same time the dismantling of the judicial services began. During the Rákosi era, the statue was stripped of its throne, sword and crown and moved to the garden of the Károlyi Palace, next to the Faculty of Law and Political Science. Instead of its throne of yellow marble, the statue stood on a simple limestone pedestal. Since Carrara marble is not suitable for outdoor use, given the delicate nature of the material, the statue began to discolour and was moved to the Pest County Court building on Thököly Street and then to the Supreme Court building on Markó Street. The statue will be returned to the Palace of Justice in the near future during renovations.

[16] BÓDINÉ BELIZNAI, Kinga: *A bíbor méltóság, a sárga árulás [The crimson dignity, the yellow betrayal]*. Budapest, 2014, Balassi Kiadó, p. 133.; SPINETO, Natale: *Szimbólumok az emberiség történetében [Symbols in the human history]*. Budapest, 2002, Officina '96 Kiadó, p. 49.

[17]The contract of Paolo Triscornia di Ferd., for 6000 forints, was dated 20 October, with a six-month period of work after the arrival of the main sample on 15 May 1895, to be ready for delivery on 1 January 1896. The sculpture was allowed to be made from two pieces of stone. His invoice was dated 28 March 1896.

[18] The work is still on display as part of the permanent exhibition of the Hungarian National Museum.

6. Palace of Justice from the communist era to the present day

The Hungarian court system was fundamentally changed by Act XX of 1949, the Constitution of the Hungarian People's Republic. The establishment of the new constitution was an important step in the process of building a Soviet-style dictatorship in Hungary. Although it enshrined democratic ideals, in practice it completely disregarded these guarantees. As all power was concentrated in the hands of the state party, a reorganisation of the judicial system was initiated. Guarantees of judicial independence were removed, and judges were allowed to sit without a doctorate. The Constitution provided that judges were elected by the organs of state power and could be recalled if necessary. To this end, in 1949 the academies of criminal judges and public prosecutors were established, which could be completed in two years. Law graduates from law schools were also deprived of their doctorate (degree in law), making it difficult to distinguish between university and academy graduates. The constitution stated that judges were independent and subject only to the law, but this remained a declaration of principle. There were also organisational changes. The judiciary formally retained its separation from the executive, but the Ministry of Justice retained the principle of judicial control. The Party interfered in the work of the courts as in the life of any other body, and the State Protection Authority often intervened in the practice of the judiciary.

For the first time, the ban on the transfer and removal of judges was abolished (Act XXII of 1948), resulting in the loss of 1,100 judges in eight years. Those removed were politically 'unreliable'. The Curia was renamed the Supreme Court. Its president and judges were elected by the Parliament for 5 years. They could issue directives and decisions in principle which were binding on the courts. In October 1950, the High Courts, which had been in existence for less than a year, were abolished, so that the Supreme Court of Justice then ruled as the court of second instance in proceedings brought in the county courts. The building was not bombed during

World War II, but was in need of renovation between 1951 and 1953, when it was remodelled by the Central Directorate of Museums under the direction of the architect Elemér Csánk Csánk. After the renovation, the Supreme Court moved to a different location. During the move, the inscription 'Iustitia regnorum fundamentum' on the façade was removed, mainly for political reasons.[19] The building housed the Labour Movement Institute and its museum,[20] and from 1957 it was converted into the Hungarian National Gallery. Between January and April 1957, there were serious discussions at the highest levels of the management about where to locate the Hungarian National Gallery, which was to be created from the New Hungarian Picture Gallery of the Museum of Fine Arts, its collection of modern sculpture and medals, and its graphic art collection. Ernő Mihályfi, the Deputy Minister of National Education, was a strong supporter of the move to the Palace, and asked János Kádár for his support.

Those who opposed the allocation of the building succeeded in getting the part of the former Palace of Justice used for the Labour Movement Museum to be shared and the Committee for the Placement of Public Buildings finally passed a resolution to this effect. The newly appointed director of the gallery, Gábor Pogány, and the director general of the Museum of Fine Arts, Andor Pigler, appealed against the decision and wrote to Kálla in support of the decision, arguing that the collections could not have been housed and displayed in such a small space. In the final and compromise decision, the Public Buildings Committee allocated the northern part of the building and the central part around the central hall to the National Gallery, with the southern wings of the building remaining in the use of the Institute of Party History.[21] Thus, during this period, three facilities were simultaneously replaced and operated side by side. Shortly after the opening of the Hungarian National Gallery, on 30 December 1959, the Economic Committee of the Council of Ministers decided

[19] During the ongoing renovations, the inscription will be put back on the building.
[20] An exhibition of various gifts sent to Mátyás Rákosi was held here in March 1952 on the occasion of his 60th birthday.
[21] MNL OL XVIII-6-g-KGy-154-1957.

that the museum would move to the Danube wings of the building following the restoration of the former Royal Palace in Buda. The technical hand-over of these parts of the building took place in 1974, which allowed the relocation of the collection in the building on Kossuth Lajos Square to begin.

Thanks to a decision of the Council of Ministers in 1973, the Ethnographic Museum started moving into the building in 1974,[22] while the Institute of Party History of the MSZMP was housed in the southern part of the building from 1957 to 1989. The Institute of Political History,[23] the successor of the Institute of Party History, has been located here from 1998 until today.[24] The Museum of Ethnography started its relocation in 2017, until then the building hosted numerous exhibitions. The first floor hall is also the largest and most spacious meeting room in the wing, which was used by the Hungarian National Gallery and the Museum of Ethnography, preserving its original form and decoration.

7. Conclusions

The topic I have explored, while wide-ranging, raises a very important question: is the presence of art necessary in a nation's largest prison building? I have to agree with the designer, "That the palace should have room for art is beyond doubt." Since the ancient Greeks, art has been present in people's lives, an element of our existence, like air, creeping imperceptibly into our everyday lives. This is the very essence of art. Its ability to break up the monotony of life and saturate the lifeless with emotion. They are able to highlight and fill space. It mediates between the artist and the viewer. The Palace of

[22] The museum moved into the part of the building used by the National Gallery.

[23] The Institute for the History of Politics is a highly public research centre operating outside the state system. It is primarily engaged in research on modern and contemporary history and social theory, and operates a public archive and library. It also hosts scientific and cultural events, conferences, lectures, film clubs and exhibitions.

[24] Moving out was not easy, as the building was given to the institute free of charge by the MSZP after the regime change. After a lengthy procedure, in 2018 the Curia ruled that the Land Registry had to cancel the right of use registered decades earlier in favour of the Institute of Political History. The Hungarian state then filed an eviction lawsuit, which the Institute of Political History failed to execute by the deadline.

Justice is the building of the Curia, the highest court of the judicial system. There was a felt need for a building that could adequately represent and symbolise the judiciary as the main mediator of law and the common good. The architectural style has a light mysticism, a sublime, sacred quality, just like a basilica or a church. That was the point. On entering the building, the visitor is greeted by vast spaces, monumental works of art that captivate. This is why it was able to function as a museum for so long, as the atmosphere perfectly complemented the various exhibitions. Babits' quote is apt, since the building is a mixture of art and (legal) science: „Science and art cannot be defined at the same time, because they are great things: there is no definition that can exhaust them. But here is one side of them: they are the most precious repositories of our knowledge of the world, art is the precious collection of feelings and emotions, science is the precious collection of the concepts that have been deposited from them. From the fresh weaves of life we press splendid wines and useful vinegars: we carry them to these immeasurable, obscure cellars."[25]

[25] BABITS, Mihály: Tudomány és művészet [Science and art]. *Nyugat [West]*, No. 24., 1912, p. 953.

Kincső Johanna KESZI: Provisions of the First Amendment to the Csemegi Code

Eötvös Loránd University, Faculty of Law

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Modern development has brought striking changes in society, politics, culture, as well as in the field of criminal law. The Hungarian medieval criminal law was based on customs mostly, but in the modern era, the lack of a criminal code has become unsustainable. The large population growth that took place in Europe also brought with it an increase in the number of criminals. Consequently, a new demand appeared: many European leaders realized that the creation of various criminal laws would serve their state's interests.

Hungarian lawmakers came to the same conclusion as well, but the development was significantly hampered by the Ottoman conquest. Therefore, in Hungary, codification began quite late compared to the Western states of Europe, and the real breakthrough only came in the second half of the 19th century.[1]

Still, the codification attempts in criminal law began immediately after the Peace Treaty of Szatmár. The first milestone was the Bencsik Bill in 1712, which was followed by the Proposals of 1795, 1830, and 1843. In 1867, Boldizsár Horváth, the Minister of Justice of the Andrássy Government initiated the detailed development of the 1843 draft right after his appointment. However, this attempt failed, so in the early 1870s, state secretary Károly Csemegi was commissioned to prepare a new bill for a criminal code. The draft was completed in 1873, but it was not enacted until 1878. The

[1] See: KÉPESSY, Imre: The Consolidation of Hungarian Legal Practice with the Austrian Norms in 1861. *Studia Iuridica*, No. 80, 2019. pp. 155-168. DOI: doi.org/10.5604/01.3001.0013.4797

completed work, the so-called Csemegi Code entered the Corpus Iuris Hungarici as Act 5 of 1878.[2]

The Code entered into force on 1st September 1880, and it received serious criticism. Practice has quickly shown that its provisions were incomplete, since it established the same provisions for almost all criminals and tied the hands of the judge in many places in imposing the punishment, which led to harsh sentences in some cases. In addition, the economic and social changes led to the emergence of new criminal habits, which were not punished by the law. It also became clear that regarding the punishment of juveniles, the Code's system was completely flawed, and action against recidivist criminals has become urgent.[3]

In addition, the fact that Károly Csemegi presented the basic tenets of the so-called classical school of correctional science in the Criminal Code also posed a problem.[4] This school is characterized by one-sidedness and generalization, a typical idea that all crimes are completely attributable to individual responsibility. However, thanks to the changed social conditions and the boom in criminological and criminal policy science, new trends and ideas, and the so-called reform schools appeared in the 19th century.

Adolphe Quetelet formulated the idea in his work "Physique sociale" (which was published in 1836), which later became the starting point of the changes. He argued that "*in a certain sense, society is what prepares crimes, the criminal is only the instrument that executes them*". This statement is especially true in the case of abandoned social classes, for example, juveniles who are at risk of moral corruption.

[2] BALOGH, Elemér: A magyar büntetőjogi dogmatika kezdetei [The beginnings of Hungarian criminal law dogmatics], *Jogtörténeti Szemle [Legal History Journal]*, No. 4., 2008.
[3] FINKEY, Ferenc: *A magyar büntetőjog tankönyve [The textbook of Hungarian criminal law]* Budapest, 1905., 4. átdolgozott kiadás, Grill Károly Könyvkiadóvállalata, pp. 85–86.
[4] KÉPESSY, Imre: Az osztrák büntetőjog hatása a magyar büntetőjogi kodifikációra. *Jogi Tanulmányok [Papers on Jurisprudence]*, No. 1., 2018. pp. 260–271.; KÉPESSY, Imre: The Influence of the Austrian Laws on the Creation of the first Hungarian Criminal Code. In: GOSZTONYI, Gergely – MILOTIĆ, Dunja – BÓDINÉ BELIZNAI, Kinga (eds.): *Sic itur ad astra III: Collection of student papers on Hungarian and Croatian legal history*. Budapest, 2019, ELTE ÁJK Magyar- Állam- és Jogtörténeti Tanszék, pp. 4–12.

Quetelet's theory became the cornerstone of criminal sociology, which later split into many branches, such as the French sociological school, the Italian positivist school, the Italian third school, and the socialist school.

In addition, only a few months after the publication of Csemegi's second draft, in 1876, Cesare Lombroso's work *L'uomo delinquent* was published, in which the author states that there are so-called "born criminals" (*delinquente nato*) who commit crimes because of their mental and physical disabilities, and against whom punishment is completely ineffective. This concept became the foundation of criminal anthropology, which's main goal was prevention.

In the late 19th century, Franz von Liszt's school appeared, the purpose of which was to bring the opposing views, the exaggerated and one-sided ideas, and aspirations into harmony.[5] This concept did not see crime as an abstract concept, but as a human act, which is also a moral, legal, political, and social phenomenon. Its followers believed that besides the fact that every criminal is naturally affected by various external and internal factors, they can be held responsible for their actions, and their punishment should contribute to the maintenance of public welfare and social order, as well as to the prevention of crime.[6] Ferenc Finkey states that "*[the mediating tendency] sees the measure of punishment in the proportionality demanded by justice, as well as in the retribution measured to the guilt of the delinquent, and in the application of humanism and fairness must be kept in mind, the specific punishment must always be individualized to the perpetrator's social conditions and the motives of the act*."[7] It is important to note that the reform trends did not seek to destroy the classic criminal law dogma but rather to modernize and further develop it.

[5] RIGÓ, Balázs: A büntetőjog történetéből II. Kora újkor – újkor. [From the history of Criminal Law II. Early modern – modern era]. In: FÖLDI, András (ed.): *Összehasonlító jogtörténet [Comparative Legal History]*. ELTE Eötvös Kiadó, Budapest, 2018, pp. 325–354.

[6] BALOGH, Jenő: *Fiatalkorúak és büntetőjog [Juveniles and criminal law]* Budapest, 1909. Athenaeum Irodalmi és Nyomdai Rt., pp. 54–63; BALOGH, Jenő – BERNOLÁK, Nándor: *A büntetőtörvények és a büntetőnovella*. *[Criminal laws and the Amendment]* Budapest, 1908. Grill Károly Könyvkiadó Vállalata, pp. 21–28.

[7] FINKEY, *op. cit.*, p. 49.

The Hungarian legislators had to react to the shortcomings described above, as well as to the new trends in criminal law, because it became obvious that the provisions of the Csemegi Code could not serve as an effective solution to the emerging problems. This is how László Fayer saw the situation in 1900: "*...the amendment-movement was awakened not so much by the lack of a criminal code, but rather by the errors of practice. Even today, the scope of the amendment could be significantly reduced if the practice itself established those that can be established within the framework of the law. This is also its job and duty*".[8]

The first and one of the most important corrections to the Csemegi Code was the First Amendment i. e. Act 36 of 1908. In its preparation, the first step was when, in May 1888, the Minister of Justice Teofil Fabinyi turned to the Royal Curia of Hungary and the Royal Table and asked for the advice of its presidents regarding whether it was necessary to amend or replace certain provisions of the Csemegi Code, and if so, what the most important changes would be. Károly Csemegi opposed any kind of amendment and fought against the proposals, however, the first draft of the Amendment was published in 1891, which only aimed to modify a few sections. At the same time, the specialist committee dealing with the matter wanted to broaden the scope of the issues affected by the amendment, so they made a new draft. On 19th May 1892, the Minister of Justice, Dezső Szilágyi submitted it to the House of Representatives.[9]

This bill would have modified 76 sections of the Code and included reforms such as the suspension of the execution of imprisonment, the reformation of the punishment for theft, the punishment for self-administered justice, the establishment of new facts in the case of fraud, etc. However, even though the bill would have helped

[8] P. SZABÓ, Béla: Bernolák Nándor, az I. büntető novella egyik kodifikátora és kommentátora [Nándor Bernolák, one of the codifiers and commentators of the First Amendment to the Csemegi Code], *Jogtörténeti Szemle [Legal History Journal]*, No. 4., 2008.

[9] LÉVAY, Miklós: Az I. büntető novella fiatalkorúakra vonatkozó rendelkezései [The provisions of the First Amendment to the Csemegi Code concerning juveniles], *Jogtörténeti Szemle [Legal History Journal]*, No. 4, 2008.

with the most pressing problems, it was not put on the agenda of the parliament, nor did the judicial committee begin its deliberation. Then, when it would have taken place in 1894, the new Minister of Justice, Sándor Erdélyi, withdrew it.

Erdélyi commissioned Károly Illés Edvi to prepare a new bill. Illés Edvi edited new drafts in 1898 and then in 1900, which were then sent to lawyers Pál Angyal, Ferenc Finkey, and Jenő Balogh. Angyal and Finkey prepared two larger drafts, but Balogh represented a different point of view. He believed that due to the lack of suitable conditions, instead of an extensive revision of the Code, it would be advisable to remedy only the most pressing shortcomings. Most of the expert committee established to discuss the content of the Amendment took the side of Jenő Balogh.

In 1905, Géza Polónyi, the Minister of Justice at the time commissioned Jenő Balogh to draft a new bill, which contained only the most important changes.[10] The first draft, published in October 1906, was criticized in Hungarian legal journals and in the debates of the Hungarian Lawyers Association. In 1907, the Minister of Justice established a committee to discuss the bill. As a result, the draft was completely remade. The law finally took its final form after its third revision, thus creating Act 36 of 1908. It received royal assent on 30th July 1908, and it was promulgated in the 12th issue of the Hungarian Corpus Juris, published on August 6, 1908. Its first chapter took effect on 1st October 1908, while the provisions concerning juveniles entered into effect on 1st January 1910.[11] In the 19th December 1909 issue of the country's official journal, several ministerial decrees regarding the second chapter of the Amendment were published. The decrees were as follows: Decree 27100/1909 of the Minister for Justice and Decree 160000/1909 of the Minister for Internal Affairs; Decree 27200/1909 of the Minister for Justice; Decree 27300/1909 for the Minister of Justice; Decree 27400/1909. of the Minister for Justice; finally, Decree 149500/1909 of the Minister for Culture. These decrees dealt with the actual enforcement of the Amendment, the

[10] P. SZABÓ, *op. cit.*; BALOGH – BERNOLÁK, *op. cit.,* pp. 35–36.
[11] LÉVAY, *op. cit.*

regulation of corrective education, the enforcement of prison, state prison, and confinement sentences for juveniles, the organization of the Supervisory Board for juveniles, and the regulation of the scope and method of school punishment applied to children and juveniles by the school authorities.[12]

The Amendment dealt exclusively with the case of juveniles and the suspension of the execution of imprisonment. The main goal was to understand the factors and causes of juvenile delinquency and to remove children from the environment that set for them a bad example. Instead of a prison sentence, education with appropriate employment and sufficient education was prioritized, and education was envisioned in separate institutions, set up either by the state, private charity, or social organizations.

The other guiding principle was to introduce juveniles who had committed crimes to the possibility of an honest life so that they would choose it of their own free will. They realized that young people who have gone astray are often themselves victims of circumstances. The Code consists of 52 sections and five chapters, which are as follows:

- Chapter One: Suspension of the Execution of Imprisonment (Sections 1–14)
- Chapter Two: Provisions concerning minors (Sections 15–35)
- Chapter Three: Provisions on ancillary penalties and confiscation (Sections 36–38)
- Chapter Four: Provisions relating to certain offenses (Sections 39–51)
- Chapter Five: Enforcement Clause (Section 52)[13]

The system of punishments of the Csemegi Code was based on imprisonment, so one of the aims of the reforms was the penal system. As a result, suspension of the

[12] MAGYAR István: A fiatalkorúak bírósága. Fiatalkorúak büntetése. *Ügyvédek Lapja [Journal of Lawyers]*, No. 2., 1910.
[13] LÉVAY, *op. cit.*

execution of imprisonment appeared for the first time in Hungarian legal history, which was already used in several places in Western Europe. In Hungary, the so-called Belgian-French method was adopted. Section 1 of Act 36 of 1908 stated that "*The court may suspend the execution of the jail sentence for a period not exceeding one month and a fine for a reason deserving of special consideration, if it expects a favorable effect on the behavior of the convicted person, taking his personality, living conditions, and all other circumstances of the case into account*." In Section 2, the law also stipulated in which cases the possibility of suspension must be ruled out. For example, a person whose punishment was imposed for an act for which the law stipulates a correctional institution or penitentiary sentence could not be placed on probation. Furthermore, if the perpetrator has previously been legally convicted or has been sentenced to detention or imprisonment within ten years, or if the convicted person committed the crime out of malicious motive. The law defined the probationary period in three years.

It is worth examining the Amendment in comparison with today's regulation. Section 85 of the current Criminal Code (Act 100 of 2012) now makes it possible to suspend the execution of a term of imprisonment of two years or less. In addition, the current law also establishes exceptional cases, so Section 85, paragraph (1a) states that in the case of crimes related to the border barrier (illegal crossing of border barriers, damage to border barriers, and obstruction of construction work related to border barriers), imprisonment of not more than five years execution may be suspended. Another change, compared to Act 36 of 1908, is that the probationary period is no longer defined uniformly. Paragraph (2) of Section 85 of the now effective Criminal Code states that "*Unless otherwise provided for in this Act, the period of probation shall be between one to five years, however, it may not be less than the term of imprisonment imposed. The period of probation shall be defined in years, or years and months*.", while paragraph (2a) states that "*Illegal crossing of the border barrier (§ 352/A of the Criminal Code), damage to the border barrier (§ 352/B of the Criminal Code), and in the case of obstructing construction work related to the border barrier (§ 352/C of the Criminal Code), the probationary period may be between two to ten years, but may not be shorter*

than the period of expulsion imposed for these crimes.". In addition, the reasons for excluding enforcement have also been changed, so the execution of a sentence of imprisonment may not be suspended if the perpetrator is a repeat offender, committed the crime in the framework of a criminal organization, or committed a criminal offense intentionally before he has finished serving his sentence, or during the probation period of a conditional sentence.

It is also worth comparing the part of the Amendment concerning juveniles with today's regulation. The Amendment reinterpreted juveniles. According to the Csemegi Code, the minimum age of criminal responsibility was twelve, between the ages of twelve and sixteen criminal liability had been established by the judge on a case-by-case basis, and then criminal liability began from the age of sixteen, however perpetrators under the age of twenty could not be sentenced to death or life imprisonment. Other than these cases young age (perhaps beyond the age of twenty) was only considered as a mitigating circumstance. The amendment did not change that a person who was under the age of twelve at the time of committing the crime or misdemeanor cannot be charged or prosecuted but in Section 16 it states that "*Any person between the ages of twelve and eighteen years at the time of committing a criminal offense cannot be called to account if they did not have the intellectual and moral development necessary for criminal liability*." This type of classification has remained to this day, as Paragraph (1) of Section 105 of the now-effective Criminal Code states that "'*juvenile offender' shall mean any person between the age of twelve and eighteen years at the time of committing a criminal offense*."

Section 16 of the Amendment (quoted above) binds the criminal liability of juveniles to additional condition: the *mental and moral development* necessary for criminal liability. The determination of this, however, depended on the judge's assessment, and if the judge decided that the juvenile did was not intellectually and morally developed, they could not be held criminally responsible. However, the practice of so-called domestic discipline was ensured, which means that the school

authority could reprimand or put the juvenile who has committed a crime or misdemeanor into custodial arrest.

However, against those whom the court found to have the appropriate intellectual and moral development reprimand, probation, correctional education, jail, or state jail sentences could be applied, according to Section 17 of the Amendment. Among the main punishments of the Csemegi Code, death penalty, and correctional institution sentence as well as penitentiary sentence were not applicable against them, and among the ancillary penalties, loss of office, suspension of the exercise of political rights, and additional fines were not applicable.[14]

The effect of the criminal law reform trends described above can be seen in Section 18, which formulates the principle of individualization. The Amendment states that "*For the measures (Section 17), the following must be considered: the personality of the juvenile, the degree of their intellectual and moral development, their living conditions, and all other circumstances of the case. Compared to these, the court applied the measures determined […] within the limits set by law, which is desirable from the point of view of the future behaviour and moral development of the juvenile defendant*.".

Among the measures involving deprivation of liberty, the court ordered correctional education for an indefinite period, but it could not extend beyond the juvenile's twenty-first birthday. In contrast, today's regulations established the duration of correctional education in years and months – just like in the case of prison sentences. Correctional education can last from one to four years, and Section 120 of the contemporary Criminal Code also states that "*Placement in a reformatory institution may not be ordered against a person over the age of twenty years at the time of sentencing*."

The Amendment set the shortest term of jail sentence at fifteen days, while the longest term – if the juvenile was fifteen years old at the time of committing the crime and the law stipulates the death or penitentiary sentence for the crime – was ten or

[14] *Ibid.*

five years. The shortest duration of the state jail sentence was one day, and the longest was two years. Sentences involving imprisonment had to be carried out in juvenile detention facilities. However, it is important to point out that the institution of the juvenile courts was established in Hungary by Act 7 of 1913, so it was not yet separated from the court system for people of legal age.

In the case of reprimands, legislators thought that a serious and loving reprimand can achieve a much more favourable result for an uncorrupted person than a sentence of imprisonment. The scope of its imposition was determined by the Amendment not positively, but negatively, thus it stated that reprimanding cannot be applied if a prison or state prison sentence of more than one month could be established if the juvenile was already punished with a prison sentence exceeding one month and if the juvenile lived in a bad environment.

Probation served as a solution between reprimands and prison sentences, so it could be used in cases where reprimanding was not sufficient, but the defendant did not show any tendencies that would justify corrective education or the imposition of a prison sentence. It essentially followed the construction of suspension of the execution of imprisonment. The amendment defined the scope of applicability negatively here as well, so it is established that probation cannot be applied if the juvenile has already been punished with a prison sentence of more than one month (Paragraph (2) of Section 21), if the juvenile has started to become delinquent, or if, for the sake of their intellectual and moral development, corrective education is necessary (Section 26), and if the juvenile is exposed to the risk of deterioration in their current environment (Paragraph (1) of Section 24).

In addition, patronage was introduced. The court appointed a guardian for the juvenile, whose task was to provide the court with information about the person, as well as to possibly be present at the hearing of the case. Anyone could be a patron. In the case of probation, someone had to be entrusted with supervision. This trustee

could be the legal representative of the minor, but also the state children's shelter, the child protection association, or an individual suitable for this purpose.

Despite its progressive spirit and modern provisions, the First Amendment received many criticisms. Many laywers believed that the law punished juveniles too lightly and complained that caning had not been brought back. In professional circles, the Amendment mostly received positive feedback, however, the already mentioned "intellectual and moral development" provoked debates, as it was not clear what this phrase meant, and the connection between this category and responsibility was not clear either, despite its importance. Regardless of this, the minister's explanation only mentions that this is a measure of guilt. That is why they tried to clarify the concept mainly during the application of the law. The unpreparedness of the enforcement was also a problem, as well as some solutions that were debatable according to the rule of law (e.g., for preventive purposes, a criminal sanction [correctional education] could be applied to juveniles who – due to the lack of proper intellectual and moral development - did not meet all the conditions of criminal liability).[15]

Despite the above deficiencies, in 1910 Ferenc Finkey stated that: "*Act 36 of 1908, the so-called First Amendment accepts the most modern ideas on the issue of juvenile offenders and lays the criminal law of juveniles in our country on such correct foundations that we can stand firmly on for decades. The second chapter of the Amendment is the one that made our country one of the countries with reformed criminal law, and even if we were late with the introduction of Suspension of the Execution of Imprisonment, which is also of epoch-making importance, we have become one of the leading states in the issue of juveniles*." Nothing proves the success of the Amendment better than the fact that in 1921, 987 juveniles had to be sent to prison for more serious crimes, but in 1930, this number was only 787, and it can also be

[15] FINKEY, Ferenc: Büntetőnovellánk a vádlottak padján [The Amendment to the Csemegi Code on the Bench]. *Magyar Szemle [Hungarian Review]*, 1934, pp. 230–235.

generally said that the criminality of young people has decreased, since in 1921 the total number of convicted juveniles was 7197, while in 1930 it was only 4995.

Time also seems to confirm the correctness of the provisions of the Amendment as it was in effect until 1st January 1952, and the basic principles created in it can still be found in our Criminal Code to this day.

Máté Lukács: The rights of prisoners during Hungarian civil era

Eötvös Loránd University, Faculty of Law

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1. Introduction

Was the prisoners' reintegration into society the core value behind the Hungarian civil era's[1] criminal law – especially concerning prison law – reforms? Based on my preliminary thoughts, I assume that the changes in prison law during the civil era provided a more humane environment for the prisoners than ever before, however the reintegration into society was not the top priority behind the reforms.

The Hungarian civil era brought radical changes in Hungarian prison practice, resulting in significant improvements in architecture, administration and prisoners' rights. The temporary introduction of the Austrian legal system, followed by the period of the Austro-Hungarian Compromise, was intended to fill a deep gap with the uniform introduction and the modern improvement of the Hungarian prison system.

1.1. The history of Hungarian prisons

To review the changes that occurred during the civil era, it is important to emphasise the huge backlog that the Hungarian prison system had to catch up with. Since the foundation of the state, the concept of the dungeon had existed, i.e. the instrument of criminal law that allowed the imprisonment of offenders as a sanction. It was difficult to integrate imprisonment into medieval criminal practice, for several reasons: it was economically expensive (feeding the prisoners, providing a place to live, taking serfs

[1] This is a literal translation of a Hungarian expression used for the period roughly between 1867-1914. During this era, the Hungarian modern state was established.

out of work), it did not provide publicity (one of the most important elements of medieval criminal practice was spectacular deterrence), and it was perceived at the time as too humane a punishment in contrast to the others (the 'idleness' of prisoners with alimony).[2] The nature of the prisons therefore took on a more brutal character in line with feudal conditions, such as the beating of prisoners, lack of hygiene and starvation.[3] The medieval Hungarian prisons had several functions, so there was hardly any institution specifically for the purpose of penal deprivation of liberty.[4] Feudal prisons were also often used for pre-trial detention, the imprisonment of political opponents and the confinement of people who posed a security risk. There was no uniform system, dungeons were subject to fragmented authority and their use was incidental. In Western Europe, the modern concept of prison, which emerged as a result of the transformation of workhouses and made the reintegration of criminals into society and their employment during their time in prison a priority, was introduced in Hungary with a different approach. Whereas in Western Europe the prison system was introduced in the workhouses, in Hungary feudal, exploitative employment was attached to the underdeveloped prisons.[5] The Habsburg administrative's developments and centralising measures of the early 18th and 19th centuries had little or no impact on the reform of the prison system. Minor changes were made (e.g. the abolishment of corporal punishment from dungeons), but the prison system remained highly disorganised: no uniform state network was established, no distinction was made between the severity of prisoners' crimes, and prison grades did not yet exist.[6]

[2] MEZEY, Barna: *A magyar polgári börtönügy kezdetei [The beginnings of the Hungarian civil prison system]*. Budapest, 1995. Osiris–Századvég, pp. 7–8.
[3] *Ibid.*, p. 8.
[4] MEZEY, Barna – LŐRINCZ, József: *A magyar börtönügy története [The history of Hungarian prisons]*. Budapest, 2019. Dialóg Campus, p. 34.
[5] MEZEY, *op. cit.*, pp. 12–13.
[6] MEZEY, Barna: *A börtönügy A 17–19. században. A börtön európai útja [The prison system in the 17th–19th centuries. The European journey of the prison].* Budapest, 2018. Gondolat, pp. 425–426.

1.2. The international background to prison reform

The change in criminal law thinking was brought by the ideas and impact of the Enlightenment. At the beginning of the 18th century, the absolute theory of punishment, which had been advocated by Kant and Hegel, and which had stressed that punishment is only neccessary beacuse of the act of crime; was replaced by the more and more popular relative theory. The relative theory, which had begun to emerge in Western civil societies, began to emphasise prevention and determinism in criminal law thinking. Ideas rose that stressed that punishment should be preventive, proportionate and in all cases individualised. With this in mind, and with freedom becoming the most important value of the period, imprisonment became the most popular (non-monetary) form of punishment. This brought with it a modernisation of prison systems and a transformation of their function, with the new priority of reforming individuals into law-abiding citizens.[7]

1.3. The criminal proposal of 1843

Article V of 1840 ordered the elaboration of new, comprehensive criminal law proposals and codes for the faculties and orders. The appointed Select Committee began work, and after years of research, debate and consultation, the 1843 Code of Criminal Proposal was drafted. The proposal was an extraordinary achievement in Hungary, combining ideas that were incredibly progressive by Western European standards even. The code was intended to introduce a modern prison regime: a privately run prison system with several grades of jail. Regarding prisoners' rights, they aimed to introduce extremely humane solutions such as the abolishment of the death penalty, the right to recieve letters, the right to receive newspapers and permission to be visited. All these would have helped prisoners to keep in touch with the outside world, to reintegrate into society later on. The proposal was not eventually enacted, society was not yet ready to put these modern ideas into practice. As Barna Mezey

[7] MEZEY, *op. cit.*, 1995, pp. 17–20.

puts it, the package of proposals "*would certainly have had a place in civilized Europe - but less so in the orderly Hungary, a country where trials were still conducted in the spirit of the orderly formulas, where judicial power was concentrated in the hands of the conservative-minded nobility, where freedom had no value apart from noble liberty*."[8]

2. The employment of prisoners

Article V of the Law of 1878, the Csemegi Code, introduced in the civil era, radically changed the criminal law regulations, including the entire prison system. Thanks to the liberal thinkers of the political elite, a new framework of regulations on prisoners' rights was established on the basis of modern and humane principles.

The concept of diligence became the main cornerstone of prisoner employment. As a moral factor, diligence reflects an individual's motivation, sense of duty and strong will. The thinkers of the time considered these to be virtues that should be maintained in order to become a law-abiding citizen again.[9]

Three main objectives have emerged for the employment of prisoners: 1. a dual aim of moral and professional education, which not only enables prisoners to acquire moral virtues but also to find a position with useful skills when they return to society; 2. to ensure that the income from prison labour covers the prisoners' costs and benefits the public purse, since it is not society as a whole that must support the prisoners, but the prisoners themselves who must (at least partly) repay the cost of their actions; 3. as a security measure, since prisoners who have been employed are less likely to organise or commit offences.[10]

[8] MEZEY – LŐRINCZ, *op. cit.*, p. 85.
[9] MEGYERY, István: *A magyar börtönügy és az országos letartóztatási intézetek [The Hungarian prison system and national detention centres]*. Budapest, 1905. Magyar Kir. Igazságügyministerium, p. 208.
[10] SZÖLLŐSY, Oszkár: *Magyar Börtönügy. A büntetések és biztonsági intézkedések végrehajtása [Hungarian Prisons. Implementation of penalties and security measures]*. Budapest, 1935. Révai Testvérek Irodalmi Intézet Részvénytársaság, pp. 189–190.

The obligations and working types of those obliged to work were varied and regulated in an advanced spirit. Several criteria were taken into account when determining the obligation to work, such as the inability to work due to illness or health, the elderly or religious persons not being required to work in exceptional situations. The latter factor was surprisingly liberal in its treatment of work (Christians were allowed to skip work on holidays and Israelites on Saturdays and holidays on request).[11]

Prisoners' work sentences were based on their abilities, background and inclinations. As a general rule, prisoners had a wide choice of work sentences.[12] The working types were determined by looking specifically at individuals. As Oszkár Szöllősy puts it, "*Nowhere is individualisation perhaps of greater importance than in the field of prison labour. Man and woman, intellectual and physical worker, industrialist and farmer, young and old, weak and strong cannot be employed in the same work in the penitentiary*."[13] This is an extremely important observation, as it illustrates the major impact of liberalism on prison reform. The individualisation of sentences is a very important criterion, which is reflected to a large extent in the employment of prisoners.

The wide differentiation of employment meant that prisoners could be employed in a very diverse range of jobs. We can distinguish different pairs of concepts within the category of jobs. According to the location of the work, there was inner work and field work; according to the place of work, there was indoor work and outdoor work; and according to the type of action, there was domestic work, industrial work and mental work.[14]

Perhaps the most interesting of all the work items is the category of outdoor work. These tasks were considered to be among the greatest duties of freedom, as prisoners could enjoy the fresh air and were physically closer to freedom and society.

[11] *Ibid.*, p. 192.
[12] 1878. évi 5. törvénycikk a magyar büntetőtörvénykönyv a büntettekről és vétségekről [Act 5 of 1878 of the Hungarian Penal Code on Crimes and Misdemeanours], 37. §
[13] SZÖLLŐSY, *op. cit.*, pp. 192–193.
[14] *Ibid.*, pp. 193–196.

They therefore needed to be properly regulated. Firstly, it was established that, as a general rule, these duties should be a quasi-reward for prisoners of good behaviour, and secondly, there were three main conditions under which a person could undertake work in the open air: (1) if he had previously been engaged in work of a similar nature or had proven himself capable of it, (2) if he had been released from solitary confinement on good behaviour, (3) if his personality did not in itself present a risk of escape.[15]

This shows once again how the study of the individual has been a pervasive feature of prison law thinking. The principle of social reintegration is also becoming more and more apparent, as it is becoming increasingly evident that the various criteria for the tasks imposed in prisons also include a high degree of consideration of the contribution of a particular task and its circumstances to the future development of society as a community with a sense of duty and a law-abiding citizen.

3. Prisoners' contact with the outside world

The nature of imprisonment makes isolation from the outside world, deprivation of contact, an important element of the theoretical background of the punishment. However, prison regulations in the civil era have made increasingly liberal concessions to the possibility of contact with the outside world, since an important element of social re-integration is that prisoners, when re-educated, are not completely isolated from the community to which they will return as morally refreshed citizens. In addition, it is important for prisoners to be able to communicate with their relatives and acquaintances, to be informed about their situations.[16] As Oszkár Szöllősy writes: "*If the prisoner were completely prevented from communicating with their relatives and*

[15] *Ibid.*, p. 200.

[16] For later problems see: GOSZTONYI, Gergely – LENDVAI, Gergely Ferenc: Bezárva és kizárva – a digitális szakadék értelmezése a rabok internethez való hozzáférés jogának vizsgálatával az Emberi Jogok Európai Bíróságának gyakorlatában [Locked and excluded – interpreting the digital divide by examining the right of prisoners to access the Internet in the practice of the European Court of Human Rights] *Belügyi Szemle [Internal Affairs Review]*, No. 4., 2024.

from settling their family and property relations, it would make it more difficult for them to reintegrate into the human community. But it is also in the immediate interest of the prison authorities that the prisoner should not be troubled by constant anxiety and concern about the fate of their relatives, their future financial situation and other interests, but should be able to fulfil their duties, do their work and conform to the rules of discipline in as calm a state of mind as possible."[17]

3.1. Correspondence, information

Prisoners' contact with the outside world was subject to strict rules and a detailed framework was established to ensure that prisoners were able to orient themselves and communicate in an appropriate environment. The sending and receiving of letters was subject to authorisation and various criteria. With some exceptions, prisoners were allowed to send letters on Sundays.[18] In addition to the date of correspondence, rules also applied to the content of the letters. It was allowed to receive or send a letter if its content was in order and if it was confirmed by a someone with authority.[19] Prisoners were allowed to write letters to their relatives and close relatives, but with special permission they could also write to strangers in exceptional situations.[20] The prisoners' good behaviour also helped them to get access to newspapers. After serving four years and obtaining a sufficient number of merit marks, prisoners could be upgraded to a higher grade, which allowed them to enjoy rewards such as: spending time in the open air with fellow prisoners, and getting a newspaper from their work allowance.[21] However, these were considered exceptional privileges and were therefore subject to strict controls. A prison officer who smuggled newspapers, letters or tobacco to prisoners without a legal basis was considered guilty of bribery.[22]

[17] SZÖLLŐSY, *op. cit.*, p. 184.
[18] MEGYERY, *op. cit.*, pp. 518–519.
[19] SZÖLLŐSY, *op. cit.*, p. 185.
[20] *Ibid.*, p. 185.
[21] *Ibid.*, p. 120.
[22] No. 4919/17 of 1926 of Curia.

3.2. Visiting

The right of prisoners to be visited is an essential element in the process of social reintegration. Proper regulation of visiting contributes significantly to prisoners' reintegration into society, as meeting relatives and loved ones provides motivation and a clear purpose, showing why it is worthwhile to return to the "outside world".

While in the period after the Austro-Hungarian Compromise, strict rules applied to the admittance of visitors, and prisoners had few opportunities in this respect, the rules were relaxed at the beginning of the 20th century, and the system became more permissive. In the period after 1867, prisoners were allowed to welcome visitors every three months, who could only be relatives. The visit took place in a designated guarded room. During the visit, the visitor had to speak clearly and loudly and was not allowed to hand anything to the inmate. The visit was limited to a maximum of half an hour, but in all cases the time was set by the warden.[23]

By the beginning of the 20th century, the strictness of the visits was reduced. Although visits by inmates were still possible every quarter of the year, for a maximum of half an hour, they could also see strangers (e.g. a legal representative) with special permission. In exceptional cases, visits could be authorised more than once. For prisoners, the conditions were much more relaxed. They could be visited not only by relatives but also by acquaintances and others. Once a week, for a maximum of one hour, in a designated place and with a ban on handing over any objects.[24]

Prisoners were also obliged to be visited by pastors. Prisoners belonging to their churches were regularly visited by chaplains for moral support after examinations. To improve the spiritual well-being of the prisoners, the chaplains met several times a

[23] MEGYERY, *op. cit.*, pp. 395–396.
[24] SZÖLLŐSY, *op. cit.*, p. 186.

week with their 'subordinates', or had the right to take them to their own offices for the duration of the visit.[25]

4. Reduction in the enforcement of custodial sentences

As a result of the liberal development of the legal system, it can perhaps be said that the idea of the reintegration of individuals into society is most evident in the appearance of the relaxation of the prison sentence and the rules of parole. The possibility for prisoners to be released before the end of their sentence or to have the conditions of their sentence reduced is an excellent illustration of the principle that the purpose of imprisonment was not primarily punishment but the rehabilitation of the individual and their harmonious integration into civil society. It is clear that, with this framework, the legislators helped to give effect to progressive penal principles.

4.1. The intermediary institution

With the introduction of the Csemegi Code, the mediation institutes appeared. The mediation institutions were also used to enforce custodial sentences, but they provided a more humane and people-oriented environment for prisoners. As the name suggests, the mediation centres were a quasi-bridge between prisons or penitentiaries and life in civil society. Prisoners who had been sentenced to at least three years in prison or jail, after serving 2/3 of their sentence, and who had shown good behaviour and diligence, could apply for placement in mediation institutions, where they would receive more lenient treatment. Those serving a life sentence were able to make such a request after their tenth year. The request could be granted by the Minister of Justice on the recommendation of a supervisory committee.[26] Mediation institutions were

[25] *Ibid.*, p. 182.
[26] Act 5 of 1878, 44–47. §§

important institutions not only because they "rewarded" the moral improvement of prisoners, but also because they provided the possibility of parole.

4.2. Conditional leave, parole

Prisoners in mediation institutions could be released on probation after having demonstrated the hope of moral improvement or after having served three quarters of their sentence, as in the procedure described above. Those sentenced to life imprisonment could apply for release after serving fifteen years. During parole, individuals nevertheless serve their sentences, under controlled conditions, but are allowed to return to their own lives.[27]

István Megyery summarized the progressive nature of this legislation as follows: "It is clear from what has just been said that the legislature's aim in drafting the penal code was the moral improvement of the condemned."[28] I strongly agree with the following sentence, because the idea behind the concept of conditional release is clearly that law must adapt to the individual, it cannot influence the behaviour of society with a single rigid regulation, it must provide a humane opportunity for the moral development of the individual.

Nothing proves this better than the fact that these provisions of the Csemegi Code do not show huge differences when compared to the current Penal Code, and while the Csemegi Code limits the earliest date of parole for life sentences to fifteen years, the current Penal Code sets the same date at twenty-five years.[29]

5. Summary

[27] Ibid, 48–51. §§
[28] MEGYERY, 1905., p. 230.
[29] 2012. évi C. törvény a Büntető Törvénykönyvről [Act C of 2012 on the Criminal Code], 43. §

The Hungarian prison system, long underdeveloped and fragmented, was given the modern makeover it deserved during the dualist era. Although the political will to reform criminal law, guided by liberal ideas, had been expressed as early as the first half of the 19th century, the structure of state power only made it possible to implement them after the Austro-Hungarian Compromise. The reforms not only meant a unified state prison system and codified criminal law, but also a modern, liberal guarantee of prisoners' rights.

The idea of reintegrating prisoners back into society was clearly a guiding principle in the development of prisoners' rights. The idea of social reintegration can be found in many practical regulations, from the employment of prisoners, their contact with the outside world, to the relaxation of the enforcement of prison sentences. The rehabilitation of offenders, making them law-abiding individuals who are useful to society, was a very important priority in the introduction of the reforms.

In the course of writing my paper, it has been clearly demonstrated to me that not only did the dualist era bring more humane and liberal regulations in the field of prisons, but that there were deeper ideas and more elaborate thoughts behind the codification, which contributed faithfully to the building of a civil society.

Josipa SUDAR: Case against Diletta – an early case of sorcery

University of Zagreb, Faculty of Law

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1. Introduction

Sorcery is a crime that was defined in several ways through the history. Both meaning of the crime and the proceedings to punish these crimes changed quite a bit. At its core, sorcery is considered as achieving success with mysterious forces and harming another.

In this paper I will present one of many cases of sorcery from Croatian history, a case against Diletta Michiel. Diletta was Venetian *nobilis domina*, a respectable member of society. Nevertheless, she was executed as sorceress. The goal of this paper is to show the proceeding against Diletta and all circumstances that were important to this case. Even if this case could seem quite simple at the first sight, it is much more complicated. It arises a lot of questions about the entire proceeding, people involved in it and other events that had influence on it.

The most significant source, or even the only one, is the Motovun document. It is very important in both historical and notarial sense. It is the basis for further knowledge and conclusions about what really happened to Diletta.

2. Early development of sorcery

Believing in sorcery has existed since ancient times. Comprehensive work on sorcery dating back more than 3000 years BC has been found in royal library in Nineveh.

Sorcery was considered as achieving success with mysterious forces beyond natural abilities of any human. Those mysterious forces aren't closely determined.[1]

The dominant religion of a state has a great impact on the state's relation to the sorcery. All religions teach that there are spiritual, superhuman beings that significantly surpass man in terms of their physical and spiritual powers. Sorcery is understood as the connection of a man with these beings, whereby these beings enable man to achieve magical effects by putting their services at his disposal.

Monotheistic religions have always believed that the sorcerer's power is obtained through the connection of a man with evil spirits, demons, who make their services available under the condition that sorcerers must regard them as gods and give them the honor that belongs only to the God. On the other hand, polytheistic religions have a different attitude. They themselves nurture sorcery, especially to find out the future for state purposes, so their priests are constantly in touch with the world of spirits.

At certain times, the state prosecuted sorcery exclusively as an act of harming another. Achieving beneficial effects through sorcery was not punishable. The mysterious power of sorcerers instilled fear in people, so sorcerers were considered more dangerous than ordinary criminals. That's why they were punished harder.[2] Therefore, the state persecuted sorcerers primarily due to their forbidden connections with evil spirits and for apostasy from the state religion, in addition to the injuries the sorcerer inflicts on someone.

[1] BAYER, Vladimir: *Ugovor s đavlom, Procesi protiv čarobnjaka u Evropi a napose u Hrvatskoj [A contract with the devil, Trials against sorcerers in Europe, and especially in Croatia]*, 3rd edition, Informator, Zagreb, 1982, p. 19.
[2] *Ibid.*, pp. 20–21.

3. Trials against sorcerers in Croatia

Sorcerers were prosecuted in Croatia from the 13th century until the middle of the 18th century. From the 13th century, we find provisions against sorcery in the statutes of Dalmatian and coastal cities. Since statutes are written codifications of earlier customs, sorcerers were most likely persecuted much earlier. The authorities in those regions considered sorcery a serious crime for which the most severe possible punishment was provided, burning at the stake.

During the persecution of sorcerers two periods can be separated. The first period refers to the period in which the folk understanding of the crime of sorcery prevails among the state authorities. It is the understanding of inflicting severe damage on people through some mysterious power whose origin is not precisely determined. This is the understanding in terms of *maleficium*. In the second period, sorcerers were considered Devil worshipers who form an organized sect, make a contract with the Devil, and meet in secret meetings. At the time sorcerers also have had a terrible power to do all kinds of horrible harm to people. This second period is actually the period of mass persecution of witches.[3]

Most statutes contain provisions for punishing sorcerers, but not for what constitutes the crime of sorcery. According to the Korčula and Dubrovnik statutes, sorcery refers to acts that can cause people to lose their mind or a part of their body.[4] When talking about *maleficium*, the Devil is not mentioned at all. Sorcery power is not considered to be of demonic origin. The term of poisoning was not clearly separated from the term of sorcery, but these two terms are not the same.

According to the statutes, sorcery was generally attributed to women. However, there is a difference in the statutes written in Croatian and Latin. In the statutes written in the Croatian language, it is stated that sorcery is practiced by women, and only one

[3] *Ibid.*, p. 216.
[4] *Ibid.*, p. 219.

provision states that men can also be punished. In the Latin written statutes, they clearly say that this crime can be committed by both men and women.[5]

We have almost no information about specific trials against sorcerers that were conducted in Dalmatia and the coastal area in the first period of prosecution of sorcery. The only known cases of sorcery of that period are the preserved opinion of an expert from Dubrovnik and the confession given by Diletta in Motovun.

4. Case against sorceress – Dubrovnik, 1556-1558

This is the case against a city prostitute who was accused of sorcery. Allegedly, she made a young nobleman to be deaf. The court of Dubrovnik was not clear if this was even possible. In this case, the expert opinion of Amatus Lusitanus played a key role. In his opinion, the young nobleman did not become deaf because of some mysterious powers, but because he got ill with syphilis.[6] The court did not ask for the opinion of lawyers or theologians, and this reflects the advanced attitude of the court.

5. Case against Diletta – Motovun document, 1271

Motovun document dates back from 6th July 1271. It is part of notarial materials, a diplomatic source drafted by notary Bonaventura. It is kept at the Venetian State Archives.[7] The document was written on an impermeable parchment, and it is very well preserved. Writing without errors and very neatly suggests that the notary had great chancerial skill and technique.[8]

The document contains statements of Diletta Michiel, wife of Motovun Podestate Lord Thoma Michiel. She confessed to a series of acts qualified as sorcery.

[5] *Ibid.*, p. 221.
[6] *Ibid*., pp. 223–224.
[7] MILOTIĆ, Dunja – MILOTIĆ, Ivan: *Case against Diletta – On the Intersection between Roman, Canon, Customary, and Venetian Law*, State Archives in Pazin, Pazin–Motovun, 2022, p. 7.
[8] *Ibid*., pp. 8–9.

She mixed a lodestone with a little black dye, body of the Christ with the Chrism, her daughter's and firstborn son's umbilical cord, her and her mother's milk and her son's placenta into the food she gave to her husband and brother-in-law; made wood-ash lye, poured her menstrual blood in it and used it to wash the head of her husband; in front of the door to the room where she resided, she had placed scissors tied with a thread; had two wax figures pierced with needles from all sides and that she had placed them under the grass and they were wrapped in a pair of undergarments; had pig's leg bone that she had burned in a fire when a quarrel arose at home, in order to resolve it; had powder of a worm to cast on a man or person and make both of the brothers hate him.[9]

6. Diletta Michiel

Diletta Michiel was Venetian citizen, married to Thoma Michiel, Podestate of Motovun. Diletta's family is mostly unknown, it was probably the family Dandolo. Her sister Maria was married to Diletta's brother-in-law, Marco. Michiel family is wealthy, famous, and reputable. Brothers Thoma and Marco lived on joint assets for long time, until they divided everything on 2nd March 1271.[10]

On the same day Diletta made her last will and testament. She appointed her husband and brother-in-law as executors of her estate and bequeathed a part of her estate to her unborn child since she was pregnant with her third child. Her firstborn son and daughter died.[11] Before she went to Motovun, Diletta gave birth to a boy in Venice.

A few months later, on 6th July 1271 Diletta came to Motovun where her husband was appointed as the Podestate. On the same day, Diletta made her confession in front of the notary Bonaventura and other witnesses. The Motovun

[9] *Ibid.*, pp. 27–28.
[10] *Ibid*., p. 98.
[11] *Ibid*., p. 37.

document does not provide any explanation of the circumstances, reasons, or motivation for drafting this document.[12]

7. Circumstances of Diletta's confession

Usually, confessions were not made in a form of notarial document which arises suspicion on the whole proceeding. There is possibility that her confession has been forced and there are several facts that support that opinion.

First of all, the confession was made in a legally reliable way, but outside any proceeding. At the time, accusation of sorcery demanded an investigation and identification of the sorcerer. Also, there is nothing that seems like Diletta tried to defend herself or hide. She basically accused herself since there wasn't any on-going proceeding against her.[13] In the most cases confession is statement that comes at the end of proceeding. In this case it came before any procedural step, investigation, or accusation. A detailed description of acts, such as one in the Motovun document, is also something not very usual for an average person when making a confession.

The location where Diletta made her confession is one more reason to support opinion about her being forced to make her statement. At the time, the Podestate had jurisdiction to prosecute sorcerers. Most of the proceeding stages, including confession, would take place in a municipal chancery. This confession was made in Diletta's home in Motovun, i.e., in a home of Motovun Podestate Thoma Michiel, and not in a municipal chancery or administration offices. This could be explained as the Podestate's desire to make this process easier for his wife, yet not convincing enough. The notary, Bonaventura, at the beginning of the document stated that it is being drafted at the request of Thoma Michiel, in his home.

[12] *Ibid*., p. 38.
[13] *Ibid*., p. 74.

The last is the list of witnesses. First witness is her husband, the Podestate. Other witnesses, known by name and place where they lived, were family related to Thoma Michiel and none of them was from Motovun.[14] Some other witnesses are also mentioned in the document. Those witnesses aren't named, so we don't know much about them, not even if they really existed. They were probably mentioned only to contribute to the credibility of the content of the document. There is a question if any of them really were present during the time that confession and document were drafted. If they were, it would mean that all of them came to Motovun only to witness the confession and that confirms that everything was planned in advanced.

One more thing that should be considered in this case is position of the notary Bonaventura. In 1271 Patriarch of Aquileia lost his authority in Motovun and Venetians took it over. Bonaventura held the office of *notarius sacri palatii*, but Venetians didn't want an office like that. Bonaventura's position, his job, depended merely on Thoma Michiel. If he wanted to keep his position and to prove his loyalty to the new authority, he would draft the document according to the Podestate's wishes which may not have been in accordance with the notarial practice.[15]

8. Diletta's confession – evidence in the proceeding, consequences of the confession

The Motovun document is a confession clothed in a notarial document. Confession before the chancellor in a notarial form and in the presence of impeccable witnesses represents qualified, undisputable, and *a priori* evidence of guilt of person who confessed.[16] The document provided many details as she confessed series of typical and ideal-type acts of sorcery, without formal charges. The confession created full

[14] *Ibid*., p. 75.
[15] *Ibid*., p. 76.
[16] *Ibid*., p. 73.

certainty of guilt in the person who led the proceedings. Also, the confession is prerequisite for a conviction, the strongest and most convincing proof.[17]

This case has many extraordinary circumstances. Diletta's confession was made far from public eye, in her husband's home, before her husband who was an authorized investigator and prosecutor of those crimes according to his office of the Podestate; before the chancellor whose professional life depended in everything on the person of the Venetian Podestate and before the witnesses – none from Motovun, but all reputable and noble people connected to Diletta's husband. This all leads to conclusion that Diletta's confession has been coerced or that Diletta never actually made those statements and that no witnesses were present.[18]

9. Diletta's punishment

The punishment for a crime of sorcery is death, burning at pyre. The same happened to Diletta, yet it is not sure if she has been burnt at stake or hung. Diletta was executed in August 1271, most likely near the Church of St Cyprian. The exact date of her death is not known but it is probably after 8th August 1271 since the news of her death came very soon to Venice. Also, the method that was used in her execution is also uncertain. The Church of St Cyprian was very small and there were buildings around it with a small square. If the executors tried to put a pyre and open flame there, the fire would have inflamed other buildings too. That's why Diletta was most likely hanged in front of the Church.

It is important to mention that the Church itself didn't have any influence in this execution since there is no mention of any theological authority, only civil one. Authorities of the Church could not involve in any judicial or civil matters since they were fully separated from Venetian authorities.[19]

[17] *Ibid*., p. 82.
[18] *Ibid*., pp. 93–94.
[19] *Ibid*., pp. 103–105.

Nevertheless, the great role in this proceeding and her punishment as well has had Diletta's husband, Thoma Michiel. He was the organizer of the confession. On his request notary Bonaventura composed the document. Diletta couldn't organize confession since she has never been in Motovun before neither she could have organized everything immediately upon her arrival to Motovun. Thoma is also person who made the decision for Diletta to be executed for acts of sorcery in or after proceedings after the drafting of the document.

Immediately after Diletta's death, Thoma has been accused of murder of his wife, *uxoricidium*, but the accusations were dismissed soon afterwards.[20] Possible reason for his planning murder of his wife and organization of drafting the document is Diletta's last will and testament. She has had substantial financial and non-financial assets. Her death was only way for Thoma to acquire those assets from Diletta since last will and testament is a legal transaction whose effects come after the testator's death. On 14th August 1271 Thoma instructed his brother to submit Diletta's last will and testament to the authorities so that Thoma could get Diletta's part of estate.[21]

Still, that is only a possibility since we don't have any source that says differently. It is also questionable if that could be the real reason. It is known that Thoma Michiel was a wealthy noble and so, he didn't need Diletta's assets. So, it's possible that he had another reason for setting up this entire proceeding against his wife, an intimate reason known only to himself.

10. Conclusion

Sorcerers were prosecuted in Croatia for more than five hundred years. The prosecution obviously changed as time passed by, but it also depended on some other factors. Case against Diletta is an early case of prosecution of a sorceress dating back to the 13th century. I find this case very interesting since it isn't some typical case where

[20] *Ibid*., p. 101.
[21] *Ibid*., p. 99.

everything is very clear. There are a lot of questionable facts that make everything more interesting, from historical and legal aspect. In this case we see how the one with the greatest power can decide the life and fate of others. However, there are a few more questions left such as what the real reason for this staged confession was, did Diletta really confessed everything by herself, what was the real reason for drafting the Motovun document, etc. Answers to these questions can't be provided until more historical sources are found, and more legal research is done.

Zoe L. Žilović: The use and form of judicial torture in Croatian lands

University of Zagreb, Faculty of Law

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1. The meaning of judicial torture

Torture, "*the act of causing great physical or mental pain in order to persuade someone to do something or to give information, or to be cruel to a person or animal*"[22]is a word still used in everyday talk as an exaggeration or a joke to express the speaker's current state of mind or feeling. When doing so the speaker is rarely in any real physical or mental pain but rather some kind of minor inconvenience that sets him or her off, as such today's grasp of torture is very much widespread and simplistic compared to what the word actually represents.

The definition given in the Cambridge Dictionary is too broad because judicial torture was originally designed to produce confessions in cases of serious crime in which "full proof" in the form of confession or two eyewitnesses was needed to convict. Therefore, torture is only a means to find the truth in criminal procedure, not a mode of punishment. The use of judicial torture is predicated upon the assumption that when a person is subjected to physical pain during interrogation he will confess the truth. The use of judicial torture in the late medieval and early modern periods had ancient and early medieval precedents. This paper will present the beginnings of the use of judicial torture, as well as its application and forms in Croatian lands.

[22] Torture, Cambridge Dictionary, Cambridge University Press and Assessment, https://dictionary.cambridge.org/dictionary/english/torture [Access on March 24, 2024].

2. The beginnings of judicial torture

The earliest recorded forms of judicial torture date back to Athens and Rome. The interesting aspect about it being that among the Greeks and under the Roman Republic torture was almost entirely confined to slaves. According to the rule in force at the time, free persons could not be subjected to torture, and in Rome this exemption was one of the privileges of citizenship. This can be explained by the belief that the slave, being absolutely at the mercy of his master, would naturally testify in accordance with the master's wishes, unless some stronger incentive to speak the truth were brought to bear.[23]

After the creation of the Roman Empire a change in the law began to take place. The ordinary criminal procedure assumed the form of an inquest by magistrates, and the importance of protecting emperor as the head of state caused the high treason (*crimen laesae majestatis*) to be treated as one of peculiar atrocity. Therefore, the torture was permitted even in the case of free persons accused of it. This rule was afterwards applied to other grave offences, although with a number of exemptions in favor of men of high rank. Thus torture ceased to be used solely in consequence of a rule of evidence about the testimony of slaves, and grew to be also a means of convicting freemen charged with heinous crime.[24]

3. Early medieval period – compurgation and ordeals

After the Barbarians overthrew the Western Roman Empire, the decay of Roman law began and, with it torture for freemen disappeared. In many barbarian kingdoms torture continued to be used on slaves, but not on free men under any circumstances. Crime was regarded as a private wrong, and no clear distinction was drawn between civil and criminal proceeding. Before the 13th century European courts used

[23] LOWELL, A. Lawrence: The Judicial Use of Torture. Part I, *Harvard Law Review*, No. 4, 1897, p. 220. DOI: doi.org/10.2307/1321315
[24] *Ibid.*, p. 221.

accusatorial procedural system, according to which a criminal action was both initiated and prosecuted by a private person, who was usually the injured party or his relatives. If the accused admitted his guilt, or if the private accuser could provide certain proof, then the judge would convict the defendant. If there was any doubt, however, the court could resort to compurgation and judgment of God.[25]

Compurgation (*juramentum purgationis*) was a way of deciding that someone who was accused of committing a crime was not guilty if accused took an oath that the charge against him was false, and produced a fixed number of his relatives or neighbors who swore that his oath was true. Because oath making often had religious implications for those who served as oath helpers and because there was also a possibility of legal sanctions, individuals might refuse to give oaths for persons with bad reputations. The institute of compurgation was also present in the Vinodol Law of 1288, as well as in other collections of Croatian customary law. This institute could have been applied if the defendant was not caught in the act, and the number of necessary oath-helpers was determined by the court. The Vinodol Law determined 6, 12 or 25 oath-helpers for the criminal offence of theft, but as many as 50 for murder. These oath-helpers were not expected to know the facts related to perpetration of a crime, but they rather served as a moral guarantee that the defendant spoke the truth. The defendant had to find oath-helpers by himself, usually among the relatives, and if an oath-helper was lacking, he would take the oath as many times as was needed.[26]

Another common way of determining the facts was the judgment of God (*judicium Dei*). This was an irrational method used to determine guilt or innocence by submitting the accused to dangerous or painful tests believed to be under supernatural control. Those ordeals were as follows: "*the ordeal by water, where the victim on being thrown into the water sank if innocent, and floated if guilty; the ordeal*

[25] LEVACK, Brian P.: *The witch-hunt in early modern Europe*, 3rd edition, Pearson Longman, Harlow, 2006, pp. 75–76.
[26] ČEPULO, Dalibor: *Hrvatska pravna povijest u europskom kontekstu. Od srednjeg vijeka do suvremenog doba [Croatian legal history in the European context. From the Middle Ages to modern era]*, Pravni fakultet Sveučilišta u Zagrebu, Zagreb, 2023, p. 130.

of the corsnaed, reserved chiefly for priests, where a morsel of consecrated bread or cheese was used, which the innocent alone could swallow without choking; the ordeal of boiling water and hot iron, where the accused thrust his arm into a boiling caldron or carried in his hand a piece of hot iron, guilt being proved by the failure of the wound to heal in three days."[27] The court decision which ordeal the accused will suffer through was based on how much evidence they had against him and what type of reputation he possessed. Therefore, result of the test was in line with people's prior opinions about the accused's guilt.

One of the most popular ordeals had to be the trial by combat (*judicium pugnae*), whose origin can't be traced but its popularity grew rapidly with the dawn of feudalism. This was a judicially sanctioned duel used to settle accusations in the absence of witnesses or a confession in which two parties in dispute fought in single combat. Before the combat each contestant took a solemn oath to the justice of his cause, and therefore the defeated party was not only proved to be in the wrong, but was convicted of perjury, and was subjected to the appropriate punishment. "*Women, priests, children, old men and cripples, who were naturally unable to fight in person, appeared by champion, and this privilege, which was at times extended to able-bodied men, became a source of scandal, the champions being, of course, in the end mere hired ruffians*."[28] To summarize: the accused could challenge his accuser, judge or witness; take an oath and whoever lost was not only wrong but also convicted for lying under oath.

Compurgation and ordeals finally meet their end in 1215 with the Fourth Lateran Council prohibiting clerics from participating in unilateral ordeals. Since the ordeals, being appeals to divine guidance in judicial matters, required clerics to bless the entire operation, the action taken by the Council signaled their end. The trial by

[27] LOWELL, *op. cit.,* pp. 221–222.
[28] *Ibid.*, p. 222.

combat lasted somewhat longer, because the feudal nobility regarded it as a privilege of their class.[29]

In the Croatian-Hungarian Kingdom the ordeals of hot iron and boiling or cold water[30] were used as a supplementary evidence for more serious crimes until their abolition in 1309. The most important ordeal was the trial by combat and it was applied until the end of the Middle Ages. Despite the principled opposition of the Church, this custom spread unusually in the Middle Ages, especially in cases where neither party had sufficient evidence. Only the judiciary of the free royal cities was against this bilateral ordeal; the Golden Bull of 1242 issued by King Béla IV of Hungary to the inhabitants of Gradec (part of today's Zagreb) stipulates in Art. 9 that no one should be forced to fight to prove his right. Ilok statute of 1525, like most cities in Slavonia that had privileges, also explicitly forbids trail by combat due to the bad influence of that institute on the arrival of foreign merchants and new settlers in the cities. The application of this customary means of proof was abolished by King Matthias Corvinus in Art. 18:1486, detaining it only for military court.[31]

4. The use of judicial torture in the late medieval and early modern periods

The abolition of the unilateral ordeals at the Fourth Lateran Council meant not only a fundamental change in the rules of proof, but profound change in thinking about the nature of government and law. At the end of the 12th century the lawyer-pope Innocent III initiated comprehensive reforms of ecclesiastical criminal procedure by introducing inquisitorial procedure to prevent scandals among the clergy: "*It began by a secret*

[29] LOWELL, *op. cit.,* pp. 222–223.; LEVACK, *op. cit.,* pp. 76–77.

[30] It is necessary to mention that the trial by cold water remained in use in Croatia and Slavonia in proceedings against witches until the 18th century. MAŽURANIĆ, Vladimir: *Prinosi za hrvatski pravno-povijesni riječnik, Prvi dio A–O [Contributions to the Croatian legal-historical dictionary, First part A–O]*, Informator, Zagreb, 1975, p. 80.

[31] DABINOVIĆ, Antun: *Hrvatska državna i pravna povijest [History of Croatian state and law]*, Matica hrvatska, Zagreb, 1940, pp. 429-430; TOMIČIĆ, Zvonimir: *Iločki statut i njegova kaznenopravna regulacija [Ilok statute and its criminal law regulation]*, Hrvatsko udruženje za kaznene znanosti i praksu, Zagreb, 2006, p. 131.

inquiry on the part of the judge, followed by an interrogation of the accused, who was obliged to answer upon oath."[32] Beginning in the 13th century the ecclesiastical and secular courts of western Europe adopted new techniques that assigned a much greater role to human judgement in the criminal process.[33]

During the 13th century heresy became the reason this new inquisitorial procedure was widely accepted and torture being allowed (and borrowed from Roman law) on the principle that heresy was *crimen laesae majestatis divinae* or a crime against sovereignty. Therefore, the old Roman laws against treason became the basis of the new inquisitorial standard known as the Roman-canon law of proof. Because new inquisitorial procedure now relied on human rather than divine judgement the requirements for proving guilt were much stricter.[34] The Roman-canon law of proof governed judicial procedure in cases of serious crimes i.e. capital crimes where death penalty could be imposed. There were three fundamental rules: (1) the court had to have at least two reliable eyewitnesses who testified in order to condemn and convict the accused; (2) if there were not two eyewitnesses, the only way the court could convict and condemn the accused was on the basis of his own confession; and finally (3) circumstantial evidence, so-called *indicia*, was not on its own enough in order to convict and condemn the accused, no matter how compelling it seemed.[35]

Therefore, if a "full proof" (testimony of two reliable eyewitnesses or accused's confession) existed, torture could not be employed since conviction was already assured. Examination under torture was permitted only when there was a so-called "half proof" meaning either only one eyewitness, or circumstantial evidence of sufficient gravity existed. Torture was widely used to convict those accused of secret crimes such as heresy and witchcraft, since eyewitnesses could rarely be produced in

[32] LOWELL, *op. cit.,* p. 223.
[33] LEVACK, *op. cit*., pp. 76–77.
[34] LOWELL, *op. cit.,* p. 223–225.
[35] LANGBEIN, John H.: *Torture and the Law of Proof, Europe and England in the Ancien Régime*, The University of Chicago Press, Chicago and London, 1976, pp. 4–5. DOI: doi.org/10.7208/chicago/9780226922614.001.0001

such concealed crimes. The use of torture in witchcraft cases was the most important factor in increasing the number of convicted witches. Under the torture accused witches were forced to name their accomplices, which enabled new accusations and trials against those denounced women. The reliability of confessions extracted under torture was not considered problematic and there existed a conviction that God would protect the innocent and help them to withstand torture. The use of judicial torture was regulated by strict rules governing its application. One of the rules was that the confession given by the defendant under torture had to be voluntarily confirmed by the defendant himself within a period of 24 hours after the torture. All of the grades of torture were supposed to be performed on the same day; repetition of torture was forbidden – namely, for repetition of torture the judge had to have completely new *indicia* against the defendant. The accused who withstood examination under torture without confessing was said to have purged *indicia* against him, and was entitled to be acquitted and released unless new incriminating evidence was discovered thereafter. There were also rules that exempted certain classes of people, such as pregnant women and children, from torture. In practice, these rules were regularly disregarded and violated by secular courts, especially in witchcraft cases. Specific modes of torture varied regionally and according to custom.[36]

Despite all its defects, the judicial torture survived into the 18th century because European criminal procedure had no alternative: the law of "full proof" was absolutely dependent upon forced confessions. In 18th century Europe, famous writers of the Enlightenment, Cesare Beccaria and Voltaire were advancing arguments against torture and inspired the European monarchs to abolish torture. Prussia finally abolished judicial torture in 1752, Saxony in 1770, Poland and Habsburg Monarchy in 1776, France in 1780, Tuscany in 1786, Sicily in 1789 etc. Torture could be abolished in 18th century because law of proof no longer required it. The developments in penology in the 16th, 17th and 18th centuries that replaced capital punishment with various forms

[36] LANGBEIN, *op. cit*., pp. 12–16.; LEVACK, *op. cit*., pp. 82–84.

of imprisonment created an opportunity to restrict the use of torture to cases of capital crimes. The new standards of proofs for noncapital crimes were developed that did not require confession evidence. This new system of proof developed alongside the Roman-canon system, which finally lost its monopoly in 17th century. According to this new law of proof, judge could now sentence a defendant to punishment (*poena extraordinaria*) on the basis of circumstantial evidence. Under the doctrine of *poena extraordinaria* for less than "full proof", the subjective theory of proof found its way into European law.[37]

5. Torture in Croatia and Slavonia

In the 15th century Croatia and Slavonia there was a relative separation of civil and criminal proceedings. A mixed criminal procedure with inquisitorial and adversarial elements was gradually developed, and the official prosecutor (*fiscus* or *fiscalis*) had the sole power of indictment. Before drawing the indictment, public authorities in a town or a county had to conduct an investigation (*inqusitio*) by hearing witnesses who charged the defendant, so that a convincing indictment could be drawn by the prosecutor. The burden of proof was thereupon transferred to the prosecutor, while previously it was on the defendant.[38]

The first recorded use of torture to obtain confession from defendant in Croatia and Slavonia dates back to 14th century. In 1375, three perpetrators of a robbery murder were caught in Gradec. They were tortured "*in equuleo*" until they confessed to the crime. *Eculeus* was an instrument of torture used in Zagreb until 18th century. This was a wooden horse on which the defendant was placed and then stretched or racked with weights or pulleys. In the 18th century *eculeus* was the name for the most

[37] LANGBEIN, *op. cit*., pp. 8–12., 45–60.
[38] ČEPULO, *op. cit*., pp. 130–131.

severe type of torture, which was always based on stretching the body.[39] In the 17th century torture became a regular means of evidence. Judicial torture was frequently applied in practice, especially on peasants, while nobles could be tortured only if they were caught while committing the offence. Solid circumstantial evidence (*indicia*) with the lack of "full proof" i.e. the lack of two reliable eyewitnesses required for the conviction, was needed for determining torture. Additionally, the confession obtained through torture had to be substantiated by a repeated testimony of the defendant within 24 hours after the torture. Therefore, the torture system used by courts in Croatia and Slavonia was largely adopted from Western European countries.

The first rule which systematically regulated the criminal procedure in Croatia and Slavonia, including the application of torture, was *Praxis Criminalis* published by Ferdinand III for the territory of Lower Austria in 1656, which was accepted as a subsidiary source of law in Hungary, Croatia and Slavonia. Information on the rules governing application of judicial torture, which were in force in Croatia and Slavonia at the beginning of the 17th century, are contained in the Ivan Kitonić's book "*Directio methodica processus iudicarii*" from 1619. In this book Kitonić explains how torture is not actually mentioned in any written law or rule, yet it was widely used before courts. He specifically states how torture should only be used when such strong *indicia* exist against a defendant but there isn't any direct proof. Another curious note of his was how torture should be permitted in cases where the accused's partner in crime confesses against him. Despite all this Kitonić strongly valued how if the accused manages to withstand all torture, he should be set free, unless new *indicia* formed. He had even gone so far as warning the judges about how they will suffer serious consequences (their conscience will condemn them before the judgement of God) if they chose not obey that rule. However, in practice this warning was in vain because

[39] MAŽURANIĆ, *op. cit*., pp. 298, 690; BAYER, Vladimir: *Ugovor s đavlom, Procesi protiv čarobnjaka u Evropi a napose u Hrvatskoj [A contract with the devil, Trials against sorcerers in Europe, and especially in Croatia]*, 3rd edition, Informator, Zagreb, 1982, pp. 264–265.

Croatian judges also greatly abused their powers and arbitrarily applied torture – they justified the repetition of torture as a "continuation" of the previous one.[40]

Torture methods which were used by Croatian judges are most similar to torture methods which were used by Austrian courts. Methods of torture prescribed in the *Constitutio Criminalis Theresiana* of 1768, the Penal Code of Maria Theresa, correspond to the descriptions of torture in torture records of Croatian courts. The torturing was done by an executioner (*carnifex*) with his helpers, who would start off by simply frightening the accused with the instruments that will be used in order to gain his confession (*territio*). Judicial torture used to be classified in categories, phases or gradations regarding its intensity and severity. The mildest degree of torture was thumbscrew (*compressio pollicum*). The defendant's thumbs were placed between two metal plates, which were then tightened with a screw, causing him severe pain. To increase the pain, executioner would hit the plates with a hammer. The second degree of torture was torture by rope, which consisted in tying the hands of defendant tightly with a rope (*ligatura manuum*). The third degree of torture was leg screw or so-called Spanish boot. The Spanish boot consisted often of two heavy iron plates which were adjusted to the lower leg. These were fastened around the shin and the calf and then gradually screwed up. The leg screw usually had sharp nails inside that stuck into the defendant's flesh during the tightening. The most severe method of torture was stretching on the rack (*scalae*). Rack is a torture device consisting of a rectangular, usually wooden frame, slightly raised from the ground, with a roller at one or both ends. The defendant's ankles were fastened to one roller, and wrists were chained to the other. During the interrogation, a handle and ratchet attached to the top roller were used to gradually stepwise increase the tension on the chains, inducing great pain. It was designed to stretch the victim's body, eventually dislocating the limbs and ripping them from their sockets.[41]

[40] BAYER, *op. cit*., pp. 260–262.
[41] *Ibid*., pp. 262–264.

Queen Maria Theresa abolished torture in Croatia and Slavonia in 1776. Maria Theresa explained the abolition by the fact that in practice it was applied arbitrarily, and not in the spirit of the rules that demanded the existence of sufficient circumstantial evidence (*indicia*) for such a way of extortion of the confession of guilt, as well as an adequate level of physical endurance. The consequence was that those who had been subjected to torture suffered severe physical injuries and confessed their guilt without any grounds for it. It was determined that in cases where "full proof" is missing and there are only strong *indicia* based on which the defendant could have been earlier subjected to torture, the judge could sentence the defendant to *poena extraordinaria*. These extraordinary punishments that were supposed to replace torture were: sentencing the defendant to a correctional facility, dragging a ship against river currents, public works that would otherwise had to be performed by hired workers. The judge should have imposed an extraordinary punishment in accordance with the guilt of the defendant, which arose from the evidence, as well as according to the strength and physique of the delinquent himself. In order to increase the extraordinary punishment and to deter others from committing crimes, convicts could be publicly exhibited at fairs or other places where a large number of people gathered, as well as publicly beaten with whips or sticks. It is important to point out that the Croatian courts opposed the abolition of torture stating that the matter should be decided by the Diet of the kingdom, as the only legal place where the laws of the kingdom are enacted and abolished. They also stated that there is a danger that without torture they will no longer be able to convict the most serious criminals, which will ultimately lead to an increase in crime and a threat to public safety. Finally, in 1790, the Hungarian-Croatian Diet passed the Art. 42:1790/1791 prohibiting torture, which confirmed Maria Theresa's decision from 1776.[42]

[42] BAYER, Vladimir: Dokumenti o ukinuću torture i o ukinuću smrtne kazne u onim jugoslavenskim zemljama koje su u XVIII. stoljeću bile u sklopu Habsburške monarhije [Documents on the abolition of torture and on the abolition of the death penalty in those Yugoslav countries, which in the 18th century were part of the Habsburg Monarchy], *Starine*, *Jugoslavenska akademija znanosti i umjetnosti [Antiquities of the Yugoslav Academy of Arts and Sciences]*, bk. 60, 1987, pp. 53–70.

6. Torture in Dalmatia and Istria

The situation regarding criminal procedure in Dalmatian and Istrian cities was different because only the inquisitorial type of procedure existed, with the active role of the judge. In case of a violation of a personal interest, the procedure was initiated by a private lawsuit, while in the case of an offence which violated public interest, it began by the initiative of a judge i.e. the duke (*per inquisitionem*). Citizens and the community officials were encouraged to report criminal offences by a monetary reward received by the person who reported the offence (usually half of the sentenced punishment), with maintenance of anonymity. This compensated the lack of organs in charge of uncovering criminal offences and their perpetrators. The duke usually had a monopoly over the trial of criminal cases. The means of evidence in criminal procedure included the testimonies of the defendant, prosecutor and witnesses, as well as "the general knowledge". Judicial torture was allowed for the purpose of extorting the confession of the defendant. The confession of the defendant was regarded as a crucial evidence (*confessio est regina probationum*). Judicial torture had been used rarely and was reserved for the most serious of crimes. Dalmatian and Istrian courts strictly adhered to the provisions of the statutes on the use of torture. Torture was usually used as a last resort. Therefore, the use of torture in Dalmatian cities was significantly different from the use of torture in Croatia and Slavonia, as well as in Western Europe.[43]

In Dalmatia torture could be applied only if there was serious circumstantial evidence about the defendant's guilt (an eye-witness) and with a later confirmation of the testimony. The 14th century can be taken as the period in which provisions on torture were developed in the Dalmatian statutes. The following is a description of the provisions on torture contained in several Dalmatian statutes. The Korčula statute

[43] TOMAŠEVIĆ, Goran – KRSTULOVIĆ DRAGIČEVIĆ, Antonija – PLEIĆ, Marija: Pravni položaj okrivljenika u kaznenom postupku dalmatinskih statuta [The legal position of the accused in the criminal procedure of Dalmatian statutes], *Hrvatski ljetopis za kazneno pravo i praksu [Croatian annual of criminal law and practice]*, No. 1, 2014, p. 88., 97., 103.; ČEPULO, *op. cit*., pp. 131–132.

limited the use of torture to the most serious crimes: murder, rape, treason, conspiracy, attempting magic, wounding, arson, adulteration, stealing, piracy and ambushes at night. However, since interpretation by analogy was accepted in criminal law of that time, this enumeration of crimes should not be taken exhaustive. The Hvar statute allowed torture "at the discretion of the duke and his judges" in cases of theft and robberies. The Split statute did not limit the application of torture to certain crimes; torture could be used in the proceedings for any crime, provided that other prerequisites were met. The Senj statute determines that in thefts of values up to 20 libar, if there is only one witness (and not the prescribed two) and in for thefts over 100 libar, if there are only two witnesses (and not the prescribed four), the defendant should be put to torture.

The *indicia* required by Dalmatian statutes for the use of torture included a very wide range of suspicions that a particular person had committed a crime: a testimony of only one eyewitness, a public opinion or a rumor that somebody committed a crime, escaping from the scene of the crime, bad reputation of the accused, bragging about a crime, if the defendant made an extrajudicial confession that he does not want to confirm, giving uncertain and unclear answers to the questions asked etc. The usual method of torture was pulley torture (*strappado*) – a defendant's hands were tied behind the back, attached to a rope which swung over a pulley. When the defendant was lifted off the ground, his arms were stretched out behind him; when he was given a sharp drop and caught before he landed, his shoulders dislocated. Sometimes weights were attached to the legs to increase the pain. Torture could also be used against members of higher social classes. Women and men were both treated the same in regard to torture except for pregnant women, who couldn't be tortured.[44]

[44] TOMAŠEVIĆ – KRSTULOVIĆ DRAGIČEVIĆ – PLEIĆ, *op. cit*., pp. 103–106.

7. Conclusion

In the Roman-canon theory of proof, judicial torture was originally designed to produce confessions in cases of serious crime in which "full proof" in the form of confession or two eyewitnesses was needed to convict. This system of evidence was created in 13th century and it lasted until the abolition of judicial torture in 18th century. By the late 18th century, most scholars and lawyers thought of the forced confession not only as a relic of past times and morally wrong but also ineffective as the victim of torture may confess to anything just to ease their suffering.

Contemporary international law determines universal ban on torture in terms of human rights. However, after the terrorist attacks on the United States of America in 2001, the use of torture was again actualized. The most common objection against the absolute ban on torture is that torture is sometimes warranted as a means of preventing and combating terrorism (e.g. ticking bomb scenario). I think that torture is always wrong and cannot be justified by any hypothetical situations. Allowing its application in some exceptional situations opens up a great danger of its abuse and represents a big step backwards in the history of mankind. The journey torture had gone through with humanity says a lot about how each generation of humans thought and perceived. Of course, not everything is, or ever was perfect but it is possible to reflect upon the past and hope for a better future.

Jakov Vojta ŽUJO: Criminal protection of marriage in the interwar Yugoslav state

University of Zagreb, Faculty of law

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1. Historical context

The Kingdom of Serbs, Croats and Slovenes/Yugoslavia was a state that existed from 1918 until 1941. It was created by merging states that were formerly part of Austria-Hungary and the Kingdoms of Serbia and Montenegro in a complex geopolitical process after the end of World War I.

From 1918 to 1929, the state's official name was the Kingdom of Serbs, Croats, and Slovenes, but the term Yugoslavia (literal translation: Land of the South Slavs) was a widespread term already, and it was also featured in the works of some Slavic, prevalently Croatian, authors and idealogues, as the genesis of the idea of the unification of the South Slavs (and further: Pan-Slavism) reached back to the 16th century.[1]

The official name of the state was changed to Kingdom of Yugoslavia by King Alexander I on 3rd October 1929. As already mentioned, the new name was more than just an act of convience, given that the state had already generally been called Yugoslavia. It was meant to reflect the state and national unitarsm.[2] To unify the diverse nations, now part of a unitary state, and solidify absolutist rule over them, there were continuous efforts to unify the legislation of the interwar Yugoslav state, with criminal

[1] BANAC, Ivo: *The National Question in Yugoslavia: Origins, History, Politics*, Cornell University Press, 1988, p. 71.
[2] DJOKIĆ, Dejan: (Dis)Integrating Yugoslavia. In: DJOKIĆ, Dejan (ed.): *Yugoslavism: Histories of a Failed Idea 1918–1992*, Hurst & Company, London, 2003, p. 149.

legislation being one of the most important aspects to be methodologically standardised.[3]

2. Overarching legislation – the Criminal Code of 1929

The efforts to unify criminal legislation involved meticulous research by the legal scientists and practitioners at the time, resulting in several legal texts being drafted in an effort to reach a single code that would universally cover criminal cases in all the legally and culturally diverse Yugoslav nations, ideally with minimal power struggle between them over which nation gets the more "privileged" status due to more of their legal norms and customs being accepted as universal. These efforts culminated with the Criminal Code of 1929, which contained various crimes against marriage and family, mostly taken and mixed and matched from other sources of criminal law present in the area at the time.

Before the criminal law of the Kingdom of SCS received its unified form in 1929, the main sources of criminal law were criminal codes and other criminal regulations in force in particular states before their unification in the Kingdom of SCS. After the unification, there were six criminal codes in force. On the territory of Serbia, it was the Criminal Code of 1860, which was shaped after the Prussian Criminal Code of 1851; in Montenegro the Criminal Code of 1906, which essentially represented a reception of the Serbian Criminal Code; in Vojvodina, the Hungarian Criminal Code of 1878. In the remaining countries (Croatia and Slavonia, Dalmatia, Slovenia, Bosnia and Herzegovina) criminal codification originated from the Austrian Criminal Code of 1852. It is clear that any sort of effort to unify these systems of law that had been developing separately for decades wouldn't be an easy task, and prominent issues would certainly arise. After a turbulent and longlasting process of unification of criminal law in interwar

[3] PASTOVIĆ, Dunja: Unification of Criminal Law in the Interwar Yugoslav State (1918–1941), *Krakowskie Studia z Historii Państwa i Prawa*, No. 4, 2019, p. 555. DOI: doi.org/10.4467/20844131KS.19.027.11645

Yugoslavia, the Criminal Code of the Kingdom of Serbs, Croats and Slovenes was enacted on 27th January 1929 and it came into force on 1st January 1930.[4]

3. Protection of marriage in the Criminal Code of 1929

The new unified Criminal Code of 1929 focused on many different aspects of marriage as a core institution, and at that time nearly synonymous with family. Marriagge and family life in the interwar Yugoslav state were regarded as a cornerstones of society. Art. 21 of the Constitution of the Kingdom of Yugoslavia from 1931 stipulates that marriage, family and children are under the protection of the state.[5]

Generally regarding the legal basis of the protection of marriage, it was stated that the lawmaker is protecting the legal right, fulfilled in the right of conducting sexual relations in a legally recognized form of marriage, from which children's rights are also drawn.[6] It is interesting to note that this definition focused on a legally recognized union and the right to consumption rather than a voluntary union of two people, which is the basis for modern interpretations and definitions of marriage.

It is also notable that bigamy is forbidden, which is the same as in contemporary Western legal systems,[7] but, unlike in the modern Western systems, it is explicitly mentioned in the Commentaries of the Criminal Code of 1929 that monogamous marriage is the foundation of the legal order in Christian states.[8] As opposed to today, where bigamy is still largely outlawed, but most Western countries are secular and

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[4] *Ibid.*, pp. 555–558, 569.

[5] *Ustav Kraljevine Jugoslavije [Constitution of the Kingdom of Yugoslavia]*, Državna štamparija Kraljevine Jugoslavije, 1931, Beograd, p. 8.

[6] DOLENC, Metod – MAKLECOV, Aleksandar: *Sistem celokupnog krivičnog prava Kraljevine Jugoslavije [The entire criminal justice system of the Kingdom of Yugoslavia]*, Izdavačko i knjižarsko preduzeće Geca Kon a. d., 1935, Beograd, pp. 174–175.

[7] WITTE, John Jr.: *The Western Case for Monogamy Over Polygamy*, Cambridge University Press, New York, 2015, p. 2. DOI: doi.org/10.1017/CBO9781316182031

[8] ČUBINSKI, Mihailo P.: *Naučni i praktični komentar Krivičnog zakonika Kraljevine Jugoslavije od 27. januara 1929. god. (Posebni dio) [Scientific and practical commentary on the Criminal Code of the Kingdom of Yugoslavia from 27th January 1929 (Special part)]*, Izdavačka knjižarnica Gece Kona, 1930, Beograd, p. 231; DOLENC – MAKLECOV, *op. cit.*, p. 174.

there is no mention of religion in modern-day legislature concerning marriage and family (religious marriage, but not as basis of any family-related institutions). Modern criminal law no longer protects monogamous marriage as such, but protects a person who first married another person in accordance with the provisions of family law. Therefore, bigamy today is primarily about the protection of individual legal rights.[9] Still, the historical connection of marriage to its Christian ideal is worth pointing out.

Criminal offenses against marriage and family are contained in Chapter 25 of the Criminal Code of 1929 (§§ 290-296) and they include following crimes against mariagge: bigamy, concealment of martial obstacles, adultery, *raptus in parentes*, and aiding an invalid marriage.

Also, in the Chapter 12 of the Criminal Code of 1929, that contains criminal offenses against the state and its constitutional order, there is a crime of disparagement of the institution of marriage (§ 100). This crime introduces a prison sentence of up to three years for publicly mocking or holding in contempt marriage as a legally recognized institution. It is introduced separately from other crimes against marriage, as part of a wider provision, where mocking the ruler, his rights, the rightful order of inheritance, and the ruling system, as well as the legally recognized institutions of family, marriage, and property. The mocking can be done orally, in written form, or otherwise. Regarding marriage, it concerns not a single marriage but marriage as an legal institution. If the perpetrator is calling for a violent abolition of marriage as an institution, they can be punished by a five-year at most prison sentence.[10] While it can hardly be imagined that anyone would call for the abolishment of marriage as an institution at that time or even mock it publicly, as it seems this crime pertains more to those that try to disparage the ruling autocracy, it is still notable that marriage as the foundation of society was considered important enough to be mentioned in a

[9] NOVOSELEC, Petar (ed.): *Posebni dio kaznenog prava [Special part of criminal law]*, 1st edition, Pravni fakultet Sveučilišta u Zagrebu, 2007, Zagreb, p. 204.
[10] RUSPINI, Ivan Angelo: Krivična djela protiv braka [Criminal offences against marriage], *Bogoslovska smotra [Theological Review]*, No. 3, 1931, pp. 262–263.

crime of this sort, protected alongside the ruler and ruling system, among other core values considered worth protecting in this way.

3.1. Bigamy (§ 290)

The crime of bigamy, found in § 290 of the Criminal Code of 1929 is a staple of the invalidity of marriage in many western legal systems, Croatian included. This contempt for bigamous relationships, according to authors Dolenc and Maklecov, was founded on Christian monogamous values, which they stated in their 1935 book analysing the entire system of Yugoslav criminal law,[11] but the same principle can be applied to all formerly majority Christian states. Bigamy is to this day criminalised and outlawed in most legal systems, except in Muslim states and Sharia law in particular.

According to § 290, whoever enters into a new marriage, even though he is already legally married, will be punished with strict imprisonment from seven days to five years. A person who was not married, and entered into a bigamous marriage knowing of an already existing marriage of his spouse, was punished in the same way. In regard to bigamy, the legislator established an exception to the general rule according to which the statute of limitations begins to run from the day the crime was committed – the statute of limitations for bigamy begins when the previous marriage ceases to be valid.[12]

The fact that Christianity strictly outlaws bigamy also explains its illegality in majority Christian countries and its legality in Muslim countries, where men having multiple women is a cultural and religious tradition. The explained state of facts also poses a question: what was the state of legality of bigamy for the Muslim population of the interwar Yugoslavia?

[11] DOLENC – MAKLECOV, *op. cit*., p. 175.
[12] DOLENC, Metod: *Tumač Krivičnog zakonika Kraljevine Jugoslavije [Commentary on the Criminal Code of the Kingdom of Yugoslavia]*, Tisak "Tipografija" d. d., 1930, Zagreb, pp. 366–367.

3.1.1. Bigamy and the Muslim community in the interwar Yugoslavia

The interwar Yugoslav state was a fairly multicultural and multireligious state for the time period, with Catholic, Orthodox, and Muslim populations (mainly in Bosnia and Herzegovina, which was under Ottoman rule for many years until Austro-Hungarian occupation in 1878). This meant that some of the religious laws weren't in accordance with the practicing criminal law that was meant to be used in the entire country. This issue is exemplified in the ban on bigamy for Muslim and Christian communities alike. Whereas bigamy was already looked down upon and an offense in Christian areas of Yugoslavia, the Muslim community considered it a custom and as well, it was a part of Sharia law, sacred to Islam. This is certainly one of the issues that arose while trying to unify the extremely diverse legal systems that formerly existed on the Yugoslav area, and as such it is worth to be highlighted.

D. N. Stanković, a Serbian judge from Niš analysed the situation regarding Muslims and bigamy in the interwar Yugoslavia in the legal journal "Archive of Legal and Social sciences". The particular question he poses is: Does § 290 of the Criminal Code of 1929 derogate bigamy and polygamy for Yugoslav citizens of the Muslim religion?

Firstly, the comment of the cassation judge G. L.Urošević on § 290 is mentioned: "*Valid are those marriages made according to existing provisions and ceremonies of all accepted religions in our Kingdom. In accordance with that, this provision tacitly derogates bigamy and polygamy of our citizens of the Muslim religion. From coming into force of this law onward, Muslims that are already in legal marriage, if they marry into a new marriage, will commit a crime under this provision*."[13]

[13] STANKOVIĆ, D. N.: Sudska hronika. Da li propis § 290 Kriv. zak. ukida bigamiju i poligamiju naših građana muslimanske veroispovesti? [Judicial Chronicle. Does regulation § 290 of Criminal Code abolish bigamy and polygamy among our citizens of the Muslim faith?], *Arhiv za pravne i društvene nauke – organ beogradskog Pravnog fakulteta [Archive of Legal and Social sciences – Journal of the Faculty of Law in Belgrade]*, bk. 24 (41), no. 4, 1932, p. 324.

Judge Stanković continues with a critique of this opinion. He points out that it is correct that if a Muslim citizen marries into a new marriage while already being in a legal marriage he is subject to punishment, but it is incorrect that bigamy and polygamy are forbidden for Muslim citizens, because bigamy and polygamy up to four women is considered legal marriage under their laws. To substantiate his claim, he points to Art. 1 of the Constitution of the religious Islamic community of the Kingdom of Yugoslavia, where it is written that Islam is an recognized religion equal to all other legally recognized religions in the Kingdom. In Art. 5 of the same text, it is stated the religion is governed by Sharia law, this Constitution, and the law on the Islamic religion. Next, judge Stanković points to Art. 19 and 30 of the Sharia law, where rules on bigamy and polygamy are found, and they are *de facto* allowed. Finally, he points to § 23 of the Criminal Code of 1929, where it is written that there is no crime if the provisions of public and private law rule out the illegality of actions.

Judge Stanković concludes his analysis by pointing out that § 290 of Criminal Code of 1929 cannot abolish bigamy or polygamy while the Sharia law allows it, due to the fact it is recognised as a civil legal source, and as such effectively rules out the illegality of these actions, according to § 23 of the very Criminal Code.[14]

3.2. Concelament of marital obstacles (§ 291)

The crime found in § 291 of the Criminal Code of 1929 is committed by anyone who, when entering into a marriage, cunningly conceals from the other party any fact that may render the marriage null and void. The fact in question must affect the validity of marriage, and because of its falsity the marriage must be nullable (marriage that is *ipso iure* not valid from the beginning) or voidable (marriage that can be, by court order, *ex tunc* made invalid). The crime is committed by the party that on purpose keeps such a fact secret, or actively misrepresents it to the other marital party. Criminal

[14] *Ibid.*, pp. 324–326.

prosecution is initiated by the injured party, but only if the marriage is voided because of the fact that was being kept secret or misrepresented.

The facts in question could be, for example, withholding the information that the party is already married, lack of parental consent when the female is under 18 years of age, and other facts crucial for the legality of marriage. Perpetrators were punished by strict prison sentence of seven days to five years at most, a signifier of how much the sanctity of true marriage was valued.[15]

3.3. Adultery (§ 292)

The crime of adultery is in many ways the most regressive legal provision found in the Criminal Code of 1929; the criminal prosecution of adultery highlights the importance of and the exalted status marriage had in the eye of the public and the state at the time — less than a hundred years ago. The fact that both the husband and the wife were treated equally and were able to be prosecuted for adultery was actually fairly liberal for the time period, as one of the rare instances of the equal legal treatment of both sexes in the context of family.

According to § 292, a husband or wife who commits adultery will be punished with imprisonment for up to two years. Also, the person with whom the adultery was committed was punished with the same punishment, regardless of whether this person was married or not. This crime was prosecuted only on a basis of private lawsuit filed by the injured spouse, despite the state doctrine of the time being that marriage is of public interest. A private lawsuit could only be filed if the marriage was divorced or in case of marital separation due to adultery. What was weighted was the public importance of marriage, both as a sanctimonious union under Christian principles and as a public good benefiting the state, and the fact that the spouses were the main creators and providers of the marriage, thus having a certain degree of control over it,

[15] ČUBINSKI, *op. cit*., pp. 234–235.; DOLENC – MAKLECOV, *op. cit*., p. 175.

and the latter prevailed. This was once again a more liberal outlook on marriage and a possible sign of changes that would slowly occur during the following century. Also, to leave the state the right to *ex officio* punish adultery would mean leaving the state the right to intrude in the most intimate relationships of private life.

If the marital partners lived separately while the adultery was committed, the spouse committing it can be freed by a court of any punishment. In this case, the legislator gave the court the possibility to exempt the adulterer from punishment, but the court could also punish him in the case when the separated life was caused by his abandonment of his wife and children.[16]

3.4. *Raptus in parentes* (§ 293)

Raptus in parentes descriptively means taking away a female under 18 years of age with her consent, but without the consent of her parents or caretakers with the intent of marrying her. In this case, there must be the consent of the girl to be taken away. Not getting her parents' consent means any act that indicates the intent of disobedience of parents' wishes, be it sneaking out or permanently leaving the parental household with a male partner will be a considered a criminal offense by the male partner. The crime is completed when the girl is brought to the place where she is to be married. A prison sentence of up to three years is prescribed, if this offense does not turn into a more serious crime – for example, if the girl's consent was coerced or obtained by fraud. The criminal prosecution is undertaken only upon the motion of the injured person. In case the marriage has been concluded, criminal prosecution against the perpetrator is possible only if the marriage is annulled.[17]

While at first glance radical, this solution has a lot more similarities to the current doctrine than firstly apparent. Since this crime passively concerns only underage females, parallels can be drawn to the still-major role parents play in

[16] ČUBINSKI, *op. cit*., pp. 235–237.; DOLENC, *op. cit*., p. 369.
[17] DOLENC, *op. cit*., pp. 370–371.

consenting to, and advising their underage children about marriage. This role can be noted in the Croatian Family Act, wich prescribes among the conditions for the validity of marriage (Art. 25): "*(1) A marriage may not be contracted by a person who is not eighteen years old. (2) Exceptionally to the provision of Paragraph 1 of this Article a court may in a non-litigation procedure allow the contracting of marriage to a person who is sixteen years old, if the court determines that the person is mentally and physically mature enough to marry, and that there is a good reason for the contracting of the marriage.*"[18]

This provision of the contemporary Croatian Family Act describes the process of marriage for persons aged 16 to 18 years old in a non-litigation procedure, as an exception to the rule that only persons aged 18 and older are allowed to marry. The parents have an active role in the court procedure, giving their testimonies on the child's psychophysical development and their overall opinion of the child's partner and the situation. This is extended to male and female underage persons, as opposed to the Yugoslav Criminal Code of 1929, where men are predominantly put in a more privileged position as opposed to women.

While there clearly exist enormous differences between the contemporary legal system and cultural sphere and the system of the interwar Yugoslav state, and the role of parents in their children's personal lives beyond the legal scope itself is wildly different as well (generally less involvement of the parents in the child's decision-making, choosing a suitor, asking for consent as a tradition, etc.), the active legal role of parents in their underage children's marital choices can be noted as a root similarity.

The crime of *raptus parentes* is addition to the provision regarding real kidnapping of a woman for the purpose of marriage (§ 246). This crime is placed in chapter 21 of Criminal Code of 1929, which contains crimes against personal freedom. In the case of real kidnapping of woman for the purpose of marriage there is no victims

[18] Obiteljski zakon (pročišćeni tekst), na snazi od 25 travnja 2020 do 31. prosinca 2023 [Family Law (consolidated text), in force from 25th April 2020 to 31st December 2023], NN 103/15, 98/19, 47/20, 49/23, https://www.zakon.hr/z/88/Obiteljski-zakon [Access on March 24, 2024].

consent to be taken away. It is important to highlight the word real in the name of this crime, since the crime itself had to be by force, a serious threat of committing a crime or by fraud, with the intention of marrying the victim. The criminal prosecution is undertaken only upon the motion of the injured person – abducted girl, if she has reached the age of 18 or her parents or guardians.[19]

It is apparent that the lawmaker considered the kidnapping of a woman for the purpose of marrying her (forcibly) important enough to classify it as a crime *sui generis*, separate from the regular crime of kidnapping. Considering this fact, and since there obviously only exists a crime of kidnapping a woman and not the other way around (woman kidnaps a man) an expected conclusion can be drawn: women were in a highly subordinate position to men during this time, and marriage was looked at more as a way of ownership, where the man owned the woman, rather than it being a consensual union of two adults.

3.5. Aiding an invalid marriage (§ 295)

This crime consists in helping to conclude a null or void marriage: "*Who, knowing that the marriage can be annulled, helps to conclude the marriage, shall be punished by imprisonment for up to three months.*"[20] This crime expands on the one mentioned in § 291 (concelament of marital obstacles), extending the reach of persons that can be penalised to other parties witnessing the marriage as well as the city official performing the marriage and knowing there exist facts that make the marriage null or void. It still encompasses the marital parties if they are involved and know the marriage is null or void. This crime is prosecuted *ex officio*, not upon the motion of the parties in question.[21] This can be explained by its more *erga omnes* nature within the limits of

[19] RUSPINI, *op. cit.*, pp. 257–258.
[20] DOLENC, *op. cit.*, p. 372.
[21] RUSPINI, *op. cit.*, p. 261.

the marital process, as it can be committed by virtually everyone involved in making the marriage come to fruition.

In the chapter 28 of Criminal Code of 1929 containing offenses against official duty, there is a crime committed by a religious representative who marries persons between whom marriage is not permitted by law (§ 399). This is a crime oriented towards religious representatives, as city officials were already covered in the crime mentioned in § 295. The here discussed crime in question pertains primarily to marriage which cannot be validly formed because it goes against general legal provisions. A religious representative who marries two people under these conditions will be imprisoned or fined. If the marriage doesn't get invalidated (because of a possible change of conditions), he can only be fined, but the court can also relieve him of any punishment. This crime is prosecuted by official duty.[22]

4. Conclusion

It is perfectly clear from the provisions of the criminal system for the protection of marriage in the interwar Yugoslavia that marriage was considered one of the most important institutions of the time, alongside family and property, less than a hunderd years ago. Through many challenges and tribulations the legal system of a new unified country faced, especially considering its multicultural and turbulent cultural background, it changed with the times, and so did the view and outlook on marriage, both through legal and civil lenses. While the pendulum was firmly on the side of the exalted, patriarchal, and state-protected marriage, thorough changes to the legal system that happened during this time and overarching root social revolution in Europe and with it the Yugoslav area swung it the other way. Western society has reached the point of supporting free, consent-centric marriage. It is important to look

[22] *Ibid*., pp. 261–262.

back at this point in history and note some of the silent but root changes slowly contributing to the liberalisation of marriage and society as a whole.

Bernadett MARTINEZ: The punishment of stuprum violentum in the Csemegi Code

Eötvös Loránd University, Faculty of Law

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1. Violent sexual offences

The heightened danger to society posed by violent sexual offenses is reflected both in the associated penalties and in the fact that sexuality, as a phenomenon closely related to human and social existence, has always been subject to various strict regulations[23]. Sexual violence refers to the act of engaging someone in any unwanted sexual activity through force, coercion, manipulation, or abuse, whether due to their age, disability, or any other reason, such as the influence of alcohol or other mind-altering substances, while the person is unable to give consent.

The definition of "decency" as a subject of criminal protection has been interpreted differently. According to older perspectives, not only legal but also moral and religious considerations expressed the criminality of satisfying sexual instincts, leading to the punishment of any extramarital sexual intercourse. The concept of decency receives criminal protection from two perspectives: (1) personal liberty and (2) societal interests related to decency. The latter aims to restrict citizens' sexual lives within certain boundaries and establish limits against "sexual insticts".

The Csemegi Code already recognized the vulnerable position of women and, although only concerning extramarital relations, began to sanction sexual violence, placing particular emphasis on the punishment for sexual violence committed against minors. The code dedicated a separate chapter to offenses related to sexual violence

[23] NAGY, Alexandra: *Az erőszakos szexuális bűncselekmények szabályozása / Ma és holnap? – birosag.hu [Regulation of Violent Sexual Crimes / Today and Tomorrow?]* https://birosag.hu/sites/default/files/2018-08/13_dok.pdf [Access on March 24, 2024].

(Chapter XIV). It detailed the sanctions associated with different sexual offenses. According to the early legal perspective, it was possible to punish offenders with violence based on the principle of retribution (Principle of Talio). The development of thelaw allowed for a shift in emphasis from physical violence to monetary penalties in the field of sanctions. Although domestic violence was not yet punishable, in my article, I will focus on the concept of "stuprum violentum," namely the offense of violent sexual intercourse, and its sanctions according to the Csemegi Code. The analysis will incorporate the code's commentary as well as subsequent court practices.

2. Historical aspects of regulating violent sexual offenses up to the Csemegi Code[24]

The sanctioning and criminalization of violent sexual offenses have been part of the Hungarian legal system since the laws of the „Árpád era". During this time, in addition to debauchery, adultery, and abduction, sexual violence began to be punished as well. During the reign of King István, there was no specific offense named sexual violence; it only appeared as a means of enforcing marriage. Its commission only required the payment of compensation.

Under the ruling of Ladislav I, the punishment for sexual violence became stricter, and the offense was punished by death penalty. At that time, the category of victims was limited to honourable women. The emergence of the „Buda City Law Book" and the legislation of certain free royal cities between 1244 and 1422 represented the next step. This legislation, also known as the "Tárnok Law", sanctioned sexual violence with death penalty, similar to the previous regulation. Categorization appeared, separating sexual violence committed against virgins, virtuous and honourable women, and prostitutes.

[24] CZEBE, András: Az erőszakos nemi deliktumok hazai szabályozásának történeti aspektusai [Historical Aspects of Domestic Regulation of Violent Sexual Crime], *Diskurzus [Discourse]*, No. 2., 2013, pp. 3–12.

In the 47th article of King Ulászló II's decree of 1514, the regulations were tightened by also penalizing the relatives of sexual crime perpetrators. These individuals were deprived of the right to hold public office, thus falling into perpetual servitude. King Ulászló II was the first to emphasize the prevention of the offense. The Buda-decree of 1522 regulated that the lodging of military troops in churches was forbidden if it occurred against the will of the priests. This provision aimed to prevent sexual crimes committed by soldiers against nuns.

The *Praxis Criminalis*, as an independent criminal law proposal, first saw light of day in 1712. Section 13 of this proposal established the crime of violent defilement. The passive subjects of these acts were young girls, virgins, widows, and married women, and the offenders were punished by death by sword. The regulation also extended to acts against nature, including sexual contact between individuals of the same sex.

The *Constitutio Criminalis Theresiana* (1768) defined the most serious sexual offense as forcible sexual intercourse, punishable by decapitation. The crime was considered committed if the perpetrator forcibly or against the will deprived a maiden, woman, or widow of her maidenhood or womanly honour. The passive subject could only be a respectable woman.

The penal code of József II, the *Sanctio Criminalis Josephina*, enacted on January 13, 1787, was the first to sanction sexual violence not with death but with imprisonment or forced labour. It was also a novelty that the victim could claim compensation from the perpetrator, and the accomplice of the offender could be beaten without further consequences.

The medieval and early modern laws described above did not satisfy the rather complex demands of criminal law.[25] It was necessary to wait until the end of the 18th

[25] BALOGH, Elemér: Az „első" magyar büntetőkódex-tervezet [The "First" Hungarian Penal Code Draft] In: KAJTÁR, István – SZEKERE, Róbert (eds.): *Jogtörténeti Tanulmányok [Legal Historical Studies] VII.* 2001, PTE ÁJK, pp. 45–48.

century for this step. In 1795, a criminal code draft emerged that included a comprehensive elaboration of the principles and provisions of criminal law. Regarding crimes related to sexual violence, a novelty was the expansion of the passive subjects of violent sexual acts, now allowing the commission of sexual violence against intoxicated, insane, feeble-minded, mentally ill, unconscious, and misguided respectable women, as well as men. For the first time in Hungarian criminal legal history, these acts could be prosecuted upon private complaint, which is still characteristic of sexual offenses to this day.

The proposal of 1827 represented a setback in the punishment of sexual violence by narrowing down the circle of passive subjects, as it stated that the offense could only be committed against respectable women.

The proposal of 1843, associated with Ferenc Deák, did not reach the level of legislation, but it is considered ground-breaking both in terms of substantive and procedural law, as it filled the gap in unified regulation. Chapters XVIII-XXII of the proposal dealt with the criminalization of sexual offenses, with the first chapter titled 'Regarding Forcible Sexual Intercourse.' According to this chapter, forcible sexual intercourse was committed by someone who forced sexual intercourse upon a woman outside of marriage by using physical violence or threats. The regulation also extended to cases where the offender administered a substance to the victim that rendered her defenceless, taking advantage of this to engage in sexual intercourse. The crime could only be committed against a woman with whom the perpetrator was not in a valid marriage. The general rule of the bill stipulated imprisonment as punishment, but the sanction was aggravated if the offense was committed against a person who had not yet reached the age of fourteen or if the offender had a sibling or parental relationship with the victim. The proposal reintroduced the institution of compensation, which the victim could demand from the offender, considering the seriousness of the consequences and the offender's financial situation. The bill considered sexual

intercourse completed when the 'reproductive organs had already united in reality'[26]. The regulation also encompassed the attempted stage of the offense, sanctioning it up to the maximum punishment applicable for a completed act. In cases where the passive subject suffered severe bodily harm during the sexual offense or its attempt, the draft law allowed for cumulative punishment. If the act resulted in the death of the victim, the offender had to be held accountable as a murderer. With the exception of the most serious cases, the proposal made the prosecution of sexual intercourse dependent on private complaint.

3. Sexual Offenses in the Csemegi Code

The Csemegi Code is considered the first Hungarian Criminal Code and is attributed to Károly Csemegi, the State Secretary of Justice. The code consisted of two legislative provisions, the Act 5 of 1878 on misdemeanours and the Act 40 of 1879 on offenses. Similar to the current regulations, the Csemegi Code also categorized sexual offenses in a separate chapter titled 'Offenses against Modesty' in Chapter XIV. Examining the content of the first section (Section 232), we can conclude that the passive subject of the offense could only be a woman. There are two similarities with previous regulations. Firstly, it was a criterion that the perpetrator could not be the spouse of the victim, and secondly, the protection extended to victims who were unconscious, incapable of expressing their will, or unable to defend themselves.

The concept of threats is defined in Section 234 of the Csemegi Code. According to this, a threat can be defined as something that '*causes justified fear in the threatened person or their present relative about the immediate occurrence of a serious offense endangering their or their relative's life or physical integrity*'.[27] In the code, individuals

[26] Deák's legislative proposal from 1843.
[27] 1878. évi 5. törvénycikk a magyar büntetőtörvénykönyv a büntettekről és vétségekről [Act 5 of 1878 of the Hungarian Penal Code on Crimes and Misdemeanours], 234. §

under the age of twelve were deemed incapable of expressing their will. As a result, any sexual act committed against them was considered forcible sexual intercourse.

Section 233 of the Code deals with offenses against modesty. It distinguishes sexual violence from attempted forcible intercourse by the absence of an intention to engage in intercourse. Depravity refers to severe acts that serve to arouse or satisfy sexual desire but exclude intercourse. Depravity encompasses all direct physical contact-related sexual abuses that do not fall under the definition of forcible sexual intercourse. The offense of sexual violence could only be established if no more serious offense was committed.[28]

The Csemegi Code sanctioned forcible sexual intercourse with a longer duration (10-15 years) of penal servitude, while for sexual violence, a shorter duration (5-10 years) of imprisonment was imposed on the offenders, along with the possibility of dismissal from office.[29]

Committing forcible sexual intercourse or sexual violence against a direct blood relative or sibling was considered an aggravating circumstance, as well as if the perpetrator committed the offense against a person entrusted to their guardianship, care, teaching, education, supervision, medical treatment, or custody. Additionally, it was considered an aggravating circumstance if the victim lost their life during the commission of these offenses, leading to life imprisonment according to Section 237.

Similar to Ferenc Deák's draft proposal, the Csemegi Code also made the prosecution dependent on private complaint, except in a few cases according to Section 239. These exceptions included situations where (1) another related offense subject to official prosecution was committed simultaneously, (2) a qualified case arose, or (3) the perpetrator caused the death of the victim. Once the private complaint was submitted, it could not be withdrawn.

[28] Act 5 of 1878, 235. §
[29] Act 5 of 1878, 235(2). §

The law did not punish the offender if they married the victim before the announcement of the verdict, which was made possible by Section 240 of the Csemegi Code. According to the justification, this provision was included in the Code based on the recommendation of judicial policy. The Code also penalized acts against nature. This offense could be committed by men against each other through violence or threats. The sanction for this offense was imprisonment. If the victim died as a result of the offense against nature, the perpetrator was sentenced to life imprisonment. The offense of seduction was also formulated in the Csemegi Code. Seduction was committed by a parent against their natural or legitimate child if they enticed their daughter to engage in intercourse with someone else or enticed their daughter or son to commit sexual acts, whether natural or against nature.[30]

4. Separation of the concepts of sexual intercourse and depravity in the Csemegi Code

The Hungarian criminal legislation between 1878 and 2012 was based on the pair of concepts of sexual intercourse and depravity, so it is important to define the difference and boundary between the two terms. The Csemegi Code does not provide a precise definition for these two concepts, and they are still not encountered in today's criminal codes. The development of these concepts was left to judicial practice, which evolved over centuries.

The concept of sexual intercourse is used differently in judicial practice compared to its everyday meaning, placing the burden on the perpetrator, which raises questions about the application of the principle of *nullum crimen sine lege scripta*, which prohibits the application of customary law or judicial law against the accused. Opposing viewpoints have emerged regarding when we can speak of the occurrence of sexual intercourse. According to some theories, even external contact of the sexual organs can be classified as sexual intercourse, while others argue that at least partial

[30] The modern equivalent of seduction is pimping.

penetration is necessary to establish the occurrence. In his book from 1937, Pál Angyal expressed that '*The prevailing view in our domestic literature is that any act during which the male sexual organ comes into contact with the female sexual organ can be understood as sexual intercourse*'[31].

Based on the above, within the concept of sexual intercourse, three distinctions need to be made:

1. Sexual intercourse in the physiological sense: This concept includes penetration as well as ejaculation.
2. Sexual intercourse in the everyday sense: Only the act of penetration.
3. Sexual intercourse in the criminal law sense: Contact between sexual organs with the intention of engaging in physiological or everyday sexual intercourse.

As a conclusion, we can infer that according to the criminal law concept of sexual intercourse, only heterosexual intercourse is possible, and any other act is considered depravity in criminal law. Depravity can also be present if the perpetrator's intention is not directed towards sexual intercourse in the physiological sense.

Depravity, as a central element of sexual violence, is addressed in criminal law. According to the formulation in the Csemegi Code, the difference between sexual violence and depravity is that '*the former is committed through stuprum, while the latter exists when no stuprum or its attempt has been committed*'[32]. Therefore, any severely offensive act against modesty, excluding sexual intercourse, that serves to arouse or satisfy sexual desire is considered depravity. The objective elements of depravity include the severely offensive nature of the act, while the subjective element involves motivation driven by sexual desire, meaning that the perpetrator aims to arouse,

[31] ANGYAL, Pál: *A szemérem elleni bűntettek és vétségek [Crimes and Offenses Against Modesty]* Attila-Nyomda Rt., Budapest, 1937, p. 34.
[32] 1878. évi 5. törvénycikk indoklása a magyar büntetőtörvénykönyv a büntettekről és vétségekről [Justification of Act 5 of 1878 of the Hungarian Penal Code on Crimes and Misdemeanours].

intensify, or satisfy their own, the victim's, or a third party's sexual desire. Without a sexual motive, the elements of depravity are not fulfilled.[33]

5. A legal case[34]

The general part of the Csemegi Code remained in validity in Hungarian law until 1951, while the special part until 1962. Therefore, I will present a case and its judgment from the year 1890, which demonstrates the difference between attempted forcible sexual intercourse and the offense against depravity.

According to the facts of the case, the perpetrator approached the victim on a road leading through the forest, urging her to engage in sexual intercourse. As the victim did not comply with the demand, the defendant threw her to the ground, lifted her clothes, and attempted to engage in sexual intercourse with her. However, another woman forcibly pulled him away from the victim. The victim had the opportunity to escape and run away, but the perpetrator followed her and again threw her to the ground. He was unable to complete the sexual intercourse because the victim kept struggling and moving. Seeing that he could not achieve his goal, the defendant left. As the perpetrator did not prepare himself for the commission of the crime other than using force, his actions can be classified as preparatory acts based on the facts of the case. However, during this time, he forcefully threw the victim to the ground, lifted her clothes, and touched her private parts, thus committing an offense of assault under Section 233 of the Csemegi Code (hereinafter referred to as the Criminal Code).

When determining the punishment, the court took into account the defendant's lack of criminal record, his confession, and his intoxicated state as mitigating circumstances. However, the court considered it an aggravating circumstance that the

[33] SZOMORA, Zsolt: A fajtalanság és a nemi cselekmény [Bestiality and Sexual Acts]. *Acta Universitatis Szegediensis: Acta Juridica et Politica*, No. 17, 2007, pp. 1–56.

[34] https://adt.arcanum.com/hu/view/BuntetoJogTara_25/?query=szemérem%20elleni%20erőszak%20jogeset&pg=117&layout=s [Access on March 24, 2024].

offense was committed in the forest and was repeated. As a result, the sentence was set at 9 months of imprisonment and a 3-year deprivation of office.

However, the Royal Court of Kassa partially modified the judgment of the royal court. Instead of convicting the defendant of the offense of indecent assault, it found him guilty on the offense of forcible sexual intercourse as defined in Section 232 (1) of the Criminal Code. Based on Sections 96, 232, and 66 of the Criminal Code, the court modified the sentence to two years of penitentiary. The appellate court's reasoning was that although forceful sexual intercourse did not occur in either case, it could not be completed due to the intervention of an external party and the resistance of the victim. The defendant acted independently and separately in each case, initiating two instances of forcible sexual intercourse. Considering that both actions of the defendant went beyond preparatory acts, his guilt can be established as an attempt to commit the offense of forcible sexual intercourse under Section 232 (1) of the Criminal Code, based on Section 65.

The Royal Curia also modified the judgment, this time sentencing the defendant to two years of imprisonment. According to the Curia's reasoning, although the defendant attacked and threw the victim down twice in a continuous sequence, he was unable to complete the offense due to an unforeseeable obstacle beyond his control. Based on this, the Curia concluded that only one act was involved, albeit committed separately but in a continuous sequence. Therefore, there is no cumulative criminal offense. Thus, the court found the perpetrator guilty of attempted forcible sexual intercourse as defined in Section 232 (1) of the Criminal Code, based on Section 65.

Based on this case law, it is evident that early courts faced difficulties in distinguishing between attempted forcible sexual intercourse and the offense of indecent assault. In addition to criminal law, moral considerations played an important role in the assessment of the facts.

6. Conclusion

The expansion and narrowing of criminal law regulations regarding violent sexual offenses have always been influenced by prevailing public opinion, as well as the general situation and ideology of society.

The sanctioning of such acts has been present in Hungary since the time of its foundation, gradually accompanied by increasingly severe punishments for the offenses. Notably, the death penalty was one of the most prominent, which could be imposed on perpetrators of violent sexual crimes until the 18th century. Monarchs sometimes broadened, sometimes narrowed the scope of passive subjects, and neither in the Middle Ages nor at the beginning of the modern era did a law emerge that would have been lasting and satisfied the complex needs of criminal law.

The Csemegi Code, known as the first Hungarian criminal code, gained legal force in the late 19th century. Alongside violent sexual intercourse, the Code also sanctioned indecent assault, which, in addition to more serious punishable cases, already contained significant conceptual elements such as obscenity or threats.

Distinguishing between depravity and sexual violence is an important doctrinal question, and a perfect demarcation does not exist to this day. The differentiation of the two offenses is based on judicial discretion, so it is through judicial practice that the two sets of circumstances can be distinguished from each other. The case presented in the article highlights how a specific set of circumstances was interpreted in early law and the mitigating and aggravating circumstances taken into account in sentencing. In conclusion, it can be stated that the regulation of violent sexual offenses in the current Criminal Code is based on the factual situations and concepts defined in the Csemegi Code.

Zsófia Anna GÉMES: Infidelity as a crime against the state in the Csemegi Code

Eötvös Loránd University, Faculty of Law

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1. Crimes against the state

The danger to society from offences against the state is very high, and this is illustrated by the fact that in modern criminal codes, they are placed in the first chapter of the special section. One of the most important tasks of the State has always been to protect its existence, its fundamental values, and its basic institutions from direct attack. However, these values and institutions, which are at the heart of the protection, depend on the social order and the historical period, so the concept of crimes against the state is determined by the prevailing concept and structure of the state. This is the reason why it is extremely difficult to formulate a uniform or stable definition of political offences or offences against the State. Public crimes are easier to define because they are (presumably) condemned by society as a whole, unlike political crimes, where the situation is not so simple and not so easy to define because of the clash of values, interests, and ideas about society.[1]

In my article, I aim to give a non-detailed historical overview of the approach to crimes against the state at the main points of our history, with particular reference to the offences of treason (*crimen laesae maiestatis*) and infidelity (*nota infidelitatis*), and then to illustrate the evolution of the 19th century legislation until the creation of the Csemegi Code. I will then explain how Csemegi distinguished between the concepts

[1] BARNA, Attila: *Az állam elleni bűncselekmények szabályozása a 19. századi Magyarországon, különös tekintettel a büntettekről és vétségekről szóló 1878. évi 5. törvénycikk előzményeire és megalkotására [The settlement od criminal offences of the state in 19th century in Hungary with special regard tot he antecedents and creation of the Article 5 of the Law of 1878 about Crimes and Misdemeanours]* Győr, Universitas–Győr Nonprofit Kft. 2015, p. 13.

of treason and infidelity, then narrow the topic to infidelity and describe its cases and sanctions in detail. Finally, I will present a case whose judgment was based on Act 5 of 1878.

2. Legal history of infidelity

The existence of standing armies justifies the need for military criminal law to punish those who break the rules governing military life. In the course of Hungarian history, military criminal justice predates both the foundation of the state and the conquest, and the army of the wandering Hungarians was a people's army, based on the fact of common descent and belonging to the nation. The ancient rules appear in the Gesta Hungarorum, the chronicle of the blood feud by the anonymous notary of Béla III, Anonymus, and sanctioned infidelity as a standard. The chiefs were thus able to establish a kind of penal code that applied to all members of the contracting tribes. The fifth article threatened excommunication, i.e., expulsion from the tribe, of those who violated the terms of the oath.[2]

The changes in the criminal, moral, social, and perception of infidelity in medieval Hungary can be traced, depending on the exercise of power. During the patrimonial monarchy, an attack on the state meant an attack on the ruler. Loyalty was linked not to patrimony but to the monarch since he formed the groups that assisted him in the state's administration and were thus bound to him by personal loyalty.[3] This system of power and strong emotional ties give infidelity, as a type of crime, a greater than usual importance in moral and ethical terms, which justifies the most severe penalties. In the Árpád era, the principle of consanguinity still prevailed strongly, but in addition, the mutual oaths taken before the Church provided the basis for the unconditional

[2] HAUTZINGER, ZOLTÁN: A magyar katonai büntető igazságszolgáltatás története [History of the Hungarian Military Criminal Justice] *Jogtudományi Közlöny [Journal of Jurisprudence]*, No. 6., 2007, pp. 263–276.
[3] MEZEY, Barna (ed.): *Magyar alkotmánytörténet [Hungarian constitutional history]* Budapest, Osiris Kiadó, 2003. pp. 48–51.

commitment of the faithful to the new ruler.[4] St Stephen's decree stipulated that persons who fled to foreign lands and treason should be condemned and that persons who attempted to take the life of the king should also have their goods confiscated, *"but there should be no harm to innocent sons."*[5]

The second part of the *Tripartitum* (1514), title LX, § 2, reads *"Since it is not customary to condemn a son for the sins and misdeeds of his father, and a father for the misdeeds of his son, either in person or in goods or other things."*[6] Nevertheless, in contrast to these principles, the ideal of collective redress was enshrined in the Middle Ages. This was complemented by a vested interest in rooting out the interest group that helped the perpetrator to commit the crime. An example of this was the sentence following the assassination of Felician Zách, under which his relatives were sentenced to three decades' death and his more distant relatives to the loss of their property.[7]

Through collective punishment, I will inevitably refer to the confiscation of assets as a sanction for infidelity. The *Tripartitum* deals in detail and at length in several places with the changes that occurred in the property of the unfaithful person punished by confiscation of property and of his family members. It provides that 'by the offence of unfaithfulness, the unfaithful man shall lose both his head and his inheritance: that is to say, all his lying goods and possessions, and that of these lying goods and possessions the portion of the class (even if his head were to fall) to which the unfaithful man, that is to say, the man who has been defiled, disgraced and condemned

[4] NEUMANN, Tibor: II. Ulászló koronázása és első rendeletei [The crowning and first decrees of Ulászló II] *Századok [Centuries]*. No. 2., 2008, p. 322.

[5] Szent István Király Dekrétomainak Második Könyve 35. Fejezet a királyok adományairól és a tulajdon javak birásáról: *„2. § És senki semmi vétek okáért kárvallást az ő javaiban ne szenvedjen, hanem ha a király életére tör, vagy országárulást követ el, vagy idegen földre szökik. 3. § Akkor a királyra szálljanak javai, őt magát pedig itéljék meg, de ártatlan fiainak bántások ne legyen."* (CJH.) [Chapter 35 of the second Book of the Decretals of King St. Stephen, Chapter 35 of the donations of kings and the judgement of property: *„§ 2 And let no man suffer damage to his property for any offence, but if he attempt the life of the king, or commit treason, or escape into a foreign land. § 3 Then the king's goods shall beforfeited to him, and he himself shall be judged, but no harm shall come to his innocent sons."*]

[6] GAZDA, István (ed.): *Werbőczy István – Tripartitum, A dicsőséges Magyar Királyság szokásjogának Hármaskönyve [The Threefold Book of the Customary Law of the Glorious Kingdom of Hungary]*. Budapest, Téka Könyvkiadó, 1990, p. 410.

[7] ALMÁSI, Tibor: Záh Felícián ítéletlevele, [Záh Felícián's judgment] *Aetas*, No. 1–2., 2000, pp. 191–192.

by unfaithfulness, is entitled, shall never again revert to his sons or his clan brothers'.[8] The Act 9 of 1715 extended the confiscation of property to the property of innocent children, to deter fathers from insulting their parents or treason. This severe sanction was only abolished by a resolution and law (Act 56 of 1791) passed during the reign of Lipót II.[9]

We can see, how the process of the moral, moral and legal evaluation of an act that harms or threatens the life, power, and physical integrity of the head of a clan, a prince, or a king is transformed through the laws and the letters of judgement, how it is transformed into an offense threatening the power of God, the Holy Crown and, ultimately, the state, or into a public offense, backed up by elements of public law, and judged by pseudo-judicial tribunals increasingly independent of the monarch. However, institutionalisation and the development of public law increasingly called for the creation of a systematic set of rules of law based on uniform principles, and the creation of a unified or consolidated code of laws, thus putting an end to the fragmented and dysfunctional legal situation.[10]

A commission was appointed by the Diet to settle the financial, military, administrative, and judicial questions. One of the members of this committee was Mihály Bencsik, who was entrusted with the task of drawing up a draft, and he listed ten areas that required urgent changes. The seventh point of the outline was to seek to reduce the penalties for *nota infidelitatis*. Bencsik adhered to the Werbőczy legal tradition, especially about the settlement of infidelity. Thus, he did not significantly change the old rules, only where necessary to remedy shortcomings or where established practice took a different direction.[11] The conciliatory political climate following the Rákóczi War of Independence favoured the systematisation of the legal

[8] Hármaskönyv I. Rész 16. czím. [Tripartitum, Part I.] (CJH.)
[9] *„Quo vero a crimine laesae majestatis, patres, metu poenae, etiam in filios ex amissione Portionum suarum redudantis, magis, quam propriae intitu, absterreantur, hocque execrandum et abominabile malum eo magis vitetur".* Act 9 of 1715. HEIL, Fausztin: Felségsértés [Insurrection] In: *Pallas Nagy Lexikona VII. [Big Dictionary of Pallas]* Irodalmi és Nyomdai Rt., Budapest, 1895, p. 40.
[10] BARNA, *op. cit.*, pp. 48–49.
[11] *Ibid.*, pp. 51–52.

system.[12] Bencsik's proposal, which György Bónis sees as an attempt to create the first Hungarian criminal code,[13] is divided into two parts, formal and substantive law. In accordance with the thinking of the time, he placed procedural law in the first half of his work, followed by substantive law.

Bencsik took a step towards a modern legal approach, since, unlike the *Tripartitum*, he no longer grouped offences according to punishments, but according to the type of offence. For reasons of tradition, Bencsik did not include the offences recorded in the *Tripartitum* under the title *nota infidelitatis* in the substantive part, but in accordance to mitigate the offences, as already mentioned in the seventh point, he formulated the mitigation of cases of infidelity in a separate motion in the Code, as an introduction or supplement. The offences under discussion have been extended based on changed circumstances and practice, with the result that almost as many offences have been brought within the scope of the proposal as are covered by the substantive part of the strict criminal code. The proposal of 1712 was adopted by Parliament but was not enacted.[14]

Almost a decade later, part of the proposal in point seven became law and differentiated between cases of infidelity and reduced their punishment. Act LXVII of 1790 entrusted a commission with the overall regulation of criminal law and procedure. The Deputatio fulfilled its obligation in 1795, summarised the requests in 12 volumes, and sent the proposals to the Chancellery, but they were never submitted to Parliament, despite the subsequent intention to submit them to Parliament. The 1827 diet, which was initiated and commissioned by the Diet in 1829, was a step backward from the progress made by the 1795 proposal. Subsequently, the 1843 proposal is worth highlighting from the point of view of the history of codification. The proposal was probably the result of the spread of modern Western European ideas and the

[12] MEZEY, Barna (ed.): *Magyar jogtörténet [Hungarian legal history]* Budapest, Osiris Kiadó, 2007, p. 313.
[13] BÓNIS, György: *A magyar büntetőtörvénykönyv első javaslata 1712-ben [The first draft of the Hungarian Penal Code in 1712]* Budapest, Angyal Szeminárium Kiadványai, No. 26. 1934, p. 6.
[14] BARNA, *op. cit.,* pp. 51–52.

pressure of civilisation, which made it clear that criminal codification could no longer be delayed. The commission charged with this task presented the results of its work in July 1843. The proposal is also known as the Deák's proposal since the chairman of the committee that drafted it was Ferenc Deák. The proposal failed because of disagreements between the lower and upper houses, particularly over the death penalty.[15]

In 1849, the Strafgesetz of 1803 was enacted in Hungary. A strongly conservative amendment to this was the Strafgesetczbuch of 1852, which made the punishment of imprisonment general. Reform efforts led to a revision of the 1843 proposal, but the arguments for it began to weaken.[16]

The real turning point came with the codification work of Károly Csemegi, a lawyer from Arad, who was entrusted with the drafting of the penal code. The draft Criminal Code was completed in 1873, and the Explanatory Memorandum was written the following year. The draft caused consternation among contemporaries, as it completely ignored the 1843 proposal and distanced itself from it. The reason for the consternation was that, although the 1843 proposal never became law, it had already been applied to a certain extent by the judiciary, and it was accepted in the country that it would become the penal code of Hungary.[17] It came to the House's desk in 1875, and the draft was passed. This was the story of Hungary's first criminal code, which became a law, and was formed entirely by the combination of Act 5 of 1878 and Act 40 of 1879.[18] In the next section, I will discuss the content of the proposed and then adopted Criminal Code.

[15] MEZEY, *op. cit.*, pp. 314–320.
[16] *Ibid.*, pp. 326–328.
[17] BÓDINÉ BELIZNAI, Kinga: A magyar büntetőtörvénykönyv a bűntettekről és vétségekről. A Csemegi-kódex (1878. évi 5. tc.) [The Hungarian Penal Code on crimes an misdemeanours. The Csemegi Code (Act 5 of 1878)], https://majt.elte.hu/dstore/document/2814/beliznai_csemegi_kodex.pdf, p. 3. [Access on March 24, 2024].
[18] MEZEY, *op. cit.*, p. 329.

3. The infidelity provisions of the Csemegi Code

The proposal of Act 5 of 1878 (hereinafter referred to as the "Proposal"), under the common name of infidelity, summarises several unlawful acts which have a similarity, in that, although, in different ways, they all attack the monarchy or the Hungarian State in its position of power in the community of countries, in its legal personality, but above all in its external security. An important question is: what is it that unites these illegal behaviours and what is it that separates the provisions of the chapter on the violation of sovereignty from those protecting the state, the sovereign territory of the state?

In order to find the answer, it is important to look in more detail at two factors, namely the specific perpetrators and the legal object of the offence. It is stipulated in the Proposal (and ultimately in the adopted law) that in the case of military treason, the perpetrator must always be a Hungarian national or a citizen of another state of the monarchy. Foreigners are subject to international military rules. This arises in cases where a person undertakes and performs military duties at the request of his Hungarian principal and possibly does so in the colours of the Hungarian armed forces. As these persons are undertaking combat activities, either clandestinely or officially, but under the authority of the Hungarian state, they are subject to military law. The question arises, which law is this? Despite the fact that Csemegi indicated in the committee debate those experts had also examined the texts, which they found to be "quite correct", we do not get a more precise answer to this, even in the comments. The basis for the narrowing down of the scope of the offence was the political and legal changes that had already transposed the concept of loyalty as a relationship and the conceptual changes in the state and the exercise of power into criminal law from the end of the 18th century. Thus, a distinction was made between insult and treason.[19] According to Liszt, treason presupposes the existence and participation of several states, but the assassinations that fall under the heading of insurrection would not lose

[19] BARNA, *op. cit.,* pp. 221–222.

their specific character even if the state attacked existed only in the world or if the whole world were a single state.[20] In distinguishing between the two offences, the proposal focuses on the definition of the obligation of inhabitants who have been elevated from subjects to citizens and on the interpretation of the relationship of loyalty. In fact, Csemegi considered the use of the word insurrection and its identification with the concept of *crimen laesae maiestatis* in Roman criminal law to be a mistake. *"It has taken a great and long struggle, a great deal of buffeting of science, the correct recognition of correct ideas, and the careful ascertainment of correctly recognized ideas until the assassination by the assault of the person of the king has been separated from the assassination by the assault on the majesty of the state."*[21]

To commit the offences detailed in this chapter, the legislator requires consciousness and "evil intent", but at least a willingness to accept the consequences. However, the motive of the offender, the reason and background that guided him when he acted, are irrelevant. A further common element of the offences is the capacity to cause conduct that endangers or harms the state, i.e. to be objectively dangerous. In addition to the offender's act, the judgment must take into account the resulting dangers and possible negative consequences, with particular regard to special situations (e.g. state of war) and protected objects. It follows that the offences listed in the law as falling within the category of infidelity may be considered to have been completed without damage to the State. [22]

After the finalisation and adoption of the Proposal, the crime of infidelity (*nota infidelitatis*) was defined in Article V of 1878 (from now on: Csemegi Code) as those offences which endanger the international status and foreign security of the State, with the additional stipulation that the person subjected to, or the perpetrator of the crime

[20] HEIL, *op. cit.*, Diplomáciai honárulás [Diplomatic treason].
[21] Csemegi Károly felszólalása a Képviselőház 1877. november 29-ei ülésén a felségsértésről szóló vitában [Csemegi's speech at the session of the Chamber of Deputies on 29 November 1877 in the debate on the
insult to the sovereignity.] Képviselőházi Napló, 315. Országos Ülés, 1875-78. XIII. Kötet, pp. 397–398.
[22] BARNA, *op. cit.,* p. 224.

must be Hungarian or a citizen of another State of the Austro-Hungarian Monarchy. Act C of 2012 on the Criminal Code (hereinafter referred to as the Criminal Code) included the offences of aiding the enemy and espionage in the Csemegi Code, and the offences of treason and treason in the existing Criminal Code was included in the offence of insubordination in the Csemegi Code.[23]

One type of treason was the offense against the terrority of the state, which constituted an act aimed at, directly or indirectly, subjecting the entirety or some part of the terrority of Hungary, as well as another state of the Austro-Hungarian Monarchy, to foreign domination by force or causing it to be detached from the state to which it actually belongs. In the Csemegi Code, acts of treason can be divided into two categories: military treason and diplomatic treason. The former, i.e. military treason, is committed when a person provokes a war or acts against the armed forces of the country during a war that has already broken out. In today's Criminal Code, this is included in the list of crimes against the state as support for the enemy.

The offence of conspiracy, which is prohibited as military treason and which endangers the security of the state, is committed by anyone who has entered into contact or conspired with the government of a foreign state to incite or induce the foreign state to commit hostile acts against the Austro-Hungarian Monarchy. Furthermore, it is also a conspiratorial offender who endeavours to induce a foreign state to wage war against the Austro-Hungarian Monarchy. Supporting the enemy's armed forces after the outbreak of war includes the acts enumerated in detail in the law. Such acts include, for example, aiding the enemy with food or money, communicating, or transmitting to the enemy the plans of a camp, fortress, or military operation, obstructing the home force, damaging or burning the food supplies or weapons of the home force, or dams, bridges or embankments, or rendering them unusable. Any person who, after the outbreak of war or the declaration of war, has undertaken military service with the enemy has committed the crime of military service

[23] *Ibid.*, p. 224.

with the enemy. The second type, i.e. diplomatic treason, could be committed not only by Hungarian citizens but by anyone. The types of diplomatic treason are, in fact, similar to the facts of espionage and treason today. The crime of diplomatic treason is committed by a person who, during his or her duties or office, came into knowledge or possession of secret documents, data, or information concerning the important interests or security of the Hungarian State or of another State of the Austro-Hungarian Empire, which he or she communicated directly or indirectly to the enemy. It is also an offence for any person to have obtained possession of or knowledge of the said document, data, or information by theft, deception, embezzlement, or violence, and to have communicated the document, data, or information thus obtained to the enemy.[24]

4. Sanctioning cases of infidelity

The Csemegi Code, in its second part, which deals with the types of offenses and crimes, as well as their penalties, addresses, in its third chapter (Sections 142-151), the subject of infidelity. Article 142 states that a Hungarian citizen who allies himself with the government of a foreign power or enters into direct or indirect contact with it to induce it to commit hostile acts against the Hungarian State or the Austro-Hungarian Monarchy, or who attempts to induce a foreign power to wage war against the Austro-Hungarian Monarchy, shall be guilty of the crime of treason and punishable by imprisonment for a term of ten to fifteen years. If a declaration of war is made or war breaks out, the penalty is aggravated to life imprisonment. Article 143 provides that a Hungarian national who enters the military service of the enemy after the declaration of war has been made or after the outbreak of war shall be punished by imprisonment for a term of ten to fifteen years. He shall be punishable with imprisonment for up to five years if he has been in military service with the enemy before the declaration of

[24] *Révai Új Lexikona [The New Encyclopedia of Révai] X. kötet [Volume X]*, Szekszárd, Babits Kiadó, 2002, pp. 320–321.

war or the outbreak of war and remains in service without compulsion with the enemy's armed forces and has fought against the armed forces of the Austro-Hungarian Monarchy or against the armed forces of alliances or joint forces of the Austro-Hungarian Monarchy. Article 144 provides for life imprisonment for a Hungarian national who commits the offence outlined in the following eight points:

"1. whoever places a fortress, town, fortified place, beach, ford or military post, armoury, supply or food depot, ship or any officer or soldier belonging to the Austro-Hungarian armed forces in the power of the enemy, or who agrees with the enemy for this purpose;

2. who communicates to the enemy the plan of a military operation, camp, fortress, or stronghold;

3. who facilitates the enemy's entry into or progress through the territory of the Hungarian State or the Austro-Hungarian Monarchy;

4. who assists the enemy with money, or by aiding his armed forces, military equipment, or the means of subsistence of his army, or by facilitating the acquisition thereof;

5. who aids the enemy by undermining the loyalty of persons belonging to the armed forces of the Austro-Hungarian Monarchy;

6. whoever sets fire to, breaks up, damages, or otherwise renders unusable any bridge, embankment, dike, dam, iron road, or road, or any other structure, whether to the detriment of the Austro-Hungarian armed forces or the advantage of the enemy;

7. who informs the enemy of the position, condition, or movements of the Austro-Hungarian armed forces, hides the enemy's spy or soldier sent to spy, or gives aid or advice for the purpose of carrying out his objective or for his escape;

8. who commits any of the acts specified in this Section against the territory of the Austro-Hungarian Monarchy or the armed forces of the Austro-Hungarian Monarchy acting in conjunction with its armed forces."

According to Article 146, whoever, in the course of his special mission or profession, has knowledge or possession of secret data, documents, or information relating to the security or other important interests of the Hungarian State or another State of the Austro-Hungarian Monarchy, communicates them directly or indirectly to the enemy, shall be punished with imprisonment for a term of between ten and fifteen years. Any person who communicates secret information, document, or report to the government of another power for purposes other than to bring it to the knowledge of the enemy, or who makes public the information, document or report, or its contents, shall be punished by imprisonment for a term of up to five years. According to the provision of Section 147, whoever obtains the information specified in Article 146 by force, theft, embezzlement, or subterfuge and communicates it directly or indirectly to the enemy shall also be punished with imprisonment for a term of ten to fifteen years. If the secret document, report, or data has not come to his knowledge in the manner specified above, but he has communicated it directly or indirectly to the enemy, knowing its secret nature, he shall be punished by imprisonment for a term of five to ten years. Under Section 148, a person shall be punishable with imprisonment for up to five years, who has formed an association for the commission of any of the acts specified in Section 142, the first paragraph of Section 143, and Section 144, as provided for in Section 132, if no preparatory act has been involved. Otherwise, he shall be liable to imprisonment for a term of five years to ten years.

Section 149 provides that anyone who makes a public and direct invitation, in the manner provided for in Section 134, to commit the offences of treason provided for in Sections 42, 143, and 144 shall be punished with imprisonment for a term of five to ten years. Section 150 provides for a penalty other than imprisonment, suspension of political rights, and loss of office, which also applies in the cases listed in this Chapter. Section 145 does not contain precise facts and does not lay down a penalty, but states that foreign nationals are subject to the rules of international war in the cases provided for in Sections 142 and 144 and that the provisions of this Act apply to nationals of another State of the Austro-Hungarian Monarchy in the cases provided

for in Sections 142, 143 and 144. This shows that infidelity as a crime is a more serious category. The Csemegi Code mainly punishes it with imprisonment. In terms of the range of penalties, the majority of the penalties are the same, ranging from ten to fifteen years imprisonment, but there are also mitigated penalties of five to ten years or up to five years imprisonment. However, there are also examples of life imprisonment, indicating the seriousness of the offence. The difference is to be found in the institution where the sentence is served. Section 143 provides for a state prison in the case referred to in the second paragraph of Section 146, while in other cases, the law provides for the prisoner to serve his sentence in a penitentiary.

Section 35 provides that state prisons are subject to less stringent rules than those laid down for prison and jail. Persons detained in the State Penitentiary may spend two hours a day in the open air in an area designated by the Board. Depending on local conditions, prisoners are kept separately at night and together during the day, are allowed to wear their own clothes, feed themselves, cannot be forced to work, and are entitled to engage in the work of their choice. There are also more lenient conditions in terms of house rules and discipline and in terms of contact with persons not belonging to the institution. Unlike in state prison, a prisoner sentenced to a penitentiary can be forced to perform assigned work, has no freedom of choice, and is obliged to perform the work assigned to him. A further difference is that the prisoner is obliged to wear church clothes, is usually kept in solitary confinement, and the rules and regulations are stricter than in the state prison. The prison is governed by Sections 28 to 34.

5. Presentation of the conviction in the Standard case

On Tuesday, 21st February 1950, at noon, the Special Council of the Budapest Court of Justice pronounced judgment in the trial I am about to present, the Standard case.

There were seven persons involved in the case, Imre Geiger, Zoltán Radó, Róbert Vogeler, Edgár Sanders, Kelemen Domokos, István Justh, and Edina Dőry. [25]

An important background to the discovery of the facts is that the US-based monopolistic communications equipment companies ISEC and ITT, of which Standard, Budapest, was a subsidiary, were closely linked to US military circles. It was in the interests of the group's shareholders to obtain larger orders for the military. For this reason, a significant number of high-ranking military officers were elected to their management. It is also important to point out that their business policy was subordinated to the General Staff.[26]

From the autumn of 1945 onwards, businessmen were sent to the Central European states, including Hungary, to carry out military and political intelligence activities in secret, under the pretext of controlling companies. In 1947, when the question of the direction of political development was finally settled, these concerns set themselves a new objective in addition to increased military intelligence. The new objective was the withering away of American capital-interested enterprises in Hungary and in the countries of the people's democracies in general. This was because the US had no interest in companies increasing the military or economic power of the people's democratic countries. Thus, at the end of 1947, the accused Imre Geiger was ordered to New York and received instructions from the group's managers to this end.[27]

In October 1948, the president of ISEC, Colonel Behn, held a secret meeting at the Gellért Hotel, attended by the accused Imre Geiger, Róbert Vogeler, and Edgar Sanders. He appointed Imre Geiger as General Director and, in line with the objective, ordered him to take over the Standard factory in Budapest under his leadership without being noticed. As a reward for carrying out this risky and dangerous task, Geiger was paid 2,500 forints per month and $125 per month into his New York checking account, in addition to his salary as CEO. Imre Geiger took on the task and

[25] *Népszava*, 22 February 1950, p. 1.
[26] *Ibid.,* p. 1.
[27] *Ibid.*, p. 1.

sabotaged the business production on technical, financial, and business levels. He minimised the company's mobility by unnecessary purchases of materials, wasting working capital, and diverting it to long-term investments. Furthermore, it failed to meet state orders, orders from the countries of the Soviet Union and the People's Democracies on time, and deliberately produced goods of substandard quality for them. In addition, he kept false accounts and damaged the country in the field of taxation. They overestimated the war damage four times over, falsely reported to the Planning Office the capacity of the plant and reported higher than actual production levels in order to cover up their sabotage activities. In addition to successfully carrying out these activities, Imre Geiger recruited several of his colleagues, including the accused Kelemen Domokos, the director of the accounting department of the factory. With their help and cooperation, he carried out the specific sabotage instructions that he received from New York through the US Embassy via US agents Róbert Vogeler and Edgar Sanders.[28]

Róbert Vogeler, a colonel in the US Army and Vice President of the ISEC consortium, spent nearly a decade as a military intelligence officer in the Army's military services, and the defendant Edgar Sander, a captain in the British Army, attended intelligence schools in the Army and was involved in intelligence activities for many years. For this reason, they were both sent to the Standard factory to conduct military reconnaissance under the guise of their positions as inspectors. They both provided military, economic, and political intelligence under the briefing and instructions of their respective military commands. They covered the substantial costs of their espionage activities by using forged vouchers from the Standard factory's cashier's office and, with the help of the recruited Zoltán Radó, the head of the heavy industry department, by releasing and withdrawing funds from the company's blocked account. Róbert Vogeler recruited Edina Dőry for espionage activities to make his reconnaissance work more effective Róbert Vogeler recruited Edgar Sanders, Imre Geiger, Zoltán Radó, and

[28] *Ibid.,* p. 1.

other defendants in addition to Edgar Sanders, Imre Geiger, and Zoltán Radó. He collected economic, military, and political data from them and sent it beyond the US Embassy to the ODI headquarters in Vienna. Sanders, Dr István Justh, a defendant, similarly recruited a rector-parish priest and others from whom he collected data on the Hungarian army, its armaments, troop movements along the border, airfields in Transdanubia, and similar data in exchange for financial reward. The accused Zoltán Radó, as the head of the department of the Hungarian Ministry of Heavy Industry, handed over to Vogeler, after his recruitment, the highly significant statements and industrial production data available to him in his official capacity, and also exposed the sabotage of bullets in the Standard factory, which constituted a breach of his duty as a public official. The Budapest State Prosecutor's Office charged the defendants essentially based on the facts outlined above. The unexpected raid and the investigation uncovered a mass of physical evidence so that the defendants could not deny the charges and admitted to a series of activities that had already been largely uncovered.[29] The Criminal Court imposed the following sentences on the defendants:

- Imre Geiger was sentenced to death as the principal punishment, and, if pardoned, to ten years' imprisonment and suspension of his political rights, also for ten years, and confiscation of all his property as a subsidiary punishment.
- Zoltán Radó was sentenced to death as the principal penalty and, as an ancillary penalty, to 10 years' imprisonment and, if pardon is granted, to the suspension of his political rights for a further 10 years and the confiscation of all his property.
- Róbert Vogeler was sentenced to a total of 15 years' imprisonment as the main penalty, and as an ancillary penalty, his property located in the territory of the country was confiscated, he was expelled from Hungary after serving his sentence and was banned from returning to the country.

[29] *Ibid.,* pp. 1–2.

- Sanders Edgar was sentenced to a total of 13 years' imprisonment as the principal penalty and, as an ancillary penalty, confiscated his property in the country, deported from Hungary after serving his sentence, and permanently banned from returning.
- Kelemen Domokos was sentenced to a total of 10 years' imprisonment as the principal penalty, 10 years' deprivation of his official functions and suspension of his political rights, also for 10 years, and confiscation of all his property as a subsidiary penalty.
- Dr István Justh was sentenced to a total of 10 years' imprisonment as the principal punishment, 10 years' deprivation of his official functions and suspension of his political rights, also for 10 years, and confiscation of all his property as a subsidiary punishment.
- Edina Dőry was sentenced to 5 years' imprisonment as the principal penalty, 10 years' deprivation of liberty and suspension of her political rights, also for 10 years, and confiscation of all her property as a subsidiary penalty.[30]

6. Summary

The aim of my article was to describe the legal history leading up to the Csemegi Code as the first Hungarian criminal code. Although I did not intend to do this in detail, as stated at the beginning of the article, I have, contrary to my plans, provided a more detailed overview of legal history, but of course, I have done this within the scope of the article. The Csemegi Code contains detailed provisions on infidelity and breach of sovereignty. I have collected the facts and sanctions of this legislation and then I have described a case of infidelity, the facts of which fall within the scope of diplomatic infidelity, and which were judged under Act 5 of 1878. The case presented illustrates that treason was sanctioned very severely for its gravity.

[30] *Ibid.*, p. 1.

In conclusion, the regulation and sanctioning of infidelity have undergone many changes in the course of history, and the main reason for this is the constant change in the definition of the term. However, one thing can be said in common: infidelity has been present in all social systems in one way or another and has always been considered a crime of the highest gravity, because of the danger it poses to society.

Zsolt BAKOS: The person who paved the road for women to law – The life and challenges of Margit Ungár

Eötvös Loránd University, Faculty of Law

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1. Introduction

Margit Ungár, who later became the first Hungarian lawyer lady, continued her studies about a century ago. In addition to her practice, she also played a significant role in public life, including speaking out for women's rights to further education and the profession of law, which had been reserved for men only, and fighting for women's equality and the rights of children born out of wedlock. Throughout her life, she has had to deal with many prejudices and hardships.[1]

2. The situation of women in Hungarian higher education

Women's opportunities for higher education were very limited at the time, and they were not allowed to demonstrate their academic knowledge at university level until 1895, when Gyula Wlassics, Minister of Public Education, issued Ministerial Decree No.65.719, which reflected the decision of Franz Joseph, allowing women to study humanities, medicine and pharmacy. The justification for the decree reads:

It certainly cannot be denied that the ways of earning which the older social conception assigned to women, rather harshly, proved insufficient. Changing social and

[1] SEREG, András: Ungár Margit – Az elfeledett első ügyvédnő [Margit Ungár – The Forgotten First Woman Lawyer]. *Jogi Fórum [Law Forum]*, 22 December 2020, https://www.jogiforum.hu/arckepcsarnok/2020/12/22/ungar-margit-az-elfeledett-elso-ugyvedno [Access on March 24, 2024].

cultural conditions have forced women to seek other occupations which are more likely to provide them with a livelihood, and to acquire the necessary skills. The educated, more privileged circles, who were forced to be self-supporting. As women of the upper classes have become more and more dependent on self-sufficiency, there has been a growing recognition that women of superior ability are scarcely able to satisfy the needs of a higher level of education and knowledge.
This explains why women have not ceased to strive for the state to open up to them the more narrowly defined academic careers. And who would not feel that the exclusion of women from a part of the scientific bread-winning careers by a strict principle is one of the great social injustices and inequities which will never be the glory of civic life. [...] And that women can acquire the knowledge necessary for the successful pursuit of scientific careers, there can be no doubt at this time, for experience, in this field in the educated Western States proves that women students in the higher scientific institutions are producing the results they need. And Hungarian women are at least on a par with women in educated foreign countries as regards intellectual talent, will-power and diligence. It is well known that women can achieve great success in both the literary and artistic fields, and there are many excellent examples, both past and present. [...] The chief aim is that women of superior intellectual power and inclination for scientific careers should not be excluded from scientific careers in which they can render a useful service to mankind and create for themselves a secure existence.[2]

Women had to wait until 1918 to enter technical and especially legal careers, when Albert Apponyi, as Minister of Religion and Public Education, made this possible in his decree No. 206.626/1918: *...I order that women may enroll in the secular faculties of the university, the university of arts and the law academies (and to enter the profession of pharmacy) under the same conditions as men, and that after they have completed*

[2] Magyarországi Rendeletek Tára [Library of Hungarian Regulations], 29. f., Budapest, 1895, M. Kir. Belügyministerium, 380., pp. 1680–1685.

their studies according to the rules in force and passed the qualifying examinations, they may be issued with a diploma.[3]

3. The life of the lawyeress

Margit Ungár was born in 1897 into a Jewish family in Diósgyőr and excelled at school. She chose a career in law at the request of her brother Ferenc.[4] She excelled at her school-leaving exams and told the daily newspaper *Magyarország [Hungary]*: "*I wanted to be a lawyer from the age of six, but you know how it is: a child who wants to be an omnibus driver will never become one in ninety-nine out of a hundred cases. I stuck to my dream of having a man's profession and I realized it. The girls I started out with all went back, fell behind, or veered off course. Most got married and bored of doing their own thing exclusively. If they were smart - her husband's too.*[5]

Act 25 of 1920, known as the *numerus clausus*, on the regulation of enrolment in universities of science, the university of arts, the Faculty of Economics of the University of Budapest and the law academies, established the possibility of excluding women and Jews from higher education, however, this law's 2nd paragraph stipulated that the prohibitions *'shall not affect the right of further enrolment of ordinary students who had already been enrolled in previous academic years [...] provided that they can be absolutely trusted in terms of nationalism and morals'*. Margit Ungár was allowed to continue her studies, graduated on 22 June 1923, and was the first woman in Hungary to be awarded a doctorate in law at the Ferenc József University of Szeged (now the University of Sciences of Szeged).[6]

After obtaining his diploma, he applied to the Bar Association for registration as a lawyer. At the time, most lawyers considered women unfit to be lawyers.[7] There

[3] Magyarországi Rendeletek Tára [Library of Hungarian Regulations], 52. f., Budapest, 1918, Magyar Királyi Belügyminisztérium, 724., pp. 2879–2880.
[4] SEREG, *op. cit.*
[5] *Magyarország*, 7 July 1927, p. 4.
[6] *Szeged*, 21 June 1923, p. 4.
[7] *Magyar Nemzet*, 25 June 1988, p. 14.

was great disagreement among the members of the selection committee led by József Papp. The debate among the members was so lengthy that many of the visitors got tired of waiting and went home. Dr Ármin Grünhut, the chamber's prosecutor, spoke on the matter, saying that *such a far-reaching extension of women's rights was not in the spirit of our existing law*. János Benedek called for a positive ruling on the application, saying that *the law should not be interpreted as a direct ban on women and that progressive legal developments make this necessary*. Following a heated debate, the vote was 19-17 in favour of Margit Ungár, making her the first registered lawyer candidate.[8]

Rusztem Vámbéry, a very eminent doctor of law of the era, commented on the registration of Margit Ungár:
If women were allowed to enter legal studies, it was a logical consequence that they should also be allowed to advance in the legal profession. This is news only to us, because in France there are already two or three woman lawyers who, even if we look at it from the strictest legal point of view, are in every respect up to the mark. Marie Vérone, for example, has been very successful in the field of oration and, as a legal scholar, has also produced some very notable works in the field of legal literature - as for the concern that women lawyers might be in competition with men, this is a laughable matter, because, as far as I know, there are very few women in the legal profession and I think that recently women have been excluded from the legal profession altogether. For a man who is so lacking in confidence that he is afraid of female competition, it does him no harm to have a sharp-witted female competitor. Besides, it is a natural consequence of the democratic development that requires the emancipation of women throughout the world that women should also have equal rights with men in the legal profession.[9]

She started his legal practice in the office of Vilmos Szende, and after a short time he continued it with his brother, Ferenc Ungár, about which she said: '*It took me*

[8] *Az Ujság*, 4 November 1923, p. 6.
[9] *Pesti Napló*, 4 November 1923, p. 4.

a lot of effort to get my doctorate, but I was happy to study, because I find the legal career beautiful and the law - despite the dry paragraphs - had a rather attractive effect on me. I am grateful to my brother, who facilitated my studies by giving me advice and guidance and by giving me the opportunity to practise in his office. Besides, I am already studying hard for the bar exam, and I would like to be the first woman lawyer in Hungary, as I was the first woman doctor of law, although one of my colleagues wants to dispute my priority, but without any reason. As soon as I am admitted to the bar, I will of course attend hearings. We have a big criminal trial later this month. I have already examined the documents and I will be defending the accused on behalf of my brother. So, I'm going to be involved in a criminal case for the first time and I hope I won't have stage fright, or if I do, I'll get over it quickly.[10]

In this criminal case, she represented one of the defendants in a theft trial. The defendants had committed jewellery thefts in Cluj-Napoca and Oradea and had fled to Hungary but were detained at the border. According to the reports, the 'premiere' of Margit Ungár was extremely popular. The lawyer's defence speech was well-formed and spirited, and from a legal point of view it perfectly met expectations.[11] She defended Jenő Weisz in front of the Curia, the newspapers reported: *"[...]Council President Szőke looked on in amazement at the unusual scene in the courtroom, when the lady duly appeared. [...] A break was called after the defence. During the break, one of the Curia judges stepped down from the high bench and approached Margit Ungár – 'Congratulations, you did very well. We were very pleased with the pleasant introduction'"*.[12]

How unprepared was the legal world for the first woman lawyer is reflected by the small details: her clients often called her Mr. Doctor, and even her candidate card said so: For Mr. Margit Ungár, candidate lawyer".[13] She finished her time as a candidate

[10] *Az Ujság*, 7 November 1923, p. 4.
[11] *Pesti Napló*, 27 January 1924, p. 8.
[12] *Pesti Hírlap*, 28 January 1926, p. 15.
[13] *Pesti Napló*, 28 February 1928, p. 8.

lawyer in the Budapest office of József Vági, with whom she fell in love and later married him. In a very stylish manner, the two best men at the couple's wedding were also lawyers.[14]

At the end of her candidateship, on 24 June 1928, she became the first woman lawyer in Hungary to pass the bar exam, answering all questions with impeccable qualifications.[15] She passed the examination with distinction, after which Ferenc Vargha, the Crown Prosecutor, welcomed the first woman lawyer, wishing her as much success in life as she had had before the examination board. The first Hungarian woman lawyer received her diploma wrapped in pink silk and tied with a golden ribbon.[16]

After graduating, she set up his own office and took on cases that attracted the attention of the press. One of these cases was a football match between Újpest and Ferencváros (the two teams, and especially their fans, are still regard each other as arch-enemies). The season-opening match attracted too much interest, and the stadium-owner Újpest took advantage of this by selling tickets for far more people than the stadium could hold. The overcrowding only added to the already tense atmosphere, and at one point in the match, spectators who wanted to see the action started pushing their way in, which led to a scuffle. Significant financial damage was caused, with around 150 people trying to take their case to court. One of them was Pál Fekete, the manager of the Oil Refinery Ltd., who had hired Margit Ungár to take his case. The lawyeress wanted to prove that the track owner was responsible for the damage, namely because of excessive ticket sales. The reporter covering the case had some prejudices against the first Hungarian lawyer, and in his article, he wrote: "*The figure of the woman on the men's track is somehow imagined as it is - very often lately*

[14] *Esti Kurír*, 21 February 1926, p. 10.
[15] GOSZTONYI, Gergely: Az első magyar jogász- és ügyvédnő, Ungár Margit [The first Hungarian woman lawyer and advocate, Margit Ungár]. *JOG.történet. Az MTA–ELTE Jogtörténeti Kutatócsoport (ELKH) blogja*. 14 August 2023. http://mtajogtortenet.elte.hu/blog/gosztonyi-gergely-ungar-margit [Access on March 24, 2024].
[16] *8 Órai Újság*, 26 June 1928, p. 7.

- declaimed from the stage by witty and less witty playwrights. So, take a dose of grittiness, mix it with a three-dioptre quiver, dress it up with a real pigskin briefcase, put it all in a skirt well below the knee, and put a modern speech accelerator in front of it - and you have her ladyship the lawyer. Being pleasantly disappointed is a great pleasure. My first observation about Margit Ungár is that she is a very interesting woman, secondly that she is a very witty woman and - last but not least (sic) *- it is not without reason that Mr. Pál Fekete entrusted her with the management of this sports case, because in addition to these excellent qualities, Ungár is also a fanatical football fan.* When asked about the case, Margit Ungár answered very confidently: *I will definitely win the case.* Finally, she herself asked the reporter a very stylistic question: How is it that Barcelona, who played so weakly in the Spanish league, beat Ferencváros like this?[17]

Among her more famous criminal cases is the case of the murder of a child in Debrecen. Ilona Földesy met a young man in her last year of high school, who seduced her and got her pregnant. On hearing the news, Ilona was chased out of their home by her father. The child was born in a clinic in Debrecen, where she left with her mother two weeks later. The next day, the body of a baby was found by children playing in a nearby pond, and suspicion soon fell on Ilona. The girl protested in desperation, claiming she was wandering with her baby in her arms when she noticed the baby was dead, and in desperation, threw it into the lake. According to the forensic expert's opinion, the child's death was caused by drowning, and in the light of this the Debrecen court sentenced her to ten years in prison. Her lawyer, Margit Ungár, said that "*defending this unfortunate girl was indeed a woman's job. She* also explained why she loves criminal cases so much. *To be honest, I feel more inclined to become a criminalist. People who have fallen into crime are so unfortunate that they need not only a defender's word, but also a warm heart, a protective hand to lift them up."*[18] Margit Ungár appealed against the verdict and attached the opinion of another examining medical expert, according to which the child's death was caused by a rare type of ear

[17] *Sporthírlap*, 12 January 1929, p. 5.
[18] *Pesti Hírlap*, 9 January 1929, p. 4.

infection, which explains the sudden death. The lawyer filed a motion to submit the documents and the expert opinions to the Medical Judicial Council, which was granted by the Court of Justice.[19]

In another case, he was the lawyer of a young man accused of adultery. Margit Kerekes denounced her ex-fiancé for the crime of fraud. She alleged that after the engagement, Illés Kalanics had rooked various sums of money from her, and had mortgaged a large part of her property without her knowledge, and then disappeared. After his arrest, he denied his guilt, defending himself by saying that he had not received a penny from his fiancée, but that her relatives had promised him a job, which they had not kept, and that she had made the marriage impossible by her intolerable behavior. According to him, she once attacked him with a knife, and on another occasion she threw a cup at his head. Margit Ungár said in the court: *the victim herself was the reason why the accused did not marry her, because I, the woman, say that men are not obliged to tolerate female brutality*. Kalanics was finally sentenced to twenty-three days in prison for embezzlement, against which he the prosecutor and Margit Ungár appealed.[20] The case even reached America, where it was reported in the American Hungarian People's Voice, the native language newspaper of the local Hungarian diaspora.[21]

Margit Ungár also got interested in medicine: she wanted to patent a natural medicine for gallstones. In her patent report, she claimed to have found a remedy for this disease, which had previously only been treatable by surgery, based on the juice of black radish. She said that she had previously suffered from severe gallstones, and once, after an attack, she ate buttered bread with black radish and felt relieved after the meal. In the light of this, she began to investigate whether it was the butter or the radish that caused the relief. In her experiments, she devised a formula that could

[19] *Pesti Napló*, 3 July 1929, p. 3.
[20] *Esti Kurír*, 31 August 1938, p. 5.
[21] *Amerikai Magyar Népszava*, 12 September 1938, p. 2.

provide relief from gallstones. The remedy was not a simple homemade potion, but a chemically prepared remedy.[22]

The lawyer has also been very active in efforts to achieve equal rights for women.[23] She has argued for the emancipation of women in several statements – after all, she has been haunted by the issue from the beginning in a traditionally male-dominated field. In an interview, she said: '*When I lose a case, it is always the woman who grieves in me first of all; when I win, it is always the woman who rejoices first of all, because I feel that I have not only a lawyer's duty to my clients, but also a woman's duty to my fellow women, for whom I must prove, in spite of all obstacles and difficulties, that our womanhood cannot be imposed as an insurmountable obstacle in front of our profession. When a new client comes, I try to deduce the matter for which they had come to see me from the way they walk, sit, hold their head, or collapse before they begin to talk. Is it criminal, civil, or divorce? Whatever it is, I always treat the case with the same love and understanding, because I know that the person who comes here is sick and needs comfort and understanding, not just some kind of legal medicine. The advantage, however, apart from the uplifting feelings of a calm conscience, is that I forget the greater and lesser troubles and sorrows of my own life. And that, let's admit it, we women, who have inherited millions of years of understanding things too much by instinct and subjectivity, need it very much. Not only because it's harder to walk on a rough road, but also because you must deal with a lot of negativism, conservatism, prejudice. Today, we still have a situation in which our nursing is not distinguished from our profession, not only as a lawyer, but also as a profession - as perhaps nothing proves more than the fact that people either look for a word to call me or simply avoid calling me... Today, women as intellectuals still pose a problem simply by their appearance, and until this changes, until it becomes habitual and natural, it makes it difficult, not easier, to assert ourselves in these careers.*[24]

[22] *Orosházi Friss Újság*, 13 January 1934, p. 3.
[23] GOSZTONYI, *op. cit*., p. 2.
[24] *Pesti Napló*, 20 April 1930, p. 85.

In response to an article on the problems of modern women, she wrote a letter to the editor of Esti Kurír [Evening Courier]. In it, she writes: "*Most women born during and after the war had no childhood, no toys. The worries of tomorrow bit into them and stole their cheerfulness, their smiles, their sunshine way too early. She had to learn very early what a loaf of bread meant, it became a problem for her very early on where to lay her tired head from today to tomorrow. The modern girl bargained at first but failed. Later she fought and succeeded. At first, she was forced into the existing world order like a foreign body. The respect that every human soul owes to its fellow men and women, was very scanty, very rare, very miserly. Because she was not appreciated, she was gladly trampled on. Later, however, she rose above the limitations of human prejudice and set out on the path, the true path, on which she had to travel. She was accustomed to being wise and to listen to reason, for she often had to face the inexorable rigors of life. - Those who think that the modern girl's finger is running on a derailed track because she has lost her ancestral ground, lost touch with the past, is on the borderland between past and future, are mistaken. She learns from the past, she serves the future, and the truth of real life vouches for her.*"[23]

Her activism did not stop at interviews, of course, she also attended the International Women Lawyers' Congress in Budapest, where she gave a speech in front of about fifty other lawyeresses from France, Belgium, Austria and even the United States.[25] She was also a founding member of the Working Women's Club, the first women's club in Hungary, which existed until 1948, when it was dissolved by a ministerial decision. In addition, on behalf of the Feminists' Association, she drafted a number of parliamentary proposals on women's suffrage and freedom of choice of career, and on the protection of children born out of wedlock; *The unfortunate children, by being forced to bear their mother's name, carries a lifelong stigma of shame, which very often excludes them from the company of other people and often leads them down the path of crime. How much help would it be if a law were passed stating that a child*

[25] *Pesti Napló*, 8 September 1936, pp. 10–11.

must bear the name of either the father or the mother, according to the will of the parent. Then it would no longer be a stigma for children born out of wedlock to bear the name of the mother.[26]

A 1935 bill to reform the Bar would have severely restricted the ability of Jews and women to practice their profession. Major figures in the legal profession criticized the draft, and Margit Ungár also spoke out on the issue. She was appalled by such restrictions on human rights and felt threatened by them. In her opinion, such a draft was an attack not only on women lawyers, but on women in general. *Today for me, tomorrow for you!* She argued that female characteristics could be of great help in the legal profession, that female lawyeresses could do profoundly human work. *After all, if we think only of the fact that countries have usually prospered under female rulers, perhaps we should give more weight to female intuition, female subjectivity, female insight, female heart, which can be of great help to those in trouble in the legal profession. It is still not fitting for the successors of Lajos Kossuth and Ferenc Deák to close a career before women and to present a country with a proposal like this.*[27]

Of course, he was not only concerned with women's rights, she was universally concerned with social issues, often seeing the source of problems in the difficulties of economic life. When asked about the idea of a 'bachelor's tax', she explained that it had been proposed in the Roman Empire in the Lex Papea Poppeia, but had failed. She said that, in addition to economic reasons, the high demands of women were a barrier to marriage: "*A hat often costs more than what you can live on for a whole week".*[28]

Unfortunately, her excellent professional qualities did not save her from the fate of Hungarian Jews; in the summer of 1939 her name was entered in the "Jewish lawyers' register", and after the Arrow Cross takeover, she had to continue her work in a house labeled with a yellow star. In an interview in 1968, she said that, although she had been brought up in a deeply religious Jewish family, she held the Ten Commandments in

[26] *Magyar Hírlap*, 10 January 1930, p. 4.
[27] *Az Est*, 24 June 1935, p. 5.
[28] *Magyarország,* 14 December 1930, p. 5.

high esteem: *the first written law and the cornerstone of society, a wonderful work of art that could only be the work of God. If mankind obeyed its rules, life would not be an eternal struggle between right and wrong. But we are mortal and frail, otherwise the earth would be full of angels... And I didn't have to fight to become a lawyer forty years ago, even as a woman.* On one occasion, she defended twelve young people accused of subverting the social order, but thanks to her work, the court was forced to acquit some of them. When she returned home, the young men had covered her entire apartment in flowers. Yet his fondest memory was of the hardest of times: "*Of all my memories, which shall I recall? Perhaps it was the moment when Lajos Lévy, the chief physician, accompanied by my husband, took me to the hospital in Wesselényi Street, where we received the news: my brother was living and healthy in a village near Vienna. So, I witnessed the miracle of the survival of a Jewish family…"*[29]

After the war, he was the member of the Unified Board of Examiners for Judges and Lawyers. Asked the obligatory question why she did not join the Communist Party, she replied, "My husband is almost immobile due to multiple strokes, and it takes time to nurse, care for and look after him without any help." In a survey of her surroundings, dated 1955, it was written: "*The whole dwelling gives the impression of poverty and desolation in the most depressing way. In these circumstances, there can be little talk of any serious advocacy on the part of her. I have only consulted the files of two cases; from the pleadings drafted by the lawyeress, it is obvious that she has a very high level of legal and general knowledge."*[30]

She died in 1969, after a serious illness, and at her memorial service Imre Benoschofsky, the National Chief Rabbi, praised the merits of this progressive woman. A small circle of family and friends accompanied her on her last journey.[31] The effort, perseverance, and persistence of the first Hungarian woman lawyer laid the foundation for the possibility for women to enter the legal profession. Her merits are inestimable,

[29] *Új Élet*, 1 May 1968, p. 4.
[30] SEREG, *op. cit.*
[31] *Új Élet*, 15 May 1969, p. 6.

but her memory has been unfortunately forgotten: her name is not even commemorated on a plaque.

Zsigmond SZÓGA: The regulation of prostitution in Budapest between 1867 and 1914

Eötvös Loránd University, Faculty of Law

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1. Introduction

The compromise of the Hungarian political elite and the Habsburg dynasty led to the establishment of the Austro-Hungarian Monarchy in 1867. From this point, the Kingdom of Hungary began to develop at a dizzying speed, which was particularly noticeable in Budapest, created in 1873 by the merger of Pest, Buda and Óbuda. The city, thanks to the skyrocketing growth, rose to the ranks of the metropolises of Europe within few years, and was at the forefront of the Hungarian territories of the dualist monarchy in terms of liberalism, embourgeoisement, urbanization and industrialism.[1] However, the development was Janus-faced, since in addition to the indisputable advantages, the economic and social changes had also many downsides. After 1867, many new or previously less significant social problems came to surface, and among these was prostitution, which was in its "golden age" during the era.

2. The rise of prostitution in the capital

The relevant ethical, economic and social disadvantages,[2] which the girls, rushing to Budapest from the countryside, had to face, such as vulnerability, loss, and lack of job opportunities, forced many of them to try to make a living from their bodies, thereby

[1] ANKA, László: A budapesti prostitúció és szexpiac története a boldog békeidőkben, [The history of prostitution and sex market in Budapest during happy times of peace], *Valóság [Reality]*, No. 6., 2006.
[2] WALKOWITZ, Judith R.: Egy kirekesztett csoport születése: prostituáltak és munkásnők Plymouth-ban és Southamptonban [The Making of an Outcast Group: Prostitutes and Working Women in Plymouth and Southampton], In: LÉDERER, Pál (ed.): *A nyilvánvaló nők [The obvious women]*, Budapest, 1999, Új Mandátum Könyvkiadó, pp. 163–189.

increasing the number of registered or secret harlots in the capital. Favourable conditions for the rise of prostitution were created by the fact that the contemporary Hungarian society condemned only the woman for breaking the sixth commandment,[3] meanwhile for men it was a common and approved practice. Many boys, when they came of age, were taken to the brothel by the father himself. The social base of the prostitution clientele was also served by a newly emerging social class, the proletariat, which had never appeared in the capital on such a large scale before.

Although the beginning of prostitution in Hungary is lost in the mist of time, after the suppression of the War of Independence of 1848–1849,[4] it began to take on alarming proportions in Pest and Buda due to the urbanization.[5] Even though the problem, albeit to a small extent, had always been present in the cities for centuries, the issue had not been subject to legal regulation. The state's reaction was slow, which can be explained by society's ostrich policy on the subject, the economic interests of prominent members of the political and economic elite, and the concept of the night-watchman state, advocated by most in the period.[6]

In the 1850s, during the period of autocracy, prostitution emerged from its previously typical guild-like framework and began to take on industrial scale. The neutral and sometimes supportive attitude of the Viennese government to the issue was a direct trigger at this. Over time, the scale of prostitution, which was blooming, made it impossible to neglect the problem, which is proved by the fact that just after the Austro-Hungarian compromise, a decree was issued in the capital to address the issue.

The regulation on prostitution largely depends on how the legislator views prostitutes: criminals who need to be punished, victims who need to be helped, or

[3] Exodus 20:14.
[4] GOSZTONYI, Gergely: Freedoms in the Hungarian April Laws of 1848. *Journal on European History of Law*, No. 1., 2024.
[5] MIKLÓSSY, János: *A budapesti prostitúció története [The history of prostitution in Budapest],* Budapest, 1989, Népszava Kiadó Vállalat, p. 28.
[6] ANKA, *op. cit.*

employees whose interests need to be protected.[7] Therefore, three main approaches are common: the prohibitionist, the abolitionist, and the regulationist model. In Hungary, as in most European countries at the time, except for England,[8] the French regulationist model prevailed. This practice considers prostitution as a necessary evil that cannot be eradicated but must be controlled and regulated to ensure public morality and public health.[9]

3. The regulation of prostitution of 1867 in Pest-Buda

On 31st October 1867, the decree of Pest city council was enacted, titled the *Regulation for brothels and prostitutes* N° 33.474/1867.[10] It is essential to note that during the period under review, no comprehensive law was created on the subject. Instead, apart from few scattered legal references, the city council tried to regulate the issue through decrees at municipal level.[11] Therefore, it is extremely important to study the decrees of (Buda)pest: on the one hand, prostitution was most influential in the capital, and on the other hand, the regulations of other municipalities were all based on the decrees made in (Buda)pest. The regulationist model served as foundation for above-mentioned decree of 1867. The decree intended to exercise police supervision over prostitution by limiting it to the brothels.

The decree set forth that the owner of a brothel could only be a woman over thirty years, with a clean criminal record and good financial background. The regulation maximized the number of brothels – evenly distributed throughout the city – at forty,

[7] VASKUTI, Gergely: A prostitúció szabályozásának változásai Magyarországon [Alterations in the regulation of prostitution in Hungary] In: ZSÉGER, Barbara (ed.): *Válogatás a 2016-ban és 2017-ben tartott tudományos rendezvények előadásaiból [A selection of presentations from scientific events held in 2016 and 2017]*, Budapest, Magyar Kriminológiai Társaság, 2017, pp. 345–346.

[8] SIGSWORTH, E. M. – WYKE, T. J.: Prostitúció és nemi betegségek a Viktória-korban [A Study of Victorian Prostitution and Veneral Disease] In LÉDERER Pál (szerk): *A nyilvánvaló nők [The obvious women]*, Budapest, 1999, Új Mandátum Könyvkiadó, pp. 138–162.

[9] CSÉRI, János: *Budapest fő- és székesváros prostitúcióügye [The problem of prostitution in the capital city of Budapest],* Budapest, 1893, Grill Károly Cs. és Kir. Udvari Könyvkereskedése.

[10] MIKLÓSSY, *op. cit.*, pp. 39–48.

[11] ANKA, *op. cit.*

so that no district would be overcrowded with brothels. To prevent individual prostitution, the decree stipulated that the number of courtesans could not be less than five or more than fifteen in a single brothel.

For prostitutes, the precondition for admission to a brothel was the existence of a health certificate issued by the respective district surgeon-general and the existence of a tolerance badge issued by the district police chief. The health certificate was used to filter out the much feared disease of the era, syphilis. In addition to the examination taking place upon entry, the prostitute was obliged to report to the district surgeon-general for an examination every four days at her own expense. At the same time, the madam had to check the harlot's health daily; in case of illness, she had to forbid intercourse and was obliged to take the prostitute for a medical examination.

The regulation of criminal sanctions deserve special attention. The decree treated non-compliance with its provisions as a simple contravention, after which the district police captain could impose a fine ranging from 50 to 100 Austro-Hungarian forints. Furthermore, if the prostitute violated the rules, she could be locked up in a workhouse, and if she had foreign nationality, she could even face deportation. With the consent of the city council, the brothel, whose owner violated the regulations, could even be closed by the respective police captain.

The greatest deficiency of the regulation was that, although it apparently covered all aspects of the problem, the decree was limited to only one segment of the wide palette of prostitution: to the brothel system. Although the decree also mentioned the category of private prostitutes, it did not go into details. On the other hand, the issue of the so-called secret prostitutes together with the unregistered harlots, remained a completely unregulated area, even though their number was many times higher than the number of registered prostitutes and was continuously increasing throughout the era.[12]

[12] MOLNÁR, Lajos: *Az erkölcsök a közegészség és a prostitúció [Morals, public health and prostitution]*, Budapest, 1899, Neumayer Ede Könyvnyomdája.

Although section 4 of part II stipulated that prostitution could only be carried out in possession of a license, no sanction was assigned to this provision, so its efficiency was doubtful. Furthermore, the lack of regulation of secret prostitution fundamentally undermined the success of the regulationist model. It was also problematic that the violation of the regulation was classified as a mere contravention, thus, it did not have a significant deterrent effect.[13]

Police corruption also played a significant role in the fact that the decree could not live up to the expectations. Ordinance N° 38.191 issued by Chief of Police Elek Thaisz in 1870 modified the provisions of the decree of 1867. From that time, on only the Chief of Police could personally issue the tolerance badges. Thaisz's action can be explained by the fact that the Chief of Police (whose wife Reich Fáni was the best-known madam in the capital) personally had business interest in commercial lechery. As a result of said amendment, within a few years the number of brothels exceeded the number specified in the regulation, mainly because the police turned a blind eye to the illegal businesses of the brothel owners in return for some bribe.[14]

Due to police corruption, it is not surprising that many provisions were not enforced in practice either. The age limit for prostitution determined at seventeen was often ignored. It was not uncommon for twelve-year-old girls to become sex workers.[15] The problems of public morality could not be remedied either, as prostitutes appeared in coffee houses and clubs, even though the regulation expressly forbade prostitutes to practice their trade in public places.

[13] MIKLÓSSY, *op. cit.*
[14] HEVESI, István: Rendőrkapitány a prostitúció élén: Thaisz Elek (1820-1892) életútja [Police captain at the head of prostitution: the life of Elek Thaisz (1820-1892], *Belvedere Meridionale*, No. 1–2., 1995, pp. 40–42.
[15] MIKLÓSSY, *op. cit.*

4. The decree of council of Budapest in 1884

The unsustainability of the situation became evident when statistics showed that the number of sexually transmitted infections had doubled between 1874-1877.[16] The reason for this was secret prostitution, as the number of prostitutes without health certificate was estimated to be 5–10 times higher of the registered courtesans.[17]

City council representative Dezső Weisz expressed his concerns about the regulation in several interpellations addressed to the Lord Mayor in 1877, requesting the reduction of brothels and prostitutes. Yet, other media outlets advocated the opening of more brothels, thus wanting to limit and control secret prostitution within legal frameworks in accordance with the principle of regulationist model.

Despite the complaints, no substantive changes were made, since Chief of Police Thaisz was not interested in tightening the regulations. Furthermore, his position as chief police commissioner proved to be unshakable, even despite his scandals, as he had patrons in the highest social circles,[18] who were also interested in business-like prostitution. These circumstances also prevented his successors from taking decisive action against the brothels. Still, after nearly two decades, the law enforcement authorities also recognized the failures of the decree of 1867, which was led to the enactment of decree N° 837/1884 on the *Regulation on brothels*.[19]

Furthermore, after 1876, several laws aimed to regulate prostitution. Section 91 of Act 14 of 1876 stipulated that the case of commercial sexual solicitation, if it concerns public health, must be regulated by a decree. Moreover, point d. of Section 7 of Act 21 of 1881 stated that only the police could issue licenses for brothels with the permission of the capital's legislative authority.

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[16] *Ibid*.

[17] FORRAI, Judit: Budapest világvárossá válása a prostitúció szabályozásának tükrében [The transformation of Budapest into a cosmopolitan city in the light of the regulation of prostitution], *Orvosi Hetilap [Medical Weekly]*, No. 40., 1989.

[18] HEVESI, *op. cit.*

[19] Cf. KAMERMAYER, Károly: *Szabályrendelet a bordély-ügyről [Regulation on the brothel case], 1885*, Pesti Könyvnyomda Részvény-társaság.

It is also important to examine how the Hungarian criminal law responded to the issue of prostitution.[20] In general, one can say the Csemegi Code did not place much emphasis on the regulation of acts of indecency, limiting it primarily to rape and incest. Regarding prostitution, however, it is worth highlighting § 247, which dealt with a specific type of procuration: anyone who, as a parent or in a supervisory capacity, forced a person under their supervision to have sexual intercourse with another person, was punishable by up to 5 years in prison.[21] § 81 of Act 40 of 1879 on contraventions also dealt with prostitution. Based on this, a harlot who did not comply with the regulations could be punished with imprisonment for one month.

The decree of 1885 made some amendments to the previous regulation. Adapting to the large number of prostitutes operating outside the framework of brothels, the lawmakers placed special emphasis on the regulation of the category of private prostitutes, aiming to suppress secret prostitution. Although the introduction of the mixed system was a development compared to the decree of 1867, it was not able to bring about significant changes, since the legislator still preferred the brothel system.[22]

At the same time, significant progress was achieved in the protection of the sex workers. The decree tried to prevent prostitutes from becoming victim to the exploitation of brothel owners, and it also prohibited luring women into brothels. Furthermore, women under the age of 17 and pregnant women were strictly prohibited from participating in prostitution. The rules of the decree concerning public

[20] RIGÓ, Balázs: A büntetőjog történetéből II. Kora újkor – újkor. [From the history of Criminal Law II. Early modern – modern era]. In: FÖLDI, András (ed.): *Összehasonlító jogtörténet [Comparative Legal History]*. ELTE Eötvös Kiadó, Budapest, 2016, pp. 325–354; KÉPESSY, Imre: Az osztrák büntetőjog hatása a magyar büntetőjogi kodifikációra. In. *Jogi Tanulmányok [Papers on Jurisprudence]*, No. 1., 2018, pp. 260–271.; KÉPESSY, Imre: The Influence of the Austrian Laws on the Creation of the first Hungarian Criminal Code. In: GOSZTONYI, Gergely – MILOTIĆ, Dunja – BÓDINÉ BELIZNAI, Kinga (eds.): *Sic itur ad astra III: Collection of student papers on Hungarian and Croatian legal history*. Budapest, 2019, ELTE ÁJK Magyar- Állam- és Jogtörténeti Tanszék, pp. 4–12.

[21] CSÁSZÁR, Kinga: A kéjelgésügy szabályozása a dualizmus-kori Magyarországon, különös tekintettel Somogyra [The regulation of lechery in Hungary during the dualism era, with particular regard to Somogy county], *Jura*, No 1., 2012, pp. 15–28.

[22] CSÉRI, *op. cit.*

morality were like those contained in the previous one, with the addition that a brothel could only be established in an out-of-the-way street, keeping at least 200 meters away from ecclesiastical edifices or schools. The decree contained some provisions on private prostitutes. These allowed prostitutes to practice their trade not only in brothels, but also in private apartments. Only one courtesan was allowed to work in one apartment, and she could only move to another with the permission of the Chief of Police.

However, the provision still did not tackle the issue of secret prostitution adequately. Although § 24 and § 52 stipulated that prostitution without a license was prohibited, the punishment for breaking the rule was not clarified.[23] Furthermore, by delegating the execution of said provisions to respective district captains, the regulation created a decentralized system making effective administration impossible.[24]

Health control was not regulated adequately either. Prostitutes had to pay for the mandatory two-times-a-week sanitary control themselves, which obviously did not motivate them to comply with the health regulations. Furthermore, the check-up did not provide sufficient protection against sexually transmitted diseases, which was proven by fact that all registered prostitutes suffered from syphilis by the Millennium. To fight against this venereal disease with a 7% mortality rate, Act 21 of 1898 was issued, making medical examination free of charge for prostitutes.[25] From this amendment, the lawmakers hoped to bring secret prostitution under medical control, as well as to avoid the infection.[26]

The reason that the decree of 1884 failed to live up to expectations cannot be put down to the incompetence of the lawmakers. It was typical of almost all European

[23] *Ibid.*
[24] *Ibid.*
[25] FORRAI, *op. cit.*
[26] CSÉRI, János: A prostitúció ügy mai állása a fővárosban [The current state of prostitution in the capital] In: LÉDERER, Pál (ed.): *A nyilvánvaló nők [The obvious women]*, Budapest, 1999, Új Mandátum Könyvkiadó, pp. 320–332.

states following the regulationist model, since while the number of brothels showed a decreasing trend, the number of private and secret prostitutes increased just in the opposite direction. Slowly the prostitutes reached the conclusion that working in a brothel comes with many disadvantages. In response to the downfall of the brothel system and the extensive growth in the number of secret and occasional prostitutes, the Minister of Internal Affairs issued a decree in 1893 that required the health checks of female employees of hotels and guesthouses.

5. Rudnay's regulation of 1900

At the turn of the century, another decree was issued, still based on the liberal regulationist model.[27] The decree N° 49.465/1900, issued by Chief of Police Rudnay in 1900, placed greater emphasis on the regulation of forms of prostitution outside the brothel system. In addition to already existing categories of private prostitutes with tolerance badge and prostitutes working in brothels, the decree added a new category by introducing the prostitutes with health card[28] a.k.a. discreet prostitutes.[29]

However, the law was incapable of having any effect because the aforementioned Act 21 of 1881, regulating the procedure of legislature between the capital's representative body and the Budapest Police, set forth that only the Chief of Police could issue ordinance concerning prostitutes together with the council of the capital. At the same time, Rudnay issued the decree without the authorization of the capital's representative body, which was therefore annulled by the Minister of the Interior.[30]

[27] CSÁSZÁR, *op. cit.*
[28] VASKUTI, *op. cit.*
[29] MIKLÓSSY, *op. cit.*
[30] LINKA, Mór: A prostitúció rendezése Budapesten [Regulation of prostitution in Budapest], *Huszadik Század [Twentieth century]*, No. 1., 1907, pp. 245–254.

6. The decree of the council of Budapest in 1907

By the beginning of the 20th century, the decree of 1884 had become unsuitable for regulating prostitution, which became an increasingly pressing problem in the capital. In 1906, Chief of Police Boda summoned a survey with the aim of creating a new regulation that would respond to the challenges of the era. Commissioners from the capital's legal authorities, experts, feminists, and representatives of other associations dealing with the issue were invited to the conference. The conference was preceded by a study trip abroad by district police captain Emil Schreiber, with the aim of examining foreign solutions for the regulation of prostitution.[31] As a result of the conference, a new regulation was enacted.

The decree of 1907 Nº 881.1008/1907, coming into force in 1909, was still focusing on the elimination of secret prostitution.[32] Furthermore, thanks to the ever-increasing activities of different women's rights movements and associations by that time, more attention was drawn to the protection of harlots. The decree divided prostitutes into three categories. They could be either a brothel prostitutes or a private courtesans, among the latter were the prostitutes with badges or identifications. The new group of harlots with identification included the occasional courtesans who pursued commercial sexual solicitation only as a side job.

As a result of the women's rights movements, a group of women was formed in the vice department of the Budapest Police, with the purpose of dissuading girls who wanted to obtain permission and interrogate them about their reasons for applying. If it was proven that the woman wanted to become a prostitute under coercion, the coercer could be sentenced to 5 days in prison and a fine of up to 100 crowns.

An interesting fact about the decree is that, in contrast to the regulation of 1884, the age limit of seventeen could be deviated from, if the "physical development" of the applicant justified it. Essentially the provisions established previously remained

[31] *Ibid.*
[32] LÉDERER, *op. cit.*, pp. 385–400.

valid for brothels, however, providing much broader protection and freedom to prostitutes than before.[33]

More pressing was the regulation of private prostitution. The situation of private prostitutes with badges was not much different from that of those who worked in brothels, since brothels were replaced by police-approved prostitute-apartments and sublettings, which resembled brothels in so far as there were apartment owners renting out their apartments directly for a share of the prostitute's income. In practice, the situation of prostitutes in private houses differed from the brothel workers only in that they enjoyed a greater extent of freedom.[34]

The prostitute with identification, on the other hand, pursued commercial sexual solicitation in a private apartment of her choice. The introduction of this category extended the locations of business-like prostitution to so-called public and private meeting places. The creation of private harlot-blocks was a novelty, just as well as allowing prostitutes to meet their clients in coffee houses and entertainment venues.

However, the innovations were still overshadowed by the particularly mild criminal sanctions. Furthermore, although the execution of the decree was not satisfactory due to the still present corruption and the lack of police personnel, district police captain Emil Schreiber called the decree humane and well-established in 1917. This was confirmed by the fact that until the outbreak of World War I, there were no further regulations issued on the subject in the capital.[35]

7. Conclusion

By the second half of the 19th century, prostitution reached industrial proportions in Hungary, especially in the capital, therefore its legal regulation became essential.

[33] SCHREIBER, Emil: *A prostitúció [Prostitution],* Budapest, 1917, Pátria Irodalmi Vállalat és Nyomdai Részvénytársaság.
[34] MIKLÓSSY, *op. cit.*
[35] SCHREIBER , *op. cit.*

Despite this, no comprehensive law was created in the era, so the capital's regulations were born one after another to rectify the deficiencies of the previous ones, but only to little or no avail at all.

The frequent enactment of the decrees clearly indicate the failures in the law-making. The decrees were based on the regulationist model, which sought to bring commercial sexual solicitation under law enforcement and public health control with smaller or larger innovations. However, these efforts were doomed from the very start due to deficiencies in regulations, high level of police corruption, and the influence of those directly profiting of prostitution.

Josipa JERABEK: Regulation of prostitution in Croatia and Slavonia at the end of 19th and the beginning of 20th century

University of Zagreb, Faculty of Law

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1. Introduction

Prostitution has existed since ancient times, so it is often heard it is the *"oldest trade"*.[1] In reality, it was always present, but also a socially unwanted phenomenon. Therefore, it represents a really complex and controversial topic with different points of view. To understand a particular definition, it is necessary to place it in the time and social context in which is used.[2] Austrian Criminal Code on Felonies, Misdemeanors and Petty Offenses of 1852 carried the unification of criminal substantive law in Croatia and Slavonia and in that way also regulated prostitution.

1.1. The concept of prostitution

Given the diversity and complexity of the characteristics, it is not possible to form a single universal definition of prostitution. However, essentially it could be said that prostitution is an occupation or activity in which the sexual desires of others are satisfied in exchange for money. There is an obvious connection with alcoholism, crime

[1] FILIPOVIĆ, Sergej: Reguliranje prostitucije u Osijeku na prijelazu iz 19. u 20. Stoljeće: Pravilnik o uređenju i nadziranju prostitucije iz 1896. i Pravilnik za bludilišta iz 1911. [Regulation of Prostitution in Osijek at the turn of the 19th and 20th century: Instruction on regulation and supervision of prostitution from 1896 and Instruction for brothels from 1911], *Scrinia Slavonica: Godišnjak Podružnice za povijest Slavonije, Srijema i Baranje Hrvatskog instituta za povijest [Scrinia Slavonica: Annual of the Department for the History of Slavonia, Srijem and Baranja of the Croatian Institute of History]*, No. 1, 2014, pp. 141–145.

[2] DITMORE HOPE, Melissa (ed.): *Encyclopedia on Prostitution and Sex Work, Volume 1*, Greenwood Press, 2006, pp. xxv–xxvi.

and other forms of socially deviant behavior. Historically, prostitution was developed in different forms, such as religious, ritual, compensatory, substitution and professional. In addition, there is also a division on male and female, forced and voluntary, occasional and permanent, street and classy, ceremonial and secular, professional – organized or independent.[3]

1.2. Development during the 19th century

In the 19th century, the world was under the influence of the industrial revolution and increasing urbanization. At the same time, neither parts of the Austro-Hungarian Monarchy nor Croatia and Slavonia were exceptions.[4] Cities were increasingly becoming the centers of life and were offering better material conditions, so more and more people were leaving the villages and coming to live in the cities. The problem arises because of overcrowding in cities that can no longer absorb such a large number of people looking for work and better life conditions. There was increasing inequality in the whole society and also an increasing number of people who were not sufficiently educated, and who did not have a job or means of livelihood.

Those reasons led them to find different ways of earning for living. At the same time, women often began to engage in prostitution because of economic and social reasons such as addiction, violence or a problematic family situation.[5] On the other hand, men used their services for reasons such as low moral standards, asociality and

[3] ZORKO, Tomislav: *Prostitucija u Zagrebu u prvoj polovici 20. stoljeća (do početka Drugog svjetskog rata) [Prostitution in Zagreb in the first half of the 20th Century (until the beginning of World War II)],* Biakova, Zagreb, 2013, pp. 8–11.

[4] PEJIĆ, Luka: Kriminal i represivni sustav u Osijeku na prijelazu iz 19. u 20. stoljeće promatran kroz elemente biopolitike i socijalne povijesti [Crime and the repressive system in Osijek at the turn of the 19th and 20th century viewed through the elements of biopolitics and social history], *Scrinia Slavonica: Godišnjak Podružnice za povijest Slavonije, Srijema i Baranje Hrvatskog instituta za povijest [Scrinia Slavonica: Annual of the Department for the History of Slavonia, Srijem and Baranja of the Croatian Institute of History]*, No. 1, 2015, p. 151.

[5] ZORKO, *op. cit.,* pp. 149–150.

easy availability. Prostitution was gaining momentum and legal regulation for this problem was being sought.[6]

1.3. Legal approaches to prostitution

Abolition warns that prostitution is a social phenomenon, so the primary focus should be on solving social issues and secondary on legal measures. Poor living conditions and the exploitation of prostitutes are presented as main problems. Because of that, the emphasis should not be placed only on prostitutes, but also on their clients and pimps. The main focus should not be only on prostitution, but also on the demand for it. In that way, prostitution itself should not be punished, but the activities that encourage it and create its demand. Abolition represented a new type of regulation that followed after the reglementation. It became more represented at the end of the 19th and beginning of the 20th century. Among the European countries, the United Kingdom was the first one that accepted it.

Prohibition, or the criminalization of prostitution enlightens that not only prostitutes should be punished, but also their clients and pimps. In this way it is possible to react to the socially undesirable effects of prostitution. Efforts are being made to reduce prostitution and related activities, or at least bring it under greater state and social control. All activities related to prostitution are prohibited. Moreover, prostitution is deprived of the status of a recognized profession. Over time, it turned out that prohibitions and repressive measures lead to an increasing number of illegal prostitutes, and that prohibition contributes to their marginalization and does not solve their existential problems.

Reglementation is an approach in which prostitution is under state and institutional supervision and is regulated according to given rules. Only persons who

[6] ŽIVIČNJAK, Iris: Zagrebačke prostitutke početkom 20. stoljeća. Podrijetlo, svakodnevni život i položaj u društvu, [Zagreb prostitutes at the beginning of the 20th century. Origin, everyday life and position in society]*, Pro tempore: Časopis studenata povijesti [Pro tempore: Student History Journal]*, No. 15, 2020, pp. 15–159.

act according to the prescribed conditions and thus have a practice licence could be engaged in performing prostitution. It is not a desired phenomenon, but is tolerated as a *"necessary evil"*, and the law enforcement authorities play an important role in passing regulations and keeping records. Prostitution should be monitored and not visible, but more covert and difficult to access. The prostitutes who would adhere to regulations passed by authorities, would not be punished. This approach was represented in most European countries, including Croatia and Slavonia.[7]

2. Normative regulation of prostitution in Croatia and Slavonia

The Austrian Criminal Code on Felonies, Misdemeanours and Petty Offenses of 1852 (further in text: Criminal Code of 1852) was introduced by imperial patent in 1852. It contained tripartition of punishable acts taken from French legislation. Prostitution was regulated in the second part, in Chapter 13, which prescribed petty offenses and offenses against public order.[8] After its entry into force, Croatian substantive criminal law was unified.

The main characteristic is a regulatory attitude towards prostitution. Moreover, regulation mostly depended on the police authorities in some territorial parts, and because of that, there weren't any uniform rules. Given that the spread of venereal diseases is closely related to prostitution, health regulations had an important role for regulation of prostitution. Accordingly, the legislative framework in Croatia and Slavonia consisted of criminal, police and health regulations.[9]

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[7] ŽELJKO, Darija: *„Sestre bluda": zakonska regulacija ženske prostitucije na hrvatskom području u razdoblju od 1852. do 1934., s posebnim osvrtom na grad Karlovac i europsko okruženje ["Sisters of fornication": statutory regulation of women prostitution in Croatian territory in the period between 1852 and 1934, with special reference to the city of Karlovac and European context*], Student work awarded with the Rector's award, Universitiy of Zagreb, 2015, pp. 16–24.

[8] PASTOVIĆ, Dunja – ŽELJKO, Darija: Zakonodavni okvir uređenja prostitucije na hrvatsko–slavonskom području 1852.–1929. [Legal Framework for the Regulation of Prostitution in Croatian–Slavonian Territory in the Period 1852–1929], *Pravni vjesnik : časopis za pravne i društvene znanosti Pravnog fakulteta Sveučilišta J.J. Strossmayera u Osijeku [Journal of law and social sciences of the Law Faculty of University J.J. Strossmayer in Osijek]*, No. 1, 2016, p. 30.

[9] ZORKO, *op. cit*, pp. 15–18.

2.1. Criminal regulations

The basis of the criminal regulation was Art. 509, which regulates *"prostitution as a trade"*. Accordingly, prostitutes were women who provided promiscuous services in exchange for money. Prostitution was tolerated, and the law enforcement authorities were given the right, but not the duty, to punish prostitutes. Thus, prostitution was tacitly accepted, so those prostitutes who followed the prescribed rules were not punished.

However, the Criminal Code of 1852 still prescribed cases in which it was mandatory to punish prostitutes. Moreover, it was characteristic that a particular case protected a certain category of society. Considering that, it was necessary to punish a prostitute who was causing a great scandal, and thus public order was protected. Another example of mandatory punishment was the case when a prostitute seduced young men, thus ensuring the protection of minors. Finally, in the third case, she was punished if she continued to work after knowing she had a venereal disease. The last provision protected public health. For the mentioned violations, they should have been punished with strict imprisonment for the duration of one to three months.[10]

According to Art. 510, a lawsuit against a married woman could be brought by the husband. In contrast to adultery, the criminal proceedings could also be initiated *ex officio*. If the prostitute was married, her status was considered an aggravating circumstance during the trial. Thus, among other things, the institution of the family was protected. According to Art. 511, a husband who introduced a woman into prostitution and benefited from it should also be punished. In that case, the investigation had to prove that he lured her into prostitution, that he was a participant or that he benefited in any other way. In that case, the punishment was strict

[10] PASTOVIĆ – ŽELJKO, *op. cit.*, pp. 30–31.

imprisonment from three to six months, with the fact that he could have received a higher sentence.[11]

2.1.1. Pimping

The law had the intention to prevent violations of public morals, so it was necessary to punish those who help illegal prostitutes as well. Thus, pimping was specially regulated and was punishable as a crime and as a misdemeanor.

According to Art. 512, pimping was a misdemeanor, and a pimp was a person: (1) who gives to a prostitute a regular place of residence or shelter so she can perform her illegal activities, (2) engages in pimping prostitutes and benefits from it, and (3) in some other illegal way mediates between prostitutes, customers and owners of brothels in their illegal arrangements. For those cases, there was prison sentence of three to six months. In addition, the punishment could be more severe if the person continued to engage in it for a long time. In case of recidivism, the person would be expelled from that place and foreigners from the entire Austro-Hungarian Monarchy.[12]

In addition, pimping was also included in the first part of the Criminal Code of 1852 as a crime, specifically in Chapter 14, which referred to rape, defilement and other serious types of fornication. The provision referred to two types of cases. The first group is represented by cases of pimping of sexually innocent persons, while the second one consists of cases for which it does not matter whether the person was sexually innocent or not. In the latter cases, it is important that the pimping was committed by a parent, tutor, guardian/foster or teacher over their children, pupils or those entrusted to them to raise or teach. In this way, persons who were in a weaker or dependent position in a specific relationship were protected. For those cases, prescribed sentence was a hard prison for the duration of one to five years.[13]

[11] *Ibid.*, p. 32.
[12] *Ibid.*
[13] *Ibid.*, p. 36.

2.1.2. Secret prostitution

The regulation of prostitution made it possible to be legally engaged in prostitution, but also brought obligations. It required the fulfillment of certain conditions and thus financial expenses. Therefore, secret prostitution was also present and brought even greater social and, consequently, legal problems. Common were cases of white slave trade, juvenile prostitution and the spread of venereal disease. It often took place in taverns and inns, which the legislator considered a high-risk place, and passed a special rule for them.[14]

Art. 515 of the Criminal Code of 1852 contained a provision that referred to innkeepers and their servants who facilitated prostitution in their guesthouses. There were different penalties for owners and servants. If the owner was convicted for the first time, he was fined. But, if he continued to facilitate prostitution, a stricter penalty would be applied. According to the Criminal Code of 1852, he could lose the specific business and could no longer obtain a license to open a new inn. If the offense was committed by a member of staff without the innkeeper's knowledge, the member of staff would be punished with imprisonment from eight days to three months.[15]

2.2. Police regulations

The Criminal Code of 1852 gave local police authorities the power to regulate prostitution in the area of their jurisdiction. Police authorities made regulations, kept records and supervised prostitutes. That is why the regulations and practice differed from place to place and caused a situation that the same institute was regulated in different ways. On the territory of Croatia and Slavonia, Osijek passed its first regulation in 1896.[16]

[14] ZORKO, *op. cit*, pp 42–45.
[15] ŽELJKO, *op. cit.*, pp. 56–58.
[16] PEJIĆ, *op. cit.*, pp. 152–155.

2.2.1. Instruction for drafting regulations on prostitution of 1911

At the end of the 19th and the beginning of the 20th century, there were many public houses in Croatia and Slavonia: in Zagreb, Osijek, Jastrebarsko, Križevci, Bjelovar, Petrinja, Brod na Savi etc. In that way, there was not any unified regulation on prostitution so on the 19th May 1911, the Department for Internal Affairs of the Croatian National Government issued an Instruction for drafting regulations on prostitution. It contained twenty-two articles divided into six chapters that intended to create a certain framework that will serve to standardize regulation and practice for regulating and punishing prostitution in Croatia and Slavonia. Accordingly, the local law enforcement authorities should have adopted regulations that will be in accordance with the provisions of the Instruction. Despite this, in reality the instructions and regulations were not implemented as they should have been and prostitutes were exploited.[17]

New regulations were passed by Zagreb, Osijek, Brod na Savi, Bjelovar and Križevci, but the Zagreb regulation never entered into force. The regulations followed the provisions of the Instruction, but they differed from each other, i.e. the Instruction determined that public houses were open 24 hours a day, but in Osijek they could be open longer than 5:00 in the morning but only with a special surcharge.

The procedure for opening and appearance of public houses was regulated as well. Requests for opening of public houses (brothels) had to be similar to requests for a building permit. The police authorities approved the establishment and relocation of public houses and could revoke the given permission at any time. In order to obtain such a permit, an inspection was carried out and the neighbors were questioned with an aim to find out their opinion. Owners could only be women over the age of 30, and only if they proved that they had not been punished for a crime or that the offense

[17] ZORKO, *op. cit.*, p. 227.

started out of greed. In addition, they had to be trustworthy people who kept order in their business.

Brothels could work both day and night, but they were not allowed to be in the center of the town, but had to be located on the outskirts and far from the church, school, public and health institutions. Street windows had to be closed and curtains drawn. Prostitutes were not allowed to lean against the windows, and when airing the room, they had to be in the back part. It was forbidden to cook food, pour alcohol, and they had to obtain a special permit to play the piano. In that way, they wanted to prevent clients from staying in the brothel for a longer time.[18]

To be able to work in a brothel, a woman had to be at least 17 years old and had to be mentally and physically healthy. In contrast, a man who used the services of a brothel had to be at least 18 years old and must not be drunk. Only prostitutes, servants, the owner with husband and child up to 2 years of age could live in the brothel.

Prostitutes were paid for working in the brothel, but the amount was divided between them and the owner of the brothel. At the same time, prostitutes lived in poor conditions and were exploited materially and physically. In reality, the prostitute received only a fifth or a quarter of the earned amount, while the owners received the rest. Accordingly, the owner had to provide them with accommodation, food, clean clothes and laundry. In addition, the owner bore the costs of medical examinations and treatment of prostitutes in case they were infected with a venereal disease.[19] Additionally, it was forbidden to move prostitutes around brothels in a way that would allow the spread of venereal diseases. Women who did not work in the brothel were forbidden to enter in it at all, and it was forbidden to induce them to engage in prostitution.[20]

[18] PASTOVIĆ – ŽELJKO, *op. cit.*, p. 40.
[19] ZORKO, *op. cit.*, p. 37.
[20] PASTOVIĆ – ŽELJKO, *op. cit.*, pp. 38–40.

To become a prostitute, a woman had to go through a certain procedure. First of all, she should have reported her intention to become a prostitute to the brothel owners or police authorities. After registration, it was mandatory for her to undergo a medical examination, during which the official doctor examined whether she was well developed, sexually innocent, not pregnant, disfigured, and free of any infection or venereal disease. If she fulfilled the necessary prerequisites, she received a certificate of suitability. After that, the owner took her to the police, who should have informed and registered her. They warned her that she has the right to stop engaging in prostitution at any time, and they gave her instructions on how to protect herself from venereal diseases. They registered her and gave her her work book. It contained her personal information, including records of medical examinations. Finally, after she registered as a prostitute and started working, she had to go for regular medical checks that were carried out at least twice a week, and more if necessary. The intention was to prevent the spread of venereal diseases as much as possible.[21]

2.2.2. Specific case – Zagreb

According to the first Zagreb regulation in 1899, prostitution was allowed only in brothels. After the adoption of the Instruction for drafting regulations on prostitution in 1911, Zagreb passed a new regulation in 1912. It was not submitted to the government for approval so it never came into force and the old regulation was applied until 1922. In that period after World War I, there was an evident connection between prostitution, exploitation of women in brothels and the spread of venereal diseases. In that way, it turned out that the solution for prostitution through a brothel was still not satisfactory.[22] Therefore, starting in 1922, Zagreb replaced the system of prostitution in brothels with a system of publicly tolerated prostitutes. On 24th September 1922, the Royal Police Directorate in Zagreb passed the Decree on

[21] *Ibid.*, pp. 40–41.
[22] ZORKO, *op. cit.*, pp. 51–57.

Supervision of Prostitution in the City. Thus, from 1st October 1922, all brothels in Zagreb were abolished and prostitutes continued to provide services but in their own arrangement. They had the status of publicly tolerated prostitutes and the police registered them in a special record. Each had her own file with a photo, and personal information: name and surname, age, religion, place of birth, native affiliation, personal description, previous occupation and the name and surname, occupation and residence of her parent or guardian. At the time of registration, they could not be virgins, pregnant, infected with venereal diseases, married, or women who had not been legally divorced. In addition, they were divided into minors (from 18 to 21 years old and were tried to be prevented from becoming a prostitute) and adults (more than 21 years old).[23]

It was shown that the abolition of brothels led to the insufficient organization of prostitution in the Zagreb area and that it did not solve the existential issues of the previous prostitutes. An increasing number of them began to engage themselves in illegal prostitution because they avoided paying for regular medical examinations and then treatment. In general, all prostitutes were paying increased accommodation prices, they were victims of murders, robberies and violence. In addition to all that, changing professions was also difficult due to the fact that they were not desirable in society.

2.3. Health regulation and abolition of prostitution

Reforms of the health care system began at the end of the 19th century, but they did not lead to a significant improvement in health care, so the quality of life was still poor. An important health problem of that time were venereal diseases, which spread quickly and at the same time demanded expensive and long-lasting treatment. Therefore, laws and by-laws were passed to prevent the spread of venereal diseases in different ways. It was stipulated that all public prostitutes should be examined twice a week, while

[23] *Ibid.*, p. 54.

private prostitutes should be examined only if there was a suspicion that she was suffering from venereal disease. If a doctor found out that the prostitute was infected, he should have found the person who infected her and all those with whom she later came into contact and infected them. The infected prostitute should have been placed in a nearby hospital for treatment.[24] A significant change was brought by the Health Act of 1906 because it emphasized preventive measures for health, and the costs of treatment in certain cases were borne by the municipalities.[25]

Given that venereal diseases continued to represent a significant problem and that the previous regulations on prostitution proved to be insufficient, finally in March 1934, the Law on the Prevention of the Spread of Venereal Diseases was passed, and a few months later, an instruction was passed, after which, within three months, all brothels were closed and all certificates for tolerated prostitutes were revoked.[26] Unfortunately, this did not make prostitution disappear nor solved its negative social effects. Moreover, prostitution only became illegal, diseases continued to spread, prostitutes did not have their existential issues resolved. The rest of the citizens were not satisfied either because prostitution still existed but since then it has not been regulated.[27]

3. Conclusion

The constant presence of prostitution in society secured the title of the *"oldest trade"*. A profession in which earnings are obtained on the basis of satisfying other people's sexual needs in exchange for money brings many moral doubts and health issues. Therefore, the legal systems that accept abolitionism, prohibition or reglementation differ. Due to the complexity of the issue, in the Austro-Hungarian Monarchy, as well as in Croatia and Slavonia, criminal, police and health regulations played an important

[24] PASTOVIĆ – ŽELJKO, *op. cit.*, pp. 46–49.
[25] ŽELJKO, *op. cit.*, p. 68.
[26] ZORKO, *op. cit.*, pp. 64–65.
[27] *Ibid.*, pp. 64–69.

role. The Criminal Code of 1852 accepted the regulation system and tacitly allowed prostitution. Article 509 classified prostitution as a trade, and it was left to the local authorities to adopt regulations for the regulation of prostitution in their own area. A special problem was secret prostitution and pimping, which in the first part of the Criminal Code was incriminated as a crime and in the second part, in a milder form, as a misdemeanor.

In Croatia and Slavonia, there was an increase in the number of brothels and at the same time the non-unification of legal rules and practice. Therefore, in 1911, the Croatian Government passed an Instruction according to which cities should adjust their own prostitution regulations. It prescribed the prerequisites for the provision and use of prostitution services, as well as the issues of opening, managing and operating brothels, as well as the employment procedure. Emphasis was especially placed on the health of the prostitute, who had to be healthy and regularly undergo medical examinations, and the local police took care of this.

Regardless of that, over time the number of people infected with venereal diseases increased, so in 1922, Zagreb abolished the system of brothels and introduced a system of publicly tolerated prostitutes who had to be registered in a special register and follow the prescribed rules. In doing so, their existential issues were not resolved. Moreover, since then, they have borne all the costs themselves, so the number of illegal prostitutes has been growing and they were avoiding paying for medical examinations and treatments. There was less and less control and prostitutes were still marginalized, victims of violence, robberies and murders.

Prostitution was finally abolished by the Law for the Prevention of the Spread of Venereal Diseases of 1934, after which all brothels and publicly tolerated prostitutes were banned in October of the same year. This did not solve the existential issues of the previous prostitutes who found themselves in the position of continuing to work illegally, and society itself could not be satisfied with the continued spread of the disease and the lack of regulation.

Dóra KARSAI: Women's criminality in the 19th–20th century

Eötvös Loránd University, Faculty of Law

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1. Introduction

If we are to describe women with some stereotypes, we are generally presented with a charming, innocent, peaceful, caring, nurturing person. However, there are two sides to the coin, since women have also committed crimes since the beginning. Still, latency has been much more predominant in their case. Only modern criminology has begun to explore the types of crimes committed by women in earlier times, although it is undeniable that the number of female offenders began to increase with the appearance of female emancipation dramatically. The motive for committing crimes is largely psychological. In many cases, the offenders are forced to choose a life of crime by family pressure or trauma, which may culminate in the commission of a crime, but also in a life of recidivism. Furthermore, women are particularly prone to commit crimes in a less considered way, rather than out of a strong impulse.

In the 19th century, Cesare Lombroso and William Ferrero developed a theory that gender was a biological factor in criminal activities. Both insisted that by using some characteristic facial features, we can determine whether someone is a born criminal. Regarding women, fourteen percent of offenders were classified as „born criminals" according to this theory, while the proportion of men was twice as high. According to Lombroso, the crime rate for women was lower since women are physically and mentally less developed than men.

During the 19th century, there were various other anthropological approaches that tried to explore and support the causal link between women's criminality and

various scientific arguments. Albert Irk[1] argued that women were more likely to be considered sexual beings because of their biological endowments and that women's brains could not function as well as men's because of their lower red blood cell count. Thus, they are less likely to think of committing any crime in advance because they do not get that far in their thought process. Another anthropological approach was chromosome research. English researchers Jonh Cowie and Eliot Slater found that male Y chromosome may be associated with criminality and that this propensity increases if a person has more than one Y chromosome. However, this link has not been well established, since the results of the Telfer-Richardson study[2] confirmed this failure. The third biological approach suggests that different physiological phases underlie crime. To be more specific, hormonal changes play a major role in the commission of crime. In this connection, Lombroso and Ferrero have already carried out research, which revealed that almost 90 percent of the women they studied had committed a criminal offence during their menstrual cycle.

Another approach is that the cause of female delinquency is not to be found in biological differences but can be explained by socialisation. According to Adolf Quetelet, a prominent 19th century scholar, women have a much lower rate of involvement in crime than their male counterparts because of their lifestyle and character. The role of parents is important, as parental neglect and negligence have been shown to have a greater impact on women and their tendency to commit crimes. Theft and prostitution were typical punishable offences for this reason. In the 1930s, the Glueck couple conducted research on hundreds of women convicts, and the results highlighted the dominant influence of environment and society, with a significant proportion of women inmates having a broken home and lacking an adequate education. As a result, many led a debauched lifestyle of vagrancy and casual work. This is especially true for those who are born into it and grow up seeing this pattern

[1] Albert Irk (18 August, 1884 – 21 October, 1952) was a lawyer and a criminologist. Besides his theoretical work on Hungarian criminal law and international law, he was a pioneer in Hungarian criminology.
[2] The point of the Telfer-Richardson study was to prove that people with more abnormal chromosomes are more likely to commit a crime.

as the only way forward. However, there is also research that shows that women have much greater self-control and consequently lower offending rates than men. This could be interpreted as women only resort to the „means" of committing a crime as a last resort, rather than as a „solution" to the situation. The social roles of women may also be a reason for offending, as they cannot identify with the passivity that society expects of them and therefore take the path to express their rebellion against the system. Finally, we should mention the scientific work of Jenő Ranschbrug[3], who found that women, because of their physical weakness, use other means to express their aggression. For example, they avoid open confrontations and resort to „false alarms", in which they make untrue, almost unprovable, statements about their partners to harm them and attract attention.[4]

In numerical terms, the proportion of female offenders in Hungary in the mid-19th century was between ten and fifteen percent. This represented about twelve thousand convicted women. During and after World WarI, the proportion of women offenders increased both worldwide and in Hungary, with an increase of forty-three percent in Hungary. This was due to the sudden and severe poverty caused by the war and the fact that people lived in fear for a long time. Therefore, everyone was more inclined to commit crimes in self-defence.[5] Furthermore, the terror of war made it necessary to use violence to get food faster on the ticket system, or to prevail in contemporary society in general. At the beginning of the 20th century, the female crime rate ranged between twenty-five and thirty percent. This is also interesting because the treaty of Trianon made our country's territory much smaller, yet the female crime

[3] Jenő Ranschburg (19 December, 1935 – 10 March, 2011) was a Hungarian psychologist, his main research field is child psychology.

[4] SZABÓ, Anna: A női bűnözés az újabb kriminológiai irodalomban [Women's criminality in recent criminological literature] *Ars Boni,* 2012a, pp. 4–8., http://arsboni.hu/dolgozatok/buntetojog/Szabo_Anna_A_noi_bunozes_az_ujabb_kriminologiai_irodalomban.pdf [Access on March 24, 2024].

[5] SZABÓ, Anna: A női bűnözés [Women's criminality]. *Joghistória [Law history]*, No. 4., 2012b, pp. 4-7.

rate remained quite high, which could only mean that female crime rate increased.[6] By the middle of the 20th century, this rate had dropped to around twenty percent. During World War II this number did not change that drastically since both the number of female and male offenders increased significantly. After 1945, the proportion of women offenders stayed around fifteen percent.[7]

2. Offences against property

In general, women commit crimes against property mostly for profit, but sometimes, these can escalate to homicide. In these cases, the act of killing is a means of committing a crime against property. This proved to be one of the most common crimes for both men and women after two World Wars. Many families were forced into extreme poverty, and the inadequacies of the ticket system forced more and more people to steal, even to secure their daily food. Women stayed at home alone with their children and their income barely covered the costs of maintaining their households. That is if they were able to engage in gainful employment in addition to running a household and supporting a family. In many cases they were had to support their extended family.

There have always been perpetrators who were motivated only by the act of theft and for no other justifiable reason. In the period of the two World Wars, there were also individuals, including women, who stole because of a certain behavioural disorder (for instance kleptomania), even taking advantage of the wartime situation. It can be observed that the judicial practice of the time was to give women who committed the crime of theft a lighter sentence than their male counterparts.[8]

[6] GILLÁNYI, Eszter: Gondoltok a női bűnelkövetés lélektani aspektusáról – különös tekintettel a maszkulitásra [Thoughts on the psychological aspect of female criminality – with special regard to masculinity] In: STIPTA, István (ed.): *Collegium Doctorum*, Miskolc, 2012, Bíbor Kiadó, pp. 1–8.
[7] SZABÓ, *op. cit.*, 2012a, pp. 9–11.
[8] MADAI, Sándor: A vagyon elleni bűncselekmények – „valami régi-valami új?" [Crimes against property – „something old-something new?"] In: HOLLÁN, Miklós – BARABÁS, A. Tünde: *A negyedik magyar*

This is illustrated by the large-scale theft of paintings from the Museum of Fine Arts at the end of the 20th century. The crime was committed by Hungarian and Italians perpetrators. On 5 November 1983, the perpetrators broke into the Museum of Fine Arts, which had been closed because of a riot and stole seven paintings with an estimated value of almost 1 billion forints. Some of the paintings were eventually found in Greece. The criminals were caught by the rope and screwdriver they had left behind. One of the perpetrators was a woman, Katalin Jónás, who received a 6-month suspended prison sentence, while the Hungarian man's accomplices received several years of imprisonment in prison or jail.[910]

3. Prostitution

For a long time in Hungarian history, prostitution was not a punishable offence. This is supported by the fact that under the Csemegi Code of 1878, prostitution and the activities that facilitated it were not prohibited, only local authorities had the possibility to restrict such activities within certain limits. The change was brought about by Decree No. 160 100/1926 of the Ministry of Interior, which brought the phenomenon itself under uniform regulation and punished anyone who induced others to engage in prostitution. Prostitutes had to be registered and had to undergo regular medical examinations. They were assigned a place to live, which provided a venue for meeting people. A prominent educated courtesan of the period was Róza Pilisy. It is also interesting to note that part of the houses in Magyar Street in the city centre were used to be a designated "work area" for prostitutes. This was confirmed by law decree

büntetőkódex régi és újabb vitakérdései [Old and new issues of the Fourth Hungarian Penal Code], Budapest, 2017, Országos Kriminológiai Intézet, pp. 152–166.

[9] Cf. ZOMBORI, Attila: *Képes Könyv* [*Picture Book*] BM Publishing House, 1984.

[10] Központi múzeumi igazgatóság: múzeumi műtárgyvédelem [Central museum directorate: protection of museum artefacts], No. 15., 1986, pp. 81–91.

34/1955. The prohibition, although apparently lifted, is still in force today because of the legislation.[11]

4. Homicide

There are several sub-categories of homicide. Based on the typology of Gabriella Raskó what the Anna Szabó article mentioned, we can conclude that women most often committed homicide in conflict-emotional and life-association situations. Women committed homicide for emotional reasons or even to escape from a miserable life situation. They mainly committed the act against their husband or partner, but it is not uncommon for it to be committed against their children, parents or relatives. In many cases, it is observed that the victim herself could be considered a perpetrator, as women often do not commit the crime of their own volition, but as a reaction to some kind of constant provocation.[12]

One of the most famous cases in Hungarian history is the case of Anna Schmidt, described by Dezső Kosztolányi in his novel Édes Anna (Sweet Anne).[13] Anna Schmidt worked as a maid for a noble family, where she was subjected to constant abuse and humiliation by Kornél Vizy's wife. Anna felt like she was completely restricted, as she was not often allowed to leave. In addition, she was ignored by her lover (the son of Kornél Vizy) and was not allowed to experience maternal pleasure, as she was forced to abortion against her will. Anna Schmidt was completely exploited, not allowed to exercise any of her basic human rights and personality, and Fessentially treated as an object over whom the Vizy family ruled. No wonder that the only way Anna saw to free herself was to kill Mrs. Vizy. She did it, but when Mr. Vizy woke up suddenly, the only way out suddenly seemed to kill him too. Anna Schmidt was sentenced to 15 years.[14]

[11] KORINEK, László: Nemek, szexualitás és bűnözés [Gender, Sexuality and Crime], *Pécsi Határőr Tudományos Közlemények – 8. Különszám* [*Pécs Border Guard Scientific Bulletins – Special Issue 8*], 2007, pp. 6–16.
[12] SZABÓ, *op. cit.*, 2012a, pp. 9–18.
[13] Cf. KOSZTOLÁNYI, Dezső: *Sweet Anne* [*Édes Anna*]. Budapest, 1926, Genius Könyvkiadó.
[14] SZABÓ, *op. cit.*, 2012b, p. 5.

In addition to this, the most typical example for when a woman kills out of jealousy, revenge or even hatred, is her husband's mistress or a neighbour who is a nuisance to her. Another type of homicide worth mentioning is the extended suicide, where the perpetrator kills not only herself but also his loved ones. This type can best be illustrated by the example of a bitter mother who wants to commit suicide but does not want her beloved children to be left alone and sees no other way out but to kill them too. Finally, there are cases where the murder is committed because of some mental illness, such as when a schizophrenic woman hallucinates voices telling her that she must kill someone. For her, it's an internal command that she can't resist, so she does what her split consciousness asks her to do.[15]

5. Poison mixing

Witchcraft is considered the medieval predecessor of poison mixing, as witches used to make various potions to harm and kill people. While the punishment of women classified as witches was largely a qualified case of some form of capital punishment, the punishment of poisoners was already imposed under a legal system of codified criminal law, which in turn did not for a long time preclude the use of the death penalty as an alternative punishment. Poisoning can be considered a sub-species of homicide. It can be categorised as a type of homicide the purpose of which is primarily to escape from a burdensome obligation. In this case, the offender is usually in a disadvantaged position and, in addition, usually has one or more other persons to care for.[16]

The most notorious case is that of the women who mixed poison in Tiszazug, about which the famous writer Zsigmond Móricz wrote a separate work. The case took place around the 1920s, when women in the villages in the region Tiszántúl used arsenic to kill people who they believed were only a detriment to their lives. It is important to note that the women who committed the crimes all came from poor

[15] SZABÓ, *op. cit.*, 2012a, pp. 14–17.
[16] *Ibid.*, pp. 15-17.

backgrounds, had low levels of education, were subjected to constant abuse, even by their own husbands, and lived in an oppressive environment. Arsenic was extracted from flypaper, the administration of which caused a slow, painful death, as the poison paralysed organs in the body one by one, while also causing severe convulsions. In many cases, this lethal procedure was used on people who were already sick, so their deaths were not so surprising. In total, these women killed around one hundred and sixteen people until they were prosecuted.[17] After an anonymous report in 1929, the women who had committed the crimes began to be brought forward. In the end, forty-three women were prosecuted and many of them were sentenced to death. Special mention should be made of Mihályné Kardos, who not only got rid of her own family members by this method, but also encouraged several women from the area to poison themselves.[18]

6. Infanticide

Infanticide should be treated as a separate category within homicide, as the motive and circumstances are quite different from those of other crimes against women. Three categories of perpetrators can be identified. The first category is mostly made up of younger people who have usually become pregnant because of a casual relationship. In the second category were women who had already had several children from the same marriage and were unable to provide for another child. The third category includes those in a troubled relationship, perhaps having already become pregnant with their former partner. The last category has the highest rate of infanticide.

Overall, in all three categories, parenting, parent-child relationships and the family environment played a key role. If a woman who becomes pregnant is afraid because of a poor family background, she will not tell her partner or parents about her pregnancy. In this case, she will see it as the best solution to get rid of the child as

[17] See: MÓRICZ, Zsigmond: *Tiszazugi méregkeverők* [*Tiszazug's poison mixers*], *Nyugat [West]*, No. 3., 1930.
[18] SZABÓ, *op. cit.*, 2012a, p. 15.

soon as possible to avoid any disadvantages. This type of action was aborting the pregnancy or even abandoning the child, condemning him or her to death. An example of this is G. Gyöngyi, a 17-year-old girl who threw her child in a garbage can after giving birth to her child. She did this because she had been brought up in a strict, all-denying upbringing and feared her parents' reaction. The damaging effects of toxic relationships are underlined by the case of a factory worker who was regularly abused by her drunken husband, who threatened her with death if she became pregnant again because they had several children who were difficult to support. However, the woman became pregnant and was forced to hide her pregnancy, which was not her husband's, out of fear. She delivered the newborn in the factory and then strangled him with a rubber belt.

In many cases, women in the village environment feared being ostracised or having negative rumours spread about them, which could stigmatise them for life in the eyes of the community. There were cases where the arrival of a child was seen as an obstacle to professional success. One 22-year-old female administrator, who saw the child she was expecting as a barrier to her career, slammed her child's head to the ground after its birth until it died. Overall, in these cases, the health care system usually does not find out about the woman's pregnancy to inform the state of alternative solutions to the placement of the unwanted child that would avoid the loss of the newborn's life.[19]

7. Summary

It was incredible and disappointing for me to see the life situations in which society was able to force women into during the period I studied. Committing a crime often seemed like a last resort. I have read many cases where women were given almost more freedom by prison than the abusive family they lived in before committing their crime. True, there were cases where none of these almost compelling circumstances

[19] *Ibid.*, pp. 19–21.

existed, and they still committed the crime. Furthermore, it cannot be ignored that for a long time, society did not attach any importance to female criminals, despite their significance. It seemed as if the societies of earlier times could not believe that women could commit terrible acts. In my opinion, the legal system in the period under study also did not provide adequate opportunities for women to seek help in such situations. If an institution had been established that focused on the protection of women, a great many crimes could have been prevented. This was not helped by the outbreak of two World Wars. On the positive side, however, there is now a growing emphasis on the protection of women by the state. I hope that this will lead to a reduction in female crime in the future and that it will also bring the institution of prevention to the fore even more.

Botond CZIFRA: On the question of certain rights of the Minister of Justice related to the organization of the jury trial in the Austro-Hungarian Monarchy

Eötvös Loránd University, Faculty of Law

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The concept of the national sovereignty became a fundamental principle during the Age of Enlightenment. The Declaration of the Rights of Man and of the Citizen,[1] which marked the beginning of a new political era, stated the following: "Art. 3. Le principe de toute Souveraineté réside essentiellement dans la Nation. Nul corps, nul individu ne peut exercer d'autorité qui n'en émane expressément." Within the framework of national sovereignty, the people started to exercise their power in the legislative and in the executive department (mostly through elected representatives), but also claimed the right to participate in judicial proceedings.[2] According to Ferenc Finkey,[3] this liberal political institution does not legitimise the jury trial in itself, but we have to emphasize that the participation of jurors act as a guarantee to repress the judicial tyranny. Although the famous Hungarian legal scholar from Sárospatak did not share this opinion, I believe that this type of tyranny was not unknown to the Hungarian society neither: for the "lent",[4] the common folk, the feudal laws could at

[1] Légifrance, Déclaration des Droits de l'Homme et du Citoyen de 1789, https://www.legifrance.gouv.fr/contenu/menu/droit-national-en-vigueur/constitution/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789 [Access on March 24, 2024].

[2] For the comparative aspect see: RIGÓ, Balázs: A kivívott és közben látenssé vált állampolgári jog (Az angol esküdtszék története – Antal Tamás) [The civil right that was won and became latent (The history of the English jury – Antal Tamás]. *Jogelméleti Szemle [Journal of Legal Theory]*, No. 3, 2023, pp. 67–87. DOI: doi.org/10.59558/jesz.2023.3.67

[3] FINKEY, Ferencz: *Az uj magyar esküdtszék és az esküdtbiróság előtti bünvádi eljárás – népszerü ismertetés az esküdtek számára [The new Hungarian jury and criminal proceedings before a jury - a popular introduction for jurors]*. Sátoraljaújhely, 1900, Zemplén Könyvnyomtató Intézet, p. 6.

[4] Lent stands for the inferior layer of the Hungarian society.

the very least impair the general sense of justice just as much as the abuses of the protonotaries, which led to their abolishment in 1723.

The jury trial means that the decision on the guilt or on the innocence of the accused party is not made by citizens chosen from various layers of the society, and only the sentencing is made by the judge. As Rusztem Vámbéry explained it in the newspaper called Vasárnapi Ujság in 1900,[5] the jury trial – as envisioned by the Proposal of 1843 – had been introduced by the April Laws,[6] but it was only one of the safeguards of the liberty of the press until the promulgation of the Code on Criminal Procedure of 1896. The Code determined the competence of the jury destining it to hear the most serious crimes. The detailed provisions on the organization of the jury were found in Act 33 of 1897. This act vested the Minister of Justice with several competences. In my paper, I will present the relevant competences of the Minister of Justice, and I will examine one in detail, which was granted by § 34: the right to merge the neighbouring territorial districts.

Many debates arose against the introduction of the jury trial during the Reform Era as well as after the Austro-Hungarian Compromise. The introduction of the jury into the Hungarian legal system was not without difficulties: despite the fact that the jury itself was derived from the concept of national sovereignty, Endre Marsovszky[7] expressed at the national assembly on 18th May 1897 that he personally opposed the jury trial, since the guarantees of judicial independence safeguarded the rights of citizens more effectively than of those of the jury procedure. Furthermore, as the Hungarian judges had not given any reason for a loss of confidence, he saw the extension of the jury trial as part of the regnant liberal government's political

[5] Vasárnapi Ujság means Sunday's Journal, it was an informative weekly print published between 1854–1921.

[6] GOSZTONYI, Gergely: Freedoms in the Hungarian April Laws of 1848. *Journal on European History of Law*, No. 1., 2024.

[7] Marsovszky Endre, born in Vienna, 1859, member of parliament, was the representative of the district alsó-lendvai (Zala county) at the national assembly of 1897. Populist politician, he published regularly in the journal Fejérmegyei Napló. https://www.arcanum.com/hu/online-kiadvanyok/Lexikonok-magyar-irok-elete-es-munkai-szinnyei-jozsef-7891B/m-96B16/marsovszky-endre-981FF [Access on March 24, 2024].

program.[8] Although the representative formulated this as his personal opinion, he said in the exordium of his speech that he was recapitulating the standpoint of his comrades.[9] Consequently, the raison d'être of the jury trial was still debated by the populist party in 1897. Still, I have to mention that the populist party managed to obtain 18 mandates in the course of the assembly election on 29th October 1896, which granted them 4% of all seats in the Parliament. Therefore, the *communis opinio* of the Hungarian society is not deductible from their standpoint.[10]

On 19th March 1897, the bill on the jury trial was introduced by the Minister of Justice Sándor Erdély.[11] The bill triggered heavy debates in the House of Representatives. The representatives opposed the selection of jurors (they proposed draw instead of the selection described in § 15)[12] and the high necessary tax rate mostly.[13] Moreover, there were representatives who saw the bill as an attack on freedom of the press.[14]

The bill[15] vested the Minister of Justice with three competences (whereof one he would have got indirectly, through the government) and with three obligations: the right to order those to juror duty who would have been exempt from carrying it out, when the jury could not be empanelled otherwise (§ 8), the right to merge several neighbouring districts into one juror district (§ 34). The bill also aimed to grant the government the right to suspend some jury trials, if the circumstances would exclude

[8] Képviselőházi Napló, 1896. VI. kötet, 1897. április 28 – június 12. Ülésnapok : 1896-98, 85. p.

[9] „I want to indicate briefly the standpoint that me and my comrates occupy over against this proposition." - Képviselőházi Napló, 1896. VI. kötet, 1897. április 28 – június 12. Ülésnapok: 1896-98, 84. p.

[10] SZABÓ, Pál Csaba (ed.): *A magyar állam története 1711–2006 [History of the Hungarian State 1711–2006]*. Budapest, 2006, Bölcsész konzorcium, 375. p.

[11] Képviselőházi irományok, 1896. V. kötet, 131-152., XXVI-XXXVII. sz., 1896-137. Törvényjavaslat az esküdtbíróságokról.

[12] E. g. Bernát Béla's speech, Képviselőházi Napló, 1896. VI. kötet, 1897. április 28 – június 12. Ülésnapok: 1896-98, p. 84.

[13] *Ibid*.

[14] Madarász József, Képviselőházi Napló, 1896. VI. kötet, 1897. április 28 – június 12. Ülésnapok: 1896-98, p. 85. Cf. GOSZTONYI, Gergely: Censorship and law in Hungary in the past. *Romanian Journal of Legal History*, No. 1., 2021, pp. 37–46.

[15] Képviselőházi irományok, 1896. V. kötet, 131-152., XXVI-XXXVII. sz., 1896-137. Törvényjavaslat az esküdtbíróságokról.

the peaceful and unbiased judgement (§ 35). The proposal also compelled the Minister of Justice to determine the number of necessary jurors and substitute jurors for the next year in every juror district in a decree (§ 15), to determine the number and the period of the ordinary sessions of the jury trials (§ 29), and to determine the details of the entry into force (§ 38-39). In the end, the Minister of Justice got only two out of these competences.

The planned authority to suspend the jury trials triggered heavy debates between the Members of the Parliament. Even the Minister of Justice argued that § 35 and the related § 36 should be left out from the bill.[16] Using the contemporary expression, this provision was still on the "carpet" during the general debate of the bill, and multiple representatives expressed their indignation. On 18th May 1897, Jenő Polczner[17] stated that the bill „*back then piqued the vivid and strong interest not only of the whole Hungarian political world, but also of the Hungarian lawyer community.*"[18] The representative labelled this part of the bill „*constitutionally impossible*", thereby he got into a contradiction with judicial rapporteur Lajos Psik, who declared[19] that this disposition was not in point of fact unconstitutional on account of the „*sufficient constitutional cautela*". Looking back from the present, I can agree with Jenő Polczner on these issue.

According to Attila Horváth, the Hungarian historical constitution consists from the most significant legal norms created through the centuries.[20] Among them are the

[16] Képviselőházi napló, 1896. VI. kötet, 1897. április 28–junius 12.Ülésnapok 1896-98, Psik Lajos előadó, p. 79.
[17] Polczner Jenő lawyer, politician, he has great merits from the reconstruction of Szeged, figther of freedom. He was MP, the representative of the electoral district II, Szeged from 1896. SZATMÁRI, Mór: *A szövetkezett balpárt arcképcsarnoka [Portrait gallery of the united left party]*. Budapest, 1905, A szerkesztő-bizottság kiadása, p. 149.
[18] Képviselőházi napló, 1896. VI. kötet, 1897. április 28–junius 12. Ülésnapok 1896-98, Polczner Jenő, p. 80.
[19] Képviselőházi napló, 1896. VI. kötet, 1897. április 28–junius 12. Ülésnapok 1896-98, Psik Lajos előadó, p. 79.
[20] HORVÁTH, Attila: A magyar történeti alkotmány [The Hungarian historical constitution]. In: GOSZTONYI, Gergely – MEZEY, Barna (eds.): *Magyar alkotmánytörténet [Hungarian constitutional history]*. Budapest, 2020, Osiris Kiadó, pp. 54–64.

so-called *cardinal acts*, for example Act 12 of 1791 on the exercise of legislative and executive power. The law, promulgated by Leopold II, states that „*the ascertained or ascertainable court organization will not be modified by royal power*". The future participle in the expression „*ascertainable court organization*" lets me infer that after the enactment of this law, even the King have not been able to change the future court organization. Furthermore, Act 3 of 1848, which re-entered into effect in March 1867,[21] declared that „*His Majesty, and in his absentia the palatine and the royal lieutenant, according to the laws, exercise the executive power by an independent Hungarian government*". Therefore, if the Minister of Justice gets the right to suspend the jury trial in a certain territory, the executive power would get the right to modify the court organization, thus the provision of the bill contradicted the Hungarian historical constitution. Furthermore, the wording of the bill („*if in the territorial scope of this act or in some part of it such circumstances arise that exclude the peaceful and unbiased judgement of the jury trials*") is not unambiguous enough to serve as a constitutional guarantee, because it would have been necessary to explain what the peaceful judgement stands for, and especially that what kind of circumstances could exclude the unbiased judgement of the jury trial. Besides, as Finkey[22] describes it, during the formation of the jury, both the accuser and the accused may signal if a juror is incompatible with the case, and the concerned juror can signal it too. Furthermore, both the accuser and the accused have the right to reject several jurors. It is important to note that experiences from the past led to the formation of this provision. In 1892, the jury exonerated Romanian politicians one after the other in Nagyszeben. Consequently, the Minister of Justice dissolved this jury, and the jury of Kolozsvár and Marosvásárhely had to adjudge these cases.[23]

[21] KÉPES, György: Kormányforma a dualizmus korában [Form of government in the age of dualism]. In: GOSZTONYI, Gergely – MEZEY, Barna (eds.): *Magyar alkotmánytörténet [Hungarian constitutional history]*. Budapest, 2020, Osiris Kiadó, pp. 320–322.
[22] FINKEY, *op. cit.*, pp. 52–53.
[23] CSIZMADIA, Andor: *Az esküdtbíróság Magyarországon a dualizmus korában [The jury in Hungary in the age of dualism]*. Budapest, 1966, Közgazdasági és Jogi Könyvkiadó, p. 133.

During the debate of the bill, Ödön Barta[24] argued that § 34 was derived from the subsequent article.[25] The representative stated that territorial jurisdiction was a constitutional guarantee, since none can be detracted from his ordinary judge. During the debate,[26] the judicial committee analysed every condition of eligibility in detail, and it stated that there were many more eligible citizens in every court district than it was really necessary (480 eligible citizens). Even in the case of royal courts of Eperjes, Lőcse, Ipolyság, Déva, Erzsébetváros, Aranyos-Marót, Rózsahegy, Trencsén, Fehértemplom and Karánsebes, it has been proved that there were much more eligible citizens than necessary: at the court of Eperjes 1382 citizens, almost three times more than required, at the court of Lőcse 2446 citizens, so close five times more than required, at the court of Ipolyság 9235 citizens, almost nineteen times more than required, at the court of Déva 3012 citizens, almost six times more than required, at the court of Csíkszereda 6756 citizens, almost fourteen times more than required, at the court of Erzsébetváros 6747 citizens almostfourteen times again more than required, at the court of Aranyos-Marót 8295 citizens, almost seventeen times more than required, at the court of Rózsahegy 1680 citizens, almost three and a half times more than required, at the court of Trencsén 1888 citizens, almost three and a half times more than required, at the court of Fehértemplom 2621 citizens, almost five and a half times more than required, at the court of Karánsebes 762 citizens, almost one and a half times more than required eligible citizen was counted compared to the number of eligible citizens that was necessary to the jury trial.[27] It is easy to see that the counter-arguments against giving the Minister of Justice the ability to merge neighbouring court districts were well-founded. Considering these statisticsc Ferenc

[24] Barta Ödön lawyer, politician, he was elected to be the representative of the district of Bereg county in 1896. ÚJVÁRI, Péter: *Magyar Zsidó Lexikon [Hungarian Jewish Lexicon]*. Budapest, 1929, Zsidó Lexikon, p. 92.

[25] Képviselőházi napló, 1896. VI. kötet, 1897. április 28–junius 12.Ülésnapok 1896-104, Barta Ödön, p. 202.

[26] Képviselőházi irományok, 1896. V. kötet, 131-152., XXVI-XXXVII. sz.Irományszámok1896-137. Törvényjavaslat az esküdtbíróságokról, pp. 120–146.

[27] For the figures: Képviselőházi irományok, 1896. V. kötet, 131-152., XXVI-XXXVII. sz. Irományszámok 1896-137. Törvényjavaslat az esküdtbíróságokról, p. 146.

Finkey thought that the Minister of Justice will rarely take advantage of this right,[28] but according to Andor Csizmadia, the Minister of Justice used this competence many times.[29]

Unlike in the case of § 35, I would not argue unequivocally that the provision found in § 34 contradicted our historical constitution. I agree with Ödön Barta,[30] who stated that Act 4 of 1869 on the exercising of the judicial power guaranteed the fundamental right of access to justice,[31] but § 34 of the bill, likewise the final text of Act 33 of 1897 declared the following: „*to emerge the territory of several neighbouring royal court districts on the territory of a same royal regional court of appeal into one juror disctrict*". The reasoning of Ödön Barta is not well-founded, since the ordinary courts and the jury trial are not the same. The cited § did not aimed to remit the case to the jurisdiction of another royal court, but it intended that the jurors would have been very likely chosen from the list of a major jury district. Furthermore, regarding the jury trial, I find the concept of the ordinary judge incomprehensible, since both the accuser and the accused could rule out some jurors, without any justification. I think that in case of the jury trial the right of accessing the justice may relate not to the person of the judge, but to the institution. Consequently, § 34 did not oppose the historical constitution, and it speaks volumes that this provision was included in the final text.

Other provisions of the bill were criticised also, primarily focusing on the census, the committees, together with the above-mentioned competences of the Minister of Justice. With the words of Sándor Erdély, the bill „*was exposed to the most baseless*

[28] FINKEY, *op. cit.*, p. 30.
[29] CSIZMADIA, *op. cit.*, p. 133.
[30] The member of parliament was speaking about the ordinary judge, but it's clear from the context and from the message that he was thinking about the judge who had the competence to adjugde the case. For reasons of space, I would not like to engage into the question of the concept 'ordinary judge' in the Hungarian historical constitution.
[31] Regarding the law see: KÉPESSY, Imre: A bírói függetlenség kialakulása Magyarországon [The establishment of judicial independence in Hungary]. In: MENYHÁRD, Attila – VARGA, István (eds.): *350 éves az Eötvös Loránd Tudományegyetem Állam- és Jogtudományi Kara [The Faculty of Law of the Eötvös Loránd University is 350 years old]*. Budapest, 2018, ELTE Eötvös Kiadó, pp. 1052–1060.

attacks and incriminations",[32] but there is an argument that these attacks and incriminations were not always without merit. From my point of view, the competences assigned to the government in the organization of the administration of justice could serve as the base of further research, especially as the judicial organization of various countires could be typified from this standpoint. Therefore, further examination of the provision found in § 35 could pave another another way to measure of the judicial independence in the comparative constitutional history.[33]

[32] Képviselőházi napló, 1896. VI. kötet 1897. április 28–junius 12. Ülésnapok 1896-104, p. 203.
[33] RIGÓ, Balázs: A büntetőjog történetéből II. Kora újkor – újkor. [From the history of Criminal Law II. Early modern – modern era]. In: FÖLDI, András (ed.): *Összehasonlító jogtörténet [Comparative Legal History]*. ELTE Eötvös Kiadó, Budapest, 2018, pp. 325–354.

Matija MATIĆ: Show Trials in Communist Yugoslavia (1945-1948) – The Staged Trial Against the Archbishop of Zagreb Alojzije Stepinac

University of Zagreb, Faculty of Law

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1. Who was Alojzije Stepinac?

Alojzije Stepinac was born on 8th May 1898 in Brezarić, a village in the parish of Krašić. After primary education, he attended the Archbishop's Oratory, which he left to serve in the Austro-Hungarian army. During World War I, Alojzije Stepinac was on the Italian front, where he was wounded in the leg and was captured by Italian forces who held him as a prisoner of war. After his demobilization, he returned to his homeland and from 1919 studied at the Faculty of Agriculture in Zagreb.

After much deliberation, Stepinac once again chose the priestly path. In 1924, at the age of 26, he enrolled in the Pontifical Gregorian University in Rome to prepare for the priesthood. He earned doctorates in philosophy and theology and was considered a brilliant student. He was ordained a priest in 1930 in Rome and rose rapidly in the church hierarchy. Although Stepinac's great wish was to be a parish priest, Archbishop of Zagreb Antun Bauer brought him to his curia and engaged him as a Master of Ceremonies working in the Archdiocesan Chancellery.

After the death of the Archbishop Bauer in December 1937 he assumed the office of Archbishop of Zagreb. At the age of 38, Stepinac became the youngest archbishop in Roman Catholic history.[1] Of course, the Archdiocese of Zagreb was then

[1] GITMAN, Esther: A question of judgement: Alojzije Stepinac and the Jews, *Review of Croatian History*, No. 1, 2006, pp. 49–50; AKMADŽA, Miroslav: *Stepinac riječju i djelom [Stepinac in his Words and Deeds]*, AGM, Zagreb, 2019, pp. 11–21.

and is still today known as the largest administrative unit of the Catholic Church in Croatia, and the position of its head in Croatia was and still is extremely important.

2. Catholic clergy in World War II

Hitler's invasion in the April War of 1941 led to the collapse of the First Yugoslavia and the establishment of the Independent State of Croatia (further in text: ISC). At the head of the ISC was the pro-fascist government of Ante Pavelić, called Ustaše, whose mission was the bloody persecution of Jews, Serbs and Roma. The Ustaše movement cooperated with the Axis powers to achieve the goal of Croatian statehood. By most accounts, the Ustaša movement enjoyed the support of much of the Catholic clergy in Croatia and Bosnia-Herzegovina. This support was not necessarily passive. Several priests and members of the Franciscan order joined the Ustaša movement and in some cases even participated in the implementation of its murderous policies.

The controversies surrounding the role of the Catholic Church in Croatia during the war center on four general issues, which identify as following: (1) the alleged high treason of the Croatian Catholic hierarchy headed by Stepinac, which welcomed the establishment of the Croatian state in April 1941 and allegedly actively supported the Ustaša regime from 1941 to 1945; (2) the alleged role of the Church in the forced and fear-induced conversions of Orthodox Serbs to Catholicism; (3) the participation of Catholic clergy in the Ustaša party and various institutions associated with that party; (4) the Church's reluctance to openly condemn the regime's methods and encroachments on Church prerogatives.[2]

[2] BIONDICH, Mark: Controversies surrounding the Catholic Church in Wartime Croatia, 1941–45, In: RAMET, Sabrina P. (ed.): *The Independent State of Croatia 1941-45*, Routledge, London and New York, 2007, pp. 31–59.

3. Stepinac's stance and reception

What was Stepinac's position in the World War II? The question of his activities during this period is the biggest point of contention among historians. Some claim (Ivo Goldstein) that Stepinac knew about the deportation of Jews to the camps but did not react.[3] However, the vast majority of sources and opinions of others are positive about Stepinac. Among them are sources that say that Stepinac appeared publicly as early as July 1941 condemning racism, violence, and regime institutions such as the Jasenovac concentration camp. In one of his letters, for example, he openly told Ustaša Minister Mile Budak that censorship in the Independent State of Croatia was even worse than in the Kingdom of Yugoslavia.[4]

As for Stepinac's positions and opinions, he explicitly spoke out against racism and racist ideologies in a series of public speeches. In a sermon of 25th October 1942, for example, he said: *"The first thing we claim is that all nations are nothing before God. (…) The second thing we claim is that all peoples and races come from God. There is one race, and that is God's race"*.[5] Not only does Stepinac say that all races are equal, which is against the propagation of Aryan supremacy, but he also attacks any judgements with racial characteristics, declaring them irrelevant from God's point of view.

4. Yugoslav political trials 1945-1948

The postwar period in Yugoslavia (1945-1948) was marked by a radicalism of the political power toward its opponents, especially toward the representatives of the defeated ISC, the followers of the Croatian Republican Peasant Party, and the hierarchy of the Catholic Church. What was the nature of criminal proceedings in Yugoslavia?

[3] VUK, Tihomir: Djelovanje kardinala Alojzija Stepinca tijekom Drugoga svjetskoga rata [Activities of Archbishop Alojzije Stepinac during World War II], *Obnova – časopis za kulturu, društvo i politiku [Renewal – Journal for Culture, Society and Politics]*, No. 1, 2018, p. 79.
[4] *Ibid.*, pp. 79–80.
[5] TRBUŠIĆ, Davor; BECK, Boris: Hierarchy And Exclusion – Alojzije Stepinac's Public Speeches Against Racism, *Nova prisutnost: Časopis za intelektualna i duhovna pitanja [New presence : Review for intellectual and spiritual questions]*, No. 1, 2023, p. 86. DOI: doi.org/10.31192/np.21.1.5

We can say that the main characteristic of the criminal legislation of Yugoslavia after 1945 is the complete impreciseness of political incriminations.[6] Numerous political trials turned into staged trials. Sentences were supported by coerced confessions of the accused. War crimes were also tried, but in many cases many of those incriminations were only about ordinary different political stances and opinions. The Yugoslav government registered with the UN war crimes commission a total of 7.812 Yugoslav citizens as the "war criminals".[7]

The courts judgements were delivered on the basis of national treason, which was not derived from evidence, but from a staged political accusation. It is precisely the lack of complete and systematized criminal legislation that has had an ominous effect on the entire criminal protection in the country. The General Part of the Criminal Code from 1947 defined the term criminal offense as: *"any dangerous act or omission committed against the state and social order of Yugoslavia"*.[8] As can be noticed, the definition itself was not sufficiently defined, which laid the foundation for inappropriate misinterpretations of analogies. The Code itself allowed the use of legal analogy, i.e. judging acts by their similarity to the acts described in the law.

As for political trials, the Law on Criminal Offenses against the State passed in August 1945 was applied.[9] In that act, list of incriminations was exclusively political. It centered around punishing any action which was aimed at endangering the political system. The lack of precise legal descriptions of criminal offenses enabled the extensive interpretation and application of this law. The procedure was considered urgent by law. If the case was deemed important, the Supreme Court then tried as a court of first instance (Stepinac's case was deemed important). When the Supreme Court acted in

[6] KISIĆ–KOLANOVIĆ, Nada: Vrijeme političke represije: „Veliki sudski procesi" u Hrvatskoj 1945-1948 [The Time of Political Repression: "the Great Trials" in Croatia 1945-1948], *Časopis za suvremenu povijest [Journal of Contemporary History]*, No. 1, 1993, pp. 1–2.
[7] *Ibid.*, p. 3.
[8] *Ibid.*, p. 6.
[9] *Ibid.*

this manner, the possibility of filing an appeal was reduced to a minimum. The punishments themselves were extremely severe.[10]

5. The institution of public prosecution and its role

As for the institutions regarding the criminal proceedings in Yugoslavia, one is The Public Prosecutor's Office, which was established by Presidency of AVNOJ (abbreviation for Anti-Fascist Council for the National Liberation of Yugoslavia) on 3rd February 1945. Public prosecution itself was regulated by the Law on Public Prosecution, dated 22nd June 1946.[11] The act regulates the Public Prosecutor's Office as a highly strict, centralized institution headed by a federal public prosecutor. The general supervision department was in charge of controlling the entire network of authorities. They also supervised all forms of economic activity and all social organizations on the suspicions of them committing endangering acts against the state. As can be noticed, The Public Prosecutor's Office extorted exceptional political power of the prosecution. This activity of the Office became a tool in the strengthening of political authoritarianism, which resulted in the complete takeover of the state's supervision and control over its citizens.[12]

Another institution is OZNA (Department for People's Protection, hereinafter: OZNA), which represented the most radical branch of the Public Prosecutor's Office. OZNA was the communist secret police (*"security-intelligence service"*) of Yugoslavia. It carried out the arrests of political opponents and took them to be searched and questioned by the Public Prosecutor's Office. As for the Department's role in the

[10] *Ibid*., p. 7.
[11] KISIĆ–KOLANOVIĆ, Nada: Pravno utemeljenje državnocentralističkog sistema u Hrvatskoj 1945.-1952. godine [Legal Grounding of the state-centralized System in Croatia 1945-1952], *Časopis za suvremenu povijest [Journal of Contemporary History]*, No. 1, 1992, p. 58.
[12] *Ibid*., p. 59.

criminal procedure, OZNA delivered opinions to the courts directing them what punishments should be imposed on the accused.[13]

6. The position of judiciary

One of the first acts of the new Yugoslav state was the Law on the Organization of People's Courts, dated 4th September 1945. The act states that the main goal of the courts is the protection of the *"democratic assets of the NOB"* (NOB is abbreviation for Narodnooslobodilačka borba, i.e. Yugoslav communist partisan movement founded in World War II with its main goal being the liberation of the peoples from the oppresive regimes), the protection of the "*rights and interests of public and private institutions, companies and organizations"* and, finally, the protection of the *"personal and property rights of citizens"*.[14] The principle that judges are independent in the administration of justice, the principle of equality of citizens before the law and the principle of public hearings were also enumerated in the act. Specialized courts could only be established by law. The jurisdiction of the courts was also standardized.[15]

It could be concluded that the act itself was a relatively stable piece of regulation, which, however, was constantly destroyed in practice by a dominant political factor. The new constitutional system proclaimed the idea of unity of government, which helped to transfer the ideas of the dictatorship of the proletariat. The doctrine states that the government is just a mere instrument driven by the revolutionary class will. This enforces the statement that every state is dictatorial, and the law was always used as repressive tool against the oppressed class. Now the new political government is also using force, but in the interests of protecting broad layers

[13] ŠARIĆ, Tatjana: Osuđeni po hitnom postupku: Uloga represivnih tijela komunističke vlasti u odnosu na smrtne osude u Hrvatskoj u Drugom svjetskom ratu i poraću, na primjeru fonda Uprava za suzbijanje kriminaliteta Sekretarijata za unutrašnje poslove SRH [Sentenced under urgent procedure: the role of repressive bodies of communist order during the WWII and in the post-war period, illustrated by data from the funds of the administration for the suppression of delinquency of the Secretariat for internal affairs of the Socialist Republic of Croatia], *Arhivski vjesnik [Archival Journal]*, No. 1., 2008, pp. 341–343.
[14] KISIĆ–KOLANOVIĆ, *op. cit.*, 1992, p. 62.
[15] *Ibid.*

of workers and citizens.[16] On the other hand, the Ministry of Justice of the People's Republic of Croatia at that time had a major influence on the selection of judges. Ministry also gave them instructions, notices, and regular consultations, adapting them to the newly formed political circumstances.[17]

7. Indictment of Alojzije Stepinac

Shortly after the World War II ended, Stepinac was arrested by OZNA. The trial was ruled by the Supreme Court of the People's Republic of Croatia, which deemed it as an important case. It started on 30th September and lasted until 11th October 1946. Public prosecution was administered under the leadership of Jakov Blažević – in August 1945 he was elected public prosecutor of the People's Republic of Croatia. According to Blažević, all political defendants were ordinary criminals and traitors deprived of human dignity and he addressed them with the greatest contempt. The indictment consisted of 51 pages. Prosecution indicted Stepinac for the following crimes: (1) political cooperation with the enemy during the occupation, meeting with Pavelić and other Ustaša officers and giving them help during the entire period (2) forced conversion of Orthodox Serbs to Roman Catholicism during the occupation, (3) assisting armed military formations of the enemy and (4) helping armed gangs and inserting them into the territory of the Federal People's Republic of Yugoslavia to overthrow the system.[18]

The first series of the prosecution's arguments concerned the incrimination of collaboration with the Ustaše. The principal charges levelled against Stepinac were that he welcomed the Ustaša government while Yugoslavia was still at war and he invited the clergy to cooperate with them. Immediately after Pavelić assumed power, many priests were appointed to local and provincial administrative posts of newly created

[16] *Ibid.*, p. 57.
[17] *Ibid.*, p. 63.
[18] *The Case of Archbishop Stepinac*, Information Officer, Embassy of the Federal Peoples Republic of Yugoslavia, Washington, 1947, pp. 88–95.; KISIĆ–KOLANOVIĆ, *op. cit.*, 1993, pp. 7–8, 13–14.

ISC. Stepinac was accused of supervising the Catholic press during the war and encouraging its fascist propaganda. Furthermore, that he turned traditional church ceremonies and processions into political events for Pavelić and celebrated mass on April 10 every year on the anniversary of the foundation of the ISC.[19]

8. The Staged Trial against the Archbishop of Zagreb Alojzije Stepinac

Because of the uniqueness of Stepinac's position and his stances in contrast to the Catholic clergy during the World War II, bringing the archbishop to court proved to be a bad decision for the communist authorities. The prosecution itself was indeed effective, but at the same time highly compromising for the communist government. As much as the Catholic clergy tended to denigrate and disparage the communist government in Croatia after the War, an excessively negative weight was attached to the authorities during the Stepinac's prosecution.

Chief prosecutor Jakov Blažević dominated the trial, speaking for more than 40 hours total, while the defense had approximately twenty minutes of uninterrupted presentation for their statements. The defense suffered many disadvantages. It had only six days between indictment and the trial to prepare its case. While the prosecution had a seemingly unlimited reservoir of witnesses at hand, the court severely restricted the number of defense witnesses it was prepared to hear. The court regularly rejected defense's witnesses, both persons of Serbian nationality who wanted to testify about Stepinac's humanitarian rescue of people, as well as his closest associates, most of whom were bishops who were blackmailed by police. It also excluded much of the available documentary evidence offered by defense.

[19] AKMADŽA, *op. cit.*, p. 103.; ANDREIĆ, Dominik: Okolnosti suđenja zagrebačkom nadbiskupu Alojziju Stepincu, analiza sudskog spisa i pravne održivosti presude [Trial of Zagreb Archbishop Alojzije Stepinac: its circumstances, analysis of the court file and the analysis of the legal viability of the judgment], *Obnova – časopis za kulturu, društvo i politiku [Renewal – Journal for Culture, Society and Politics]*, No. 1, 2019, pp. 98–99.

The trial proceeded at an accelerated pace. Most of the hearings lasted from 8 am to 9 pm, so it was tiresome to maintain the concentration of the trial subjects and subsequently review the court files. The police forbade taking notes during the trial or confiscated them later. Newspaper reports further helped the regime by publishing tendentious articles which omitted all of defense's statements. They were comprised of inciting tones and in many instances made a complete propaganda mockery of Stepinac's defense.[20]

Stepinac, however, decided to defend himself in silence. Ivo Politeo (Stepinac's attorney defense) predominantly went in the direction arguing that the legal situation of the ISC was not about statehood but about occupation, so the legal relations between the inhabitants of the occupied territories and the occupiers should be judged according to the regulations of The Hague Convention (Convention no. IV Respecting the Laws and Customs of War on Land) from 1907. The inhabitants of the occupied territory, according to the Convention, were not obliged to be loyal to the occupier, but disobedience was at their own risk. Stepinac's behavior was, therefore, within the limits of The Hague Convention. Also, the defense pointed out that Stepinac had a very hostile attitude towards Ante Pavelić, who was only present at the service of God in the Zagreb Cathedral once in the regime's four years of existence.[21]

9. Verdict, imprisonment and death

Despite all the evidence presented, the defense could not have expected a positive result due to the political context. The court found Stepinac guilty and sentenced him to 16 years' imprisonment at forced labor, followed by five years' deprivation of civil and political rights. Despite the sentence, Stepinac did not in fact have to perform hard labor. He served his sentence in Lepoglava penitentiary where he had a special double

[20] KIRCHHEIMER, Otto: Political Justice: The Use of Legal Procedure for Political Ends, Princeton University Press, Princeton, New Jersey, 1961, pp. 99-100. DOI: doi.org/10.1515/9781400878529; KISIĆ–KOLANOVIĆ, *op. cit.*, 1993, p. 14.
[21] KISIĆ–KOLANOVIĆ, *op. cit.*, 1993, p. 14.

cell - he had a cell and a smaller room where he could celebrate holy service. In 1951, when Tito was trying to improve relations with Vatican, Stepinac was released from prison and moved to house arrest in Krašić. On 12th January 1953, while being in house arrest, Pope Pius XII appointed him cardinal.[22]

In this trial political incriminations completely took over the proceedings, and the entire evidence material of the prosecution was a skillfully crafted hoax. Archbishop Stepinac was convicted, not because of his collaboration with the Ustaša, as the communist government said, but because of his loyalty to the Vatican. The imprisonment and conviction of Stepinac proved to be a big mistake for the communist authorities. Many protests were held by numerous cities around the world such as Rio de Janeiro, Philadelphia, Milan, Buenos Aires, Santiago, Chicago, Lima, Spain, Lebanon, and Egypt. The Pope himself also issued an objection. These complaints began to pose an increasing burden to the authorities. On 7th March 1947 Vladimir Bakarić (head of the Communist Party of Croatia) visited Archbishop Stepinac in Lepoglava penitentiary and offered him to sign a document with a request for pardon to free him and allow him to leave the country. The archbishop refused, stressing that he will not abandon the Croatian people in these difficult times. Alojzije Stepinac died of illness on 10th February 1960 in Krašić, the place of his birth.[23]

10. Legacy of Alojzije Stepinac

Croatian Sabor condemned the Stepinac Trial as early as of 1992. The Croatian Parliament adopted at its session on 14th February 1992 *"the Declaration on the Condemnation of the political process and the Verdict against Cardinal Alojzije Stepinac"*. In this declaration the following was determined: *"Stepinac was innocently convicted at a staged political trial, because he refused to carry out a church schism and separate the Catholic Church of the Croats from Rome and the Vatican at the behest of*

[22] *Ibid.*, p. 14; AKMADŽA, *op. cit.*, pp. 113–125.
[23] AKMADŽA, *op. cit.*, p. 121–126; 134–141.

the communist rulers, with the far-reaching goal of destroying the Catholic Church as the centuries-old guardian and protector of preserving the identity and freedom of the Croatian people. (…) Although the Croatian people and the Catholic Church have never recognized the conviction of Archbishop Stepinac, the Croatian Parliament, as the highest representative body of Croatia, corrects the historical injustice and insult to the Croatian people by expressing a clear attitude towards the unjust conviction of Cardinal Stepinac".[24]

On 22nd July 2016, the extra-judicial panel of the Zagreb County Court presided over by Judge Ivan Turudić, completely overturned the verdict against the Archbishop Stepinac. This decision was made on the basis of a request for appeal submitted by Archbishop's nephew Boris Stepinac. Judge Turudić said that the request for appeal was founded because the sentence of the Supreme Court of the People's Republic of Croatia from 1946 violates all principles of the current material and procedural criminal law, as well as the law in force at the time the sentence was passed. The 1946 ruling violated the principle of legality, the ban on the retroactive application of the criminal code, the principle of guilt, as well as the right of the accused to a fair trial.[25] Moreover, Pope John Paul II declared Alojzije Stepinac blessed on 3rd October 1988, and the memorial day Stepinčevo is celebrated on the date of Stepinac's death, February 10th. Today, we can say that Stepinac's position in Croatian society is mostly positive.[26]

As for me, I think it's important to emphasize the large burden one has to face when making decisions in exceptionally dire and turbulent times, as it was for Archbishop's himself during the war period and all the horrors that come with it. Therefore, I will end the paper with the famous statement of Archbishop Stepinac:

[24] Deklaracija o osudi političkog procesa i presude kardinalu Alojziju Stepincu [Declaration on the Condemnation of the political process and the Verdict against Cardinal Alojzije Stepinac], *Narodne Novine*, No. 140. , 1992.

[25] The sentence of Zagreb County Court in case Stepinac is available at: https://sudovi.hr/sites/default/files/dokumenti/2020-09/22.7.2016.%20STEPINAC.pdf [Access on March 24, 2024].

[26] http://stepinac.zg-nadbiskupija.hr/hr/vijesti/ponistena-presuda-kardinalu-stepincu/1302 [Access on March 24, 2024].

"When everything is taken from you, you are left with two hands. Fold them in prayer and then you will be the strongest."

Antal Zoltán MASASON: A mysterious case or the criminal procedural characteristics of the blood libel trial at Tiszaeszlár

Eötvös Loránd University, Faculty of Law

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1. Introduction

Until the 19th century, some judicial proceedings were based on blood libel in Hungary.[1] Among those, the so-called Tiszaeszlár-case became the most notorious. Many people, even abroad, consternated: how was a *blood libel trial* possible in the Golden Ages of the Austro-Hungarian Monarchy? The trial sent shockwaves through the Hungarian society, and it sparked interest in many European countries. Since the case also demonstrated the need for a modern code on criminal procedure, I will analyse the contemporary rules of criminal procedure, focusing mostly on its shortcomings.

To understand the case better, it is crucial to review the events of 1st April 1882, since the blood libel was based on the mysterious disappearance of a young girl. Eszter Solymosi, a fourteen-year-old domestic servant, who had been working at that time in the village called Tiszaeszlár (located in Szabolcs county), was sent by her employer, Andrásné Huri (who was also her „*distant relative*"[2] form her mother's, Jánosné Solymosi's side) to buy some paint for her and for her neighbour, so that they could paint the atriums of their houses for upcoming Easter.[3] Eszter Solymosi and Andrásné

[1] KÖVÉR, György: *A tiszaeszlári dráma. Társadalomtörténeti látószögek [The Drama of Tiszaeszlár. Perspectives of Social History]*. Budapest, 2011, Osiris Kiadó, pp. 331–350., 519–559.
[2] KÉPESSY, Imre: The Case of Eszter Solymosi from Tiszaeszlár: The Notorious Blood Libel Trial through the Eyes of Gyula Krúdy. In AMOROSI, Virginia – MINALE, Valerio Massimo (ed.): *History of Law and Other Humanities*, Madrid, 2019, Dykinson, p. 408. DOI: doi.org/10.2307/j.ctvr7f8t1.29
[3] KÖVÉR, *op. cit*.

Huri lived in the smaller part of the village called Tiszaeszlár-Újfalu, therefore, the young domestic servant had to walk this Saturday to the other part of the village (called Tiszaeszlár-Ófalu) to a shop owned by a Christian shopkeeper, since the shops owned by Jewish shopkeepers in Tiszaeszlár-Újfalu were closed on sabbath.[4] This journey took approximately forty or forty-five minutes in one direction. Although there were many people who saw Eszter that day (for example her schoolmate, János Jakab, her elder sister Zsófi Solymosi or the miller called József Papp), the young girl did not arrive home: she went missing on her journey between Tiszaeszlár-Ófalu and Tiszaeszlár-Újfalu around noon or early in the afternoon. Meanwhile the Jewish population of Tiszaeszlár was preparing for the feast of unleavened bread (Passover, Pesach). That Saturday, which was called Sabbath Hagadol, the community held an election for the position of the cantor and the kosher butcher. There were many contestants[5] from the village and even from the region. They gathered in the synagogue at Tiszaeszlár-Tótfalu (in the middle part of Tiszaeszlár), which was located beside the pathway where Eszter probably walked that day. In the afternoon, Eszter's employer notified Eszter's mother about her disappereance, and later that day, József Scharf, the clerk of the synagogue told Eszter's mother that the Jews did not have anything to do with the girl's disappearance and the girl would definitely go home.[6]

Unfortunately, Eszter never turned up. Shortly after, rumours began to spread about the circumstances of her alleged death. The story originated from József Scharf's five-year-old son, Samu. He told a twelve-year-old girl that he had seen his father, elder brother and the kosher butcher bringing a young girl into the synagogue, whose name he did not mention. According to Samu's tale, the kosher butcher „*cut the girl's leg*".[7] This rumour reached Jánosné Solymosi as well who reported the disappearance

[4] *Ibid.*
[5] *Ibid*.
[6] *Ibid*.
[7] KÉPESSY, *op. cit*. p. 411. The aim of this treatment was to get the patient back to a conscious state and was pretty risky medically at that time. Cutting the leg causes a loss of blood, which indicates the decrease of blood pressure. Because of this, the human body begins to produce andrenaline which makes the patient wake up. The main risk of the treatment is basically bleeding out.

of her child to Gábor Farkas, the town clerk on 3rd April. However, he did not carry out[8] any official action, only sent the mother to the district administrator. The district administrator did not order „the search in the synagogue",[9] even though the mother asked for it. After that, Solymosiné went to the president of the District Tribunal at Nyíregyháza (Ferenc Korniss), but this did not help either: the official investigation began only a month later, right after Solymosiné visited the district administrator again.[10]

During the investigation, testimonies of witnesses were taken which referred to the event as „*ritual murder*".[11] (Samu Scharf stated in his testimony at this time that the people he had seen had sliced the girls throat and had taken her blood. He held up his testimony later for the inquiry judge as well.) After that, the actions of preliminary investigation and the inquiry followed, led by the appointed inquiry judge called József Bary who wrote a book later about the whole procedure from his viewpoint. During the preliminary investigation and the inquiry, other witness testimonies were gathered. Móric Scharf, the fourteen-year-old elder son of József Scharf, became the key witness of the state. He was interrogated and separated from his family and acquaintances. On the 18th June the corpse of a young girl was found in the river Tisza near the village Tiszadada[12]. The relatives of Eszter Solymosi and other people who knew her could not determine without any reasonable doubt, whether the

[8] STIPTA, István: A tiszaeszlári per és a korabeli büntető eljárásjog [The lawsuit at Tiszaeszlár and the contemporary law of Criminal Procedure]. *Jogtörténeti Szemle [Review of Legal History]*, No. 4, 2012, pp. 22–34.
[9] *Ibid*., p. 27.
[10] *Ibid*. István Stipta emphasises the role of the town clerk according to leading Solymosiné to other assigned organisations further. This active role made Tamás Kende think about Gábor Farkas as the „game leader" of the blood libel. See: KENDE, Tamás: *Vérvád. Egy előítélet működése az újkori Közép- és Kelet-Európában [Blood libel. The functioning of a preconception in Modern Central and Eastern Europe]*. Budapest, 1995, Osiris Kiadó, p. 127.
[11] STIPTA, *op. cit*., p. 27.
[12] KÖVÉR, *op. cit*. Earlier at the end of May, another corpse, found and fished up the river Tisza on 28th April, had been examined after disinterment but it had not been determined as Eszter Solymosi as well. See: *Ibid*.

corpse was the dead body of the young domestic servant, even coroners gave different opinions according to the autopsies performed by them[13].

The main trial took place in the summer of 1883 at the District Tribunal of Nyíregyháza. There were sixteen accused – all of them were Jewish people – who were defended by attorneys Károly Eötvös, Sándor Funták, Bernát Friedmann, Ignác Heumann and Miksa Székely. The representative of public prosecution was deputy chief prosecutor Ede Szeyffert, moreover, Károly Szalay entered the trial as the representative upon the motion of the aggrieved party, Jánosné Solymosi. The press reported frequently about the trial. At the end of trial, all suspects were discharged and neither the Regional Court of Appeal at Budapest nor the Hungarian Royal Curia have changed that judgement.[14]

2. Procedural peculiarities of the case

Through this case we can look into a special era of the Hungarian legal system when there were some legal fields where codification was not completed. Phases of investigations and the inquiry before the main trial and the trial itself took place in the years of 1882 and 1883, including redresses. In contrast to this, the first modern code which gathered all rules of criminal procedure was the Act 33 of 1896 on Criminal Procedure. At the time of the trial, the so-called Yellow Book was used by courts as a „*normative rule*"[15] which had been created as the bill on criminal procedure by Károly

[13] BLUTMAN, László: *A rejtélyes tiszaeszlári per [The mysterious case of Tiszaeszlár]*. Budapest, 2017, Osiris Kiadó, pp. 117–149. The clothes on the corpse were pretty similar to the clothing worn by Eszter Solymosi at the time of her disappearance.

[14] KÖVÉR, *op. cit*.

[15] MEZEY, Barna (ed.): *Magyar jogtörténet [Hungarian Legal History]*. Budapest, 2007, Osiris Kiadó, p. 444. The bill had been submitted to the Parliament by the Minister of Justice called Boldizsár Horváth but the legislature had been deliberating that too long an had not come to a decision. The person who had given out the text of the bill as a decree had been the next Minister of Justice called István Bittó. See: KÖVÉR, *op. cit*., pp. 442–444. Special normative judgements of the Royal Curia of Hungary from the first years of the 1880-ies have influenced the judicature as well.

Csemegi. It was never enacted, but the draft had been given out later in 1872 as a decree by the Minister of Justice.

The document was not an appropriate source of law for regulating the criminal procedure. Moreover, it did not adhere to the modern procedural principles. At that time, *the principle of oral proceedings* and *the right to be heard* was not realised during the criminal procedure; and *free preponderance of evidences* was clearly impossible. All phases of investigation and inquiry were secret and the rights of the suspects' attorneys were pretty limited.[16] Before trial, the investigation and the inquiry was led by the Royal Prosecutor's Office and by the inquiry judge of the locally competent District Tribunal. In case of a technical dispute between the public prosecutor and the inquiry judge, the latter's opinion counted as decisive.[17] In contrast to this, public charge at the main trial was represented by the Royal Prosecutor's Office which could file motions to the Distict Tribunal in case of direct citation, arraignment, and termination of procedure. At trials of courts acting in the first instance there was an oral and *adversarial process*, including the authentication of testimonies. The tribunal could find the accused guilty even in case of a motion of acquittal filed by the public prosecutor. Courts acting in higher instance generally came to their decisions based on the written documents of the inquiry as well as on the transcripts of the main trial.[18]

The deficiencies of criminal procedure appeared in our case too and they led the suit even to the phase of trial, even if the mysterious events could not be made clear by reconstructing the facts.[19] During the investigation organised by Gábor Farkas, the real timeline and happening of events were not set up, moreover, no palpable evidences were collected, only a few testimonies of witnesses instead. The second investigation was in horrible lateness: actions took place a whole moth after Eszter's

[16] KÖVÉR, *op. cit.*, p. 444. Providing defence for suspects was obligatory only in „capital cases" and attorneys were able to meet the defendants and take a look into the documents of procedure only exceptionally.
[17] *Ibid.*
[18] MEZEY, *op. cit.*
[19] STIPTA, *op. cit.*

disappearance, which made it nearly impossible to collect any palpable evidence. This one month distorted the reminiscence of the witnesses in a selective manner too. This phase was quickly followed by the preliminary investigation. We must emphasise that József Bary, the appointed inquiry judge had not taken the bar exams necessary for his role, but more importantly, he did not have enough experience to lead this type of investigation.[20]

The preconceptual charge of ritual murder committed by local Jewish people was based on Samu Scharf's testimony, who was five years old and made his confession without the presence of his personal representatives, his parents. Móric Scharf became separated from his family and from the other suspects; after that, he was examined as a witness and made a confession against the other suspects on 21st May 1882 under objectionable circumstances. The examination took place in a civil house owned by the local gendarme at Nagyfalu, during the night. József Bary was not present, although he would have to write the official transcript; instead, Móric was interrogated by the gendarme called András Recsky while a clerk called Kálmán Péczeli wrote the official document. Consequently, the fourteen-year-old Móric was interrogated without the presence of any personal representative and the undated transcript of his testimony contained several expressions – like „*duress, scene*"[21] – which he had not used or had sad differently. The boy, who became the key witness of the main trial, said that „*he had been watching through the keyhole of the synagogue's door*" when the Jewish suspects killed Eszter Solymosi who was walking home and had been invited by József Scharf into his house to move some candles.[22]

[20] *Ibid*.
[21] *Ibid*., p. 28.
[22] KÉPESSY, *op. cit*., p. 413. The explanation to this could be that moving candle counted as working which is forbidden during the sabbath for Jewish people. Meanwhile, the dead body of the girls was not found yet; the inquiry judge became desperate because he even asked a sybil about the exact location of the corpse and interrogated an innkeeper based on that „advice". See: KÖVÉR, *op. cit*., p. 557. It was crucial that Móric defined his role in his testimony otherwise like Samu had described earlier (accomplice – eye witness), and altered the role of his father (accomplice – he had just invited Eszter into his house and a Jewish man from the synagogue got Eszter out. See: KÖVÉR, *op. cit*.

The truth of the statements made by Móric Scharf became quickly challenged by other witnesses' testimonies collected during the inquiry by József Bary. These confessions tried to determine Eszter's path and the timeline of events on 1st April.[23] Some written testimonies, which supported the accusation, were all collected from illiterates. Therefore, these documents were signed only with crosses and it debatable whether they had been read for the witnesses. Moreover, many witnesses changed the content of their testimonies during the phases of preliminary investigation and the inquiry and on the main trial frequently. This could be motivated based on certain aspects. Firstly, recalling their memories about the events again and again distorted their reminiscence.[24] At the same time, there were not any reliable methods available for measuring time, so the basis of testimonies was often weak and vague. (As an example, it seemed rather difficult for József Bary to support the charges based on the confession of Móric Scharf when a witness called Borbála Feketéné stated that when she had been walking home from the Catholic church after mass on 1st April, she heard sounds of crying from the synagogue and she had seen two Jewish men at the door of the building. Therefore, Móric would have not been able to see the events happening in the synagogue through the key hole because then he would have been seen by Feketéné as well[25].)

Moreover, there were other peculiarities such as the spontaneous uniformity of some testimonies. Some even tried to influence or even „*train*"[26] witnesses. Confessions became homogeneous in case of the accused Jewish people at the main trial and from the perspective of the people who had (partially) identified the corpse at Tiszadada. The accused could be led by an internal urge that as members of a small and solidary community their testimonies should be similar, otherwise prosecution could confuse and suspect them successfully based on these differences. Likewise, the

[23] KÖVÉR, *op. cit.*
[24] BLUTMAN, *op. cit*. „Supplementing" memories generally shows the intention of the person wanting to recall the real events, like „realization".
[25] KÖVÉR, *op. cit*., p. 539.
[26] BLUTMAN, *op. cit*., p. 122.

distant relatives and acquaintances of Eszter Solymosi, who had taken part in the first coroner's inquest, had stated that there were some similarities between the corpse and Eszter, however, they changed their testimonies later because identifying the corpse as the dead body of Eszter Solymosi seemed unreasonable and impossible for them, according to the fact that neither the mother nor the closer relatives stated that.[27] Yet, some witnesses were influenced also in favour of the accused and the charges as well. Influence in favour of the accused was usually bribery (for example one witness had got some money from a Jewish person before confession), in favour of the charges it was usually use constraint and abuse, although those did not become proved[28].

The most famous „*witness*" of the trial was Móric Scharf, who was kept separated from his family and the other suspects right after being taken into custody until the main trial. The opinion of Károly Eötvös[29] was quite extreme because he thought that the situation itself could lead Móric Scharf to make a harsh testimony against the accused. Móric could have realized that his small community probably would not take him back after he was the key witness of the prosecution and had made a testimony against the members of the community during the preliminary investigation. He might see the option of cooperation with the prosecution at the main trial as a sole opportunity. Another source of his motivation could have been that he broke away from the closed world of the small village and got to know the more developed (semi-)urban milieu at Nyíregyháza which could offer more opportunities for him, therefore he might find it more attractive[30].

During the blood libel trial at Tiszaeszlár, it was the main trial where the procedural deficiencies and instigated emotions culminated. Ede Szeyffert, deputy

[27] *Ibid*. Only Julcsa Szakolczay stated at the first coroner's inquest that the corpse at Tiszadada belonged to Eszter Solymosi. One of the main deficiensies of that inquest was that it was not held right after the dead body had been found.
[28] *Ibid*. The suspicion of abuse emerged by the Rutenian raftsmen from county Máramaros who were accused of „*smuggling the corpse*". See: KÖVÉR, *op. cit*., p. 549. However, the defence exaggerated the idea of abuse.
[29] BLUTMAN, *op. cit*., p. 122.
[30] KÖVÉR, *op. cit*. p. 552.

chief prosecutor stated on the first day of the trial that according to him, the accused had not committed the crimes (premeditated murder, complicity, abetment) which were included in the charges. Therefore, he proposed the discharge of accused. Consequently, (public) charge was not represented by anybody in this lawsuit.[31] As usual in that era, the suit had followed a *mixed procedural system*, including a *written inquisitorial process* (phases of investigations and inquiry) and an *oral accusatorial process* (main trial) in contrast. At the main trial literal, stenographic transcripts were written because the prosecution and the defence both wanted to record everything appropriately.[32] Some witnesses, as we mentioned, altered their testimonies quite often, even during the trial itself. The tribunal did not authenticate those confessions (via taking an oath) and did not take them into account when rendering the judgement. For witnesses who did not speak Hungarian there were not always interpreters available for helping making testimonies so the truth of their confesses during the investigation and the trial seemed questionable. The defence often referred to the inappropriate regulation of the position of the inquiry judge and to the mistakes made by József Bary who did not have the necessary experience to hold his position. Moreover, they tried everything to prove that the corpse found at Tiszadada belonged to Eszter Solymosi. At the same time, prosecution upon the motion of the aggrieved party (and the inquiry judge as well) wanted to prove that the corpse was not the dead body of the young domestic servant.[33]

The press also followed the main trial, representing filo-Semitic and anti-Semitic opinions as well. At the end, all of the accused were discharged and the corpse was determined not belonging to Eszter. The Regional Court of Appeal and the Royal Curia

[31] *Ibid*., BLUTMAN, *op. cit*. Attorneys at Nyíregyháza who were in connection with the defence wrote even a letter about this peculiarity to the Minister of Justice. Although the demand for punishment of the accused was represented by Károly Szalay, attorney on the motion of the aggrieved party, the accusatorial quality of the suit was quite weak.

[32] STIPTA, *op. cit*.

[33] From the perspective of the charge, blood libel would have been incorrect if the corpse had been determined as the dead body of Eszter Solymosi because no signes of incision had been found on the neck of the corpse. Therefore, the raftsmen from Máramaros had been suspected at first with „*smuggling the dead body*". See: KÖVÉR, *op. cit.*, p. 549.

of Hungary did not change the judgement of the District Tribunal in the process of redresses, although they criticised the deficiencies and contradictions of the transcripts written by the inquiry judge during the phases of investigations.

3. Conclusion

The blood libel trial at Tiszaeszlár was the first criminal process in the 19th century Europe in which the alleged crime included the blood libel.[34] Exploring the facts of the case already seemed impossible at the time of the first official investigation of authorities and the inconsistent testimonies of witnesses made the procedure more difficult. The main cause of the disappearance of the young girl stayed unclarified, even her death was not proved. The principles of modern criminal procedure which can guarantee the *prevention of unjustified suspicion* did not prevail during several phases of the process. After doubtful testimonies and actions of investigation carried out wrongly and too late, there was hardly anybody who founded the charges well-grounded, including those who had to represent the charges *ex officio*.

At the end the process reached the phase of trial, although it should have not do it, and despite the absolute discharge, it carried out both serious and significant consequences. It gave a boost to political anti-Semitism in Hungary through the strengthening of the National Anti-Semitic Party and brought out sweeping reforms in the regulation of criminal procedure. This case casted light upon the fact that reforms of criminal procedure cannot be delayed. The result of it was the enactment of Act 33 of 1896 on Criminal Procedure.

[34] STIPTA, *op. cit.*

Imre Farkas Küzmös: The Phenomenon and the Hungarian Law of Duels

Eötvös Loránd University, Faculty of Law

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On an autumn morning in 1877, tragic events were reported in the Pest newspapers.[1] A young lawyer, Perczel Aurél, the barely 28-year-old son of Justice Minister Béla Perczel, was shot dead in a duel. Perczel's opponent, László Wágner, a professor at the Technical University, later committed suicide in a moment of great nervousness. The conflict between the two men began in Ausseen, where Perczel met Wágner's young wife. Although their relationship never went beyond the boundaries of simple flirtation, Aurél made insulting remarks about the beautiful woman while drinking with his friends. A friend of his asked him to retract his careless statement with manly sincerity in front of the same company, pointing out the possible consequences, but Perczel refused. On his return to Budapest, Wágner's assistants, Sándor Leövey and Dénes Szűry, ministerial secretaries, came to see him, and challenged him to a duel, no doubt seeking chivalrious satisfaction for the serious offence committed. Perczel's assistants were Oszkár Ivánka and Ödön Szitányi, Imperial and Royal Chamberlains. After it became clear that the matter could not be settled peacefully, the assistants agreed to a pistol duel, with ordinary pistols at a distance of twenty paces. The duel took place in the morning hours on the 26th of September 1877 in the forest of Rákospalota. Both parties fired simultaneously to the sign of the assisting conductor: Wágner was unharmed, but Perczel suddenly staggered and after taking a round turn, fell on the grass. The bullet pierced his neck and after a few seconds of dying, he passed away.[2]

[1] CLAIR, Vilmos: *Magyar párbaj. Magyar párbajok. Attila hun király idejétől az 1923. év végéig [Hungarian duel. Hungarian duels. From the time of King Attila the Hun until the end of 1923]*. Budapest, 2002, Osiris Kiadó, pp. 277–288.
[2] *Budapesti Hírlap*, 5 July 1888, p. 3.

The tragic outcome of the duel caused massive public outrage in the press, reviving the social discourse about duels. The incident made it clear that the feudal and harmful legacy of duelling, incompatible with civic ideals, is a phenomenon that must be eradicated from society's psyche.

The legislator dealt with duelling in Chapter XIX of Article 5 of 1878, the provisions of which – in themselves – are very difficult to understand. To understand them, we need to be familiar with the history, the concept, the function and the social significance of duelling.

What are the reasons for this? To answer this question, we need to understand the origins of the duel, its motives and its social relevance. Starting with the origins of the duel, many authors, including the already quoted Vilmos Clair, trace it back to antiquity, or – in the case of Hungary – even to the time when the founders of the state of Hungary definitively settled in the Carpathean Basin. It is important to note, that this position may be misleading, since, as Ede Gergely pointed out in his study,[3] these ancient duels were only similar in appearance to the duels that gradually spread from the 16th century onwards.[4]

The main difference lies in the motives, the most important of which is the harm of individualised honour, which was treated with a completely different attitude in antiquity. To illustrate this, consider, for example, the notion of honour of Homer's heroes, which is very specific in today's terms. Although this phenomenon exists only in the abstract today, in the ancient world 'collective' honour, i.e. the collective honour of communities, cities or whole nations, was much more predominant. In this context, heroes and leaders such as Hector and Achilles always fought in the name of someone

[3] GERGELY, Ede: *Az Országos Párbajellenes Szövetség megalakulásának története és működésének ismertetése [The history of the establishment of the National Dueling Association and description of its operation]*. Budapest, 1908, A szövetség kiadása, p. 6.

[4] Andrea Juhász, for the sake of simplicity, called them modern duels. JUHÁSZ, Andrea: A párviadal vétsége és az államfogház-büntetés a Csemegi-kódex szabályozásának tükrében [The offense of dueling and the state prison sentence in the light of the regulations of the Csemegi Code]. *De iurisprudentia et iure publico*, No. 2., 2014, p. 1.

or something, in their case the Trojan – or Greek – army and people. This phenomenon explains why, while the whole Greek world was set aflame for Helen, the duel between Hector and Achilles was not an act of individual revenge, but a way of settling a battle between two armies that cost little blood.[5]

Looking at the later types of duels, let's examine the prominent medieval judicial duels. Its origins were traced by Frigyes Pesty to the judging customs of the pagan Germanic, Celtic and especially Scandinavian tribes. According to Pesty, the first written records of judicial duels are to be found in the Burgundian laws.[6] In a law passed in 502, King Gundobald of Burgundy summarised the legal customs of the time, thus for the first time in history mentioning and regulating the institution of the "decisive duel" (according to a document of Bishop Agobard of Lyon, he even thought that Gundobald was the one who had introduced this very institution).[7]

As far as Hungary is concerned, the rules of judicial duels are unknown in the medieval law codes. Only once was the subject mentioned in detail, when Matthias and Ulászló II decided to abolish them. According to Pesty, this is a sign that the custom had already developed and was being observed in the country by the 13th century. Similar cases were often mentioned in documentary practice.[8]

It was customary in the German territories for the would-be combatants to submit an indictment (libellus) to the judge, asking for permission to win their rights by jousting. In these, the accusing party presented his complaint and then asked the judge to allow them to fight a duel if the party he accused did not admit the allegations he had made.[9] Although no such indictment has been found in Hungary, it is assumed that one must have existed in Hungary, since the duel was always by mutual consent

[5] VUTKOVICH, Sándor: *A párbaj [The duel]*. Budapest, 1895. Eggenberger-féle (Hoffmann és Molnár) könyvkereskedés, p. 11.
[6] PESTY, Frigyes*: A perdöntő bajvívások története Magyarországon [The history of court battles in Hungary]*. Budapest, 1867, Eggenbegger Ferdinánd Akadémiai Könyvárus Kiadó, p. 8.
[7] *Ibid.*, p. 10.
[8] *Ibid.*, p. 19.
[9] GERGELY, *op. cit.*, p. 10.

of the parties.[10] In Hungary, the chewk, or chewewk, was the challenge token (a wooden stake), which was presented by the challenger to the challenged.[11]

It is also important to note that the fight was generally non-lethal, the first shed of blood or the discharge of a weapon was enough. The fight was also fought with specific weapons.[12] In Hungary, the most common form of combat was the cavalry clash, in which the parties would break heads and then fight with swords or clubs.[13]

To sum up the relationship between modern duels and judicial duels, it is important to point out that although the latter contributed greatly to the development of the customs and framework of the former, judicial duelists were driven by completely different motives than the modern duelists. The judicial duelist fought for divine justice, that is, for the irrefutable presumption that his victory was due to nothing other than his own righteousness. The presumption itself was irrefutable because a deeply rooted religious conviction in the society of the time held it to be self-evident that God would help the just in controversy. In contrast, the modern duellist fought to defend his own chivalrous honour to avenge a perceived or real injury inflicted upon him.[14]

Closely related to judicial duels is the institution of hired deputies, the "champions", which originates from France. The parties involved in judicial duels often did not fight in person, but had a pugil, a hired champion, to fight in their stead.[15] The pugil[16] was originally an object of public scorn in many European countries, a craft typically practised by slaves and people of servant status.

This was far from being the case in Hungary though, where pugils were respected and considered free, property-owning people, who could even be ennobled

[10] *Ibid.*, p. 10.
[11] PESTY, *op.cit.*, pp. 22-25.
[12] *Ibid.*, p. 33.
[13] *Ibid.*, p. 44.
[14] GERGELY, *op. cit.*, p. 6.
[15] *Ibid.*, p. 11.
[16] In France they call him the champion.

for their merits. Princes, lords and even abbots kept permanent pugils. Pugils could be used to substitute the elderly, those over sixty, clergymen and women as well. As for the public esteem of the pugilists in Hungary, I think it is in little details such as this where we can discover a quite specific Hungarian attitude towards dueling. An attitude rooted in the long past, which many refer to as the 'militant Hungarian spirit'. Arisztid Dessewffy, in his pamplhet called "Anti-duelling movement in Hungary" has made the following remarks about this phenomenon: "*Let us not forget that the Hungarian is a chivalrous race, and that it is in their blood to retaliate in a chivalrous way for the slightest offence, not to speak of insult*."[17] It was this same militant mentality that was behind the social prejudice that hindered the reform efforts of the 1878 legislation and which renowned figures such as Arisztid Dessewfy, Géza Kenedi and Rusztem Vámbéry tried to fight tooth and nail.

Another predecessor of the modern duel were the medieval jousting tournaments. These can, quite simply, be described as a ritualised, ritualistic-game form of war. They had a sporting and entertainment purpose, but were primarily used to practise armed combat.[18] In the early versions of these tournaments, the defeated man's arms and horse were taken into the possession of the victor, and often the loser himself became a prisoner of the defeated man, being released only in exchange for a ransom. By the 12th century, however, tournaments had become much more refined and civilised. The aim was no longer to get the loser's possessions, but to prove their worth to the dignitaries present, especially the king and certain ladies. All of this was closely linked to the cult of women in chivalric literature,[19] which, along with the growing desire to prove oneself, in my opinion, contributed greatly to the development of chivalric honour.

The classical form of combat on horseback was the "tjostírozás", the sport of "spear-breaking", which I have already mentioned above in relation to Hungarian

[17] GERGELY, *op. cit.*, p. 169.
[18] *Ibid.*, p. 7.
[19] *Ibid.*, p. 7.

judicial duels. This is the first thing that comes to mind when people of today think of jousting. Given that the main aim of these tournaments was for the participants to prove themselves, the tournaments became more and more athletic and the rules more and more refined.[20] These rules can in fact be seen as the precursors of modern duelling customs and frameworks.

To conclude, jousting was closer to modern duels than judicial duels in a sense, because between the motives of the jouster and the modern duelist, we can discover the first parallels. With this, I am referring in particular to the ever-rising importance of the king's, the court's and a particular social class's opinion. The acquisition of a presumption of competence became a key factor in maintaining the social status of the knights and hence their prosperity. This priceless presumption, like the presumption of divine truth in the case of judicial duels, could only be acquired through struggle. Despite all this, chivalrous jousting still cannot be considered a forerunner of modern duelling, because the combatants in chivalrous jousts always offered their victory to the king or a lady.

At this point, the cult of acquiring individual honour through sheer physical violence was beginning to take definite shape (though it should be noted that this idea was already present to some extent in the logic of judicial duels). But to arrive at the chivalric concept of honour which underlays modern duels, another important process had to go through. This process was the separation of the knighthood from the nobility.

Ágnes Kurcz (referring to Elemér Mályusz) explained that in the Hungary of the 13th century, there was a tendency to equate knighthood with nobility.[21] In the West, the knighthood and the nobility were already separated at the turn of the 12th and 13th centuries, but in Hungary this process took place only at the end of the century.[22] The

[20] *Ibid.*, p. 7.
[21] KURCZ, Ágnes. *A lovagi kultúra Magyarországon a 13–14. században [Knightly culture in Hungary in the 13–14th century]*. Budapest, 1988, Akadémiai Kiadó, pp. 113–114.
[22] GERGELY, *op. cit.*, p. 8.

development of the army also played a major role in the separation of knighthood and nobility. There is a theory originating from Schopenhauer, that where the state is unable to reward those who serve it adequately, it rewards them by other means, such as by giving them special prestige.[23] This prestige was becoming increasingly important for the knighthood as they lost their military importance and thus their legitimacy. Up to that point, their identity had consisted of their ordo militaris status and the primitive chivalric honour, which had become extremely valued as a result of the loss of the former. To support this phenomenon, Ede Gergely, quoting Sandberg, states that the increased cult of the concept of chivalric honour in the 14th century England compensated the chivalry for the loss of their military significance.[24]

After all this, the only thing that remained of the identity of the classical chivalry was the now valorised knightly spirit, also referred to as "knightly honour", an idea which sometimes can be felt nowadays as well. It is enough to think of the word 'knight' or 'knightly', which has a positive connotation to this day. This was even more prevalent at the turn of the 19th and 20th centuries, when if a duel was described as 'chivalrous', it meant, that all the rules had been properly kept. Furthermore, a "chivalrous settlement" meant the honest, 'clean' conclusion of a case. Thus the term "unchivalrous procedure" became synonymous with dishonesty. In the same way, the ideal man of this age, the gentleman of honour, considered himself the heir of the medieval knights when he demanded armed redress for his perceived or real grievances. [25] This is the type of man whose motives and fears are behind modern duels. Only by deeply understanding their psyche, can someone realistically set out to properly legislate duelling and thus, put an end to the phenomenon of duels.

In the light of these, I believe we are now adequately prepared to begin tackling the conceptual approach of the 1878 legislation. A duel, according to the trichotomous system of the Csemegi Code (crimes, misdemeanours and misconducts), is

[23] *Ibid.*,p. 2.
[24] *Ibid.*, p. 10.
[25] *Ibid.*, p. 9.

conceptually distinct from both manslaughter (a crime) and assault (a misdemeanour). This is because a duel can lead to both manslaughter and assault – or even to nothing at all. Due to this, it is reasonable to classify duels as a *delictum sui generis*, inserted between crimes and misdemeanours.[26] This solution was not unique, as many legislators of criminal law in Europe had already reached this conclusion by that time.

The *delictum sui generis* nature of duels is further reinforced by the fact that, although they cannot be left unpunished – as threats to the social order –, there is no doubt that the motives of the duelist are far from nefarious. This goodwill-inducing honourable motive ends up being a source of understanding and acceptance in society, the views of which laws must abide to at all times. After all, it is understandable that the sense of justice of many people would be offended if the winner of a duel were to receive the same treatment as some nefarious assassin. The institution of *custodia honesta* was created to remedy this problem, the essence of which is that although the offender is deprived of his liberty (for he has broken the rule of law and cannot be allowed to go unpunished), this is done in such a way that his honour is not damaged and the punishment is not morally degrading.[27]

Regarding the technical approach of the regulation, Chapter XIX consists of eight sections (Sections 293-300), which in itself raises concerns about its comprehensiveness. One is immediately struck by the institution of state prison, which is mentioned in these sections and in which *custodia honesta* is easily recognisable. State prisoners were allowed to receive visitors, wear their own clothes and were not required to perform forced labour.[28] However, after a closer study, it also becomes apparent that the passages have overlooked many eventualities and are incomplete. In addition to these shortcomings, the disproportionate nature of the legislation is also apparent. The party who wounded the other was punishable by two years in state prison, while the party who killed the other – either instantly or by causing a mortal

[26] JUHÁSZ, *op. cit.*, p. 1.
[27] *Ibid.*, p. 7.
[28] They were even allowed to consume alcohol to a certain extent. *Ibid.*, p. 8.

wound – was punishable by five years in state prison. All this, as we already know, can be partly explained by social perceptions. At the same time, there is no doubt that the situation created by this legislation was untenable.

Two realistic solutions to eradicate this "social prejudice".[29] were considered appropriate, as well as realistic in the late 19th century. The first solution was to convince the legislator to change the values and perceptions of society through strict regulation. The second solution, which proved more effective in practice, was rounding up the elite class to create and enter large-scale civic organisations, clubs and associations, that promoted anti-duelling views and prohibited duelling for their members. In the following, I will discuss the attempts to realize both the former and the latter ideas in Hungary.

Géza Kenedi, a prominent legal theorist at the time, was an advocate of legal regulation – although he took great part in realizing the second idea later on as well – , and thus believed that the responsibility of remedying social prejudices rested on the shoulders of the legislature. An 1902 article of his, published in the Journal of Legal Studies, called 'On the Legal Questions of Duel' sums up his views quite well.[30] He states in the attitude of *de lege ferenda* what he believes the legislator should do. The first thought he raises is that of making the penalties for libel and slander more severe, but he quickly dismisses this. It is important to stress, as I have already pointed out, that we are talking about the concept of noble honour. Given that duels were typically fought among members of the aristocracy, tightening up the principle of equality of rights merely with regard to the noble classes would have been a serious breach of the principle. Such class legislation would have led to draconian strictness in dealing with everyday conflicts between the common folk. [31]

[29] A term often used to refer to the permissive approach of society to duelling at the time.
[30] KENEDI, Géza: A párviadal jogkérdései [On the legal questions of duel]. *Jogtudományi Közlöny [Journal of Legal Studies]*, No. 52., 1902, pp. 437–439.
[31] *Ibid.*, p. 437.

His second idea is the abolition of duels as a concept from the criminal law, but he dismisses this as well. France was the first to try to get rid of duels in this way, with little success.[32] To put it simply, they have ruled out every instance of the word "duel" from their criminal law, meaning all consequences of duels were to be treated as assault or manslaughter, depending on the outcome. Obviously both the judges and the people felt how unjust this was, so the judges continued to give lighter penalties or no penalties at all, despite the regulations. To regard the results of a duel as mere assault and manslaughter is extremely out of touch with society's perception and, as I have already explained in the definition of duels, it is very offensive to one's sense of justice. There was no doubt that both the common folk and the judiciary would treat such situations more leniently, were the legislator to walk the same path as France did. With that said, the only option left was to reform the duel chapter. Here Géza Kenedi refers to the works of László Fayer, who formulated the problems of the regulations with great precision. Fayer's observations can be divided into three main problem areas.[33]

The first problem area arises from the ignorance (real or deliberate) of the regulation. Section 299 spoke of the 'customary or mutually agreed rules' of the duel, but the alternation between the two is flawed. There are both customary and consensual rules present at a duel, which exist in parallel to each other. The customary rules were general rules that formed the basis of the whole chivalric procedure. The consensual rules concerned the execution and the conditions of the fight. Ignoring both the general rules and the consensual conditions would lead to unfair judgements. Without this knowledge, the judge would be unable to properly see through and analyze the case. Nevertheless, in practice, the judges ignored the general rules and did not examine the conditions of the fight.

[32] *Ibid.*, p. 438.
[33] *Ibid.*, pp. 438–439.

The second set of problems were the issue of assistants. The law made no provision for a duel without assistants or witnesses, nor for cases where the assistants themselves broke the rules of the duel. It is an omission that, apart from Section 294 (Assisting in a simple challenge), there were no provisions for the punishment of assistants for any other reason, although, as there was a saying at the time: 'It is not the duel that kills, but the assistants'. Section 300 laid down a saving clause: 'Witnesses and physicians present at the duel, and [...] assistants who have endeavoured to prevent the duel: they shall not be punished.', but it did not speak of assistants who had – in fact – not endeavoured to prevent the duel. Even an unscrupulous assistant of a duel that led to death was not liable to a punishment more severe than six months in state prison.[34] Not to mention that this six-month punishment was based on the acceptance of the challenge (Section 294), not on the immorality of the act in any other respect. Section 299 seems also unfair, as it deems assistants who were otherwise unable to prevent duelists who broke the rules of the duel from doing so their accomplices in this act (e.g. a rule-breaking, "cheap" shot). It is clear from all of this that the punishment of the assistant was not at all consistent with the punishment of the offending duelist.

The third set of problems relates to shortcomings and disproportionalities, of which the assistant's section has already taken a great part of. For taking stance (being present and armed at the pre-arranged time and place), Section 296 spoke of imprisonment for up to one year, while in the case of simple wounding (Section 298) it was up to two years, the difference between the two hardly being proportionate. Cases in which the fight took place without wounding, even the cases where a bullet has pierced the clothes of one of the combatant were treated simply as "taking stance" as well. The judge in these cases was forced to classify the offence as taking stance. The greatest disproportionality, of course, was the regulation of duels resulting in death, which was punishable by a meagre five years of imprisonment. The Belgian code

[34] Which, as we are by now aware of its circumstances, is hardly a punishment at all.

imposed a 10-year prison term and a fine of 20,000 francs for a repeated offence, while the German code sentenced recidivists (repeat offenders) to 2 to 3 years in prison for the mere act of recidivism. The Austrian code punished the surviving party with a prison term of 10 to 20 years. In the light of all this, the leniency of the rules could hardly be justified. Chapter XIX of the Csemegi Code did not deal with recidivism, nor did it deal with ancillary penalties. The former would have helped the legislator to deal with regular duellists, while the latter would have helped the legislator to take a more vigorous stance against the wealthy classes, who are generally responsible for duels. With Chapter XIX, the legislator has distorted an already flawed situation and despite the many loopholes in the legislation, he has not sought to fill them. Assistants were often praesumed exempt and sentences were pushed towards the minimum.

In that time, an extensive literature of anti-duelism was developed, in which the works of Rusztem Vámbéry, who was also a member of the board of directors of the National Anti-Duelling League together with Géza Kenedi, deserves mention. In his writings, he recognized that tightening the rules would not prevent 'duelling' and he agreed with Géza Kenedi that the state prison was too lenient as a punishment and in fact had no deterrent effect.[35] He also did not think that it would be a good solution to increase the penalties for defamation, because society – if the offence was serious enough – would put such great pressure on the victim to act, that it would be hardly realistic to expect him to resist. The victim himself had to avenge the offence, the stain on his noble family prestige and honour, otherwise the reputation of his unmanliness would have begun to spread and he could have very quickly found himself the subject of public ridicule. Vámbéry's final conclusion was that the second solution, the path of civic organizations should be tread, following the example of England. In other words, the elite, specifically the nobility and the army, had to be round-up under the banner of anti-duelling, in a sort of a "civil organisation".[36] Then, with an organisation or group

[35] VÁMBÉRY, Rusztem: A párbaj [The duel], *Jogtudományi Közlöny [Journal of Legal Studies]*, No. 50., 1917, p. 431.
[36] *Ibid.*, p. 432.

of organisations such as this, it would have been possible to democratically and organically eradicate the idea of duelling from psyche of society.

In Hungary, there were two such prominent organisations. The Nagyvárad League, of which Endre Ady, a famous Hungarian poet was a committed member of, and the National Anti-Duelling League, which was modelled after the Nagyvárad Leauge, but on a national scale. The anti-duelling movement in Nagyvárad began with Vilmos Vázsonyi, a Member of Parliament. He was provoked by another member for his speeches in the Parliament, after which, it would have been the natural course of things to continue the debate in a clearing in the woods, with pistols in hand. But Vázsonyi, showing no little moral courage, refused the challenge, based on his principles. His supporters formed an organisation in Nagyvárad, and among the organisers was Ady, who was also the probable author of an appeal published in the Nagyvárad issue, on the 8th of December 1901, in which he wrote the following: „Citizens! It is your most sacred rights. Your most sacred rights are at stake. Your example will be followed elsewhere, the whole of public opinion will be stirred up and that medieval prejudice, that patented murder, whose name is duel, will be swept away." This was the basis of the country's first anti-duelling association.[37]

At the turn of the century, duelling became so rampant that at the meeting of the Peace Association of the Countries of the Hungarian Holy Crown, convened on 21st January 1903, the idea was raised that a national association should be formed on the model of the Nagyvárad League. The association itself was originally concerned with war-related matters, but the proposal was accepted, since as they put it, war was nothing more than a 'war between individuals'. On the 12th of July 1903, the inaugural meeting was held in the building of the Court of Audit, and István Rakovszky, the head of the State Audit Office, was elected president. Arisztid Dessewffy, Árpád Bókay and Károly Zipernovszky were elected vice-presidents of the anti-duel association. There were also a few familiar names on the board, them being Rusztem Vámbéry and Géza

[37] GERGELY, *op. cit.*, p. 120.

Kenedi. One of the main reasons for Kenedi's membership was that he had already proven himself as a duelist in his youth. The federation payed great attention to avoid giving the public the impression that it was made up entirely of people who have never held a sword in their lives. However, immediately after their formation, they came into conflict with the Nagyvárad League. In the statutes of the National Anti-Duelling Leauge,[38] the following lines were written: „As our laws do not afford honour a sufficient and complete protection, the league does not require of its members the promise never to fight a duel, but reserves to each of its members the freedom of action in this respect."[39]

For understandable reasons, this has led to a great deal of controversy. It is perhaps not surprising that among the most vocal critics of the national league we find the name of Endre Ady, who commented on the developments the following: "The National Anti-Duelling Association was founded yesterday in Budapest. [...] The Budapest League, among other decrees, has decreed that a court of honour formed from the League may order – in necessary cases – a chivalrous match. Europe has never seen such an anti-duelling league. István Rakovszky, Arisztid Dessewffy and the others have completely twisted the meaning of the league, ruining a Western European idea born of a new age's intuition. They have codified the existence of chivalrous honour, whereas there is no such thing, and there cannot be." Arisztid Dessewfy responded to the position of the Nagyvárad League in his pamphlet, called "The Anti-Duel movement in Hungary". According to him, the League of Nagyvárad took a too rigid position. He considered their efforts to reject all duels honourable, but he believed that this would isolate them from society and would lead to contempt from the supporters of duelling. This "intransigence", he felt, would do more harm than good. As he himself put it: "Let us not forget that the Hungarian is a chivalrous race, and that it is in their blood to retaliate in a chivalrous way for the slightest offence, not to speak

[38] § 10.
[39] GERGELY, *op. cit.*, pp. 167–168.

of insult."[40] So, if they wanted to achieve their goal, they had to keep the chivalrous forms, all the while trying to insist on other forms of satisfaction.

In the end, neither the legislator nor the associations were able to bring about the end of duels in Hungary. During the events of World War I, the number of duels decreased considerably, as most men were needed on the fronts. Although duelling flared up again towards the end of the war, due to all the insults that the parties had not been able to remedy during the war, the period of 1921–1925 saw a significant reduction in court judgements of duel cases. Of course, due to the prestige of duels and, according to Ede Gergely, the socio-psychological motivations of noble men,[41] the number of duels continued to fluctuate even in the 1930s. Another such inner motive was a sort of desire for dominance, which noble men acquired during their socialisation. A compulsive sense of duty, the *'libido dominandi*', as it was called by Pierre Burddieu.[42]

As time went on, and as the concept of 'the gentleman' was becoming obsolete, so too was the concept of dueling. In the years of 1935–39, social perceptions changed. The social pressure that had been referred to so often in the past, the pressure that was forcing people into duelling, has faded by that time. Although the older generations still clung to the old chivalrous forms of settling their differences – in their case, by duels – World War II swept away these older generations.[43] And with this older social stratum gone, so was the idea of duelling, which thus vanished from the psyche of the Hungarian society.

[40] *Ibid.*, pp. 168–169.
[41] *Ibid.*, p. 185.
[42] *Ibid.*
[43] *Ibid.,* p. 189.