

VII

# SIC MUR AD ASTRA

EDITORS  
GERGELY GOSZTONYI  
IMRE KÉPESSY  
DUNJA MILOTIĆ

Collection  
of papers  
on **Hungarian**  
and **Croatian**  
legal history 2024

ISBN 978-963-489-672-2

# SIC MUR

EDITORS  
GERGELY GOSZTONYI  
IMRE KÉPESSY  
DUNJA MILOTIĆ

# AD

**Collection  
of papers  
on Hungarian  
and Croatian  
legal history 2024**

# ASTRA

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

## Table of Contents

|  |     |
|--|-----|
| Croatian–Hungarian Legal History Summer School .....   | 1   |
| Panna MEZŐ: The history of the Hungarian Palace of Justice .....   | 3   |
| Kincső Johanna KESZI: Provisions of the First Amendment to the Csemegi Code ....   | 14  |
| Máté LUKÁCS: The rights of prisoners during Hungarian civil era.....   | 26  |
| Josipa SUDAR: Case against Diletta – an early case of sorcery .....  | 37  |
| Zoe L. ŽILOVIĆ: The use and form of judicial torture in Croatian lands .....   | 47  |
| Jakov Vojta ŽUJO: Criminal protection of marriage in the interwar Yugoslav state..   | 61  |
| Bernadett MARTINEZ: The punishment of stuprum violentum in the Csemegi Code  | 74  |
| Zsófia Anna GÉMES: Infidelity as a crime against the state in the Csemegi Code.....  | 85  |
| Zsolt BAKOS: The person who paved the road for women to law – The life and challenges of Margit Ungár.....   | 103 |
| Zsigmond SZÓGA: The regulation of prostitution in Budapest between 1867 and 1914 .....   | 116 |
| Josipa JERABEK: Regulation of prostitution in Croatia and Slavonia at the end of 19th and the beginning of 20 <sup>th</sup> century .....                        | 128 |
| Dóra KARSAI: Women’s criminality in the 19 <sup>th</sup> –20 <sup>th</sup> century .....   | 142 |
| 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 ..... | 152 |
| Matija MATIĆ: Show Trials in Communist Yugoslavia (1945-1948) – The Staged Trial Against the Archbishop of Zagreb Alojzije Stepinac.....                         | 160 |
| Antal Zoltán MASASON: A mysterious case or the criminal procedural characteristics of the blood libel trial at Tiszaeszlár.....                                  | 172 |
| Imre Farkas Küzmös: The Phenomenon and the Hungarian Law of Duels .....  | 182 |

# **Máté LUKÁCS: The rights of prisoners during Hungarian civil era**

**Eötvös Loránd University, Faculty of Law**

DOI 10.21862/siaa.7.3

## **1. Introduction**

Was the prisoners' reintegration into society the core value behind the Hungarian civil era's<sup>1</sup> 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

---

<sup>1</sup> 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).<sup>2</sup> 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.<sup>3</sup> The medieval Hungarian prisons had several functions, so there was hardly any institution specifically for the purpose of penal deprivation of liberty.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

---

<sup>2</sup> MEZEY, Barna: *A magyar polgári börtönügy kezdetei [The beginnings of the Hungarian civil prison system]*. Budapest, 1995. Osiris–Századvég, pp. 7–8.

<sup>3</sup> *Ibid.*, p. 8.

<sup>4</sup> MEZEY, Barna – LÓRINCZ, József: *A magyar börtönügy története [The history of Hungarian prisons]*. Budapest, 2019. Dialóg Campus, p. 34.

<sup>5</sup> MEZEY, *op. cit.*, pp. 12–13.

<sup>6</sup> MEZEY, Barna: *A börtönügy A 17–19. században. A börtön európai útja [The prison system in the 17<sup>th</sup>–19<sup>th</sup> 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 18<sup>th</sup> century, the absolute theory of punishment, which had been advocated by Kant and Hegel, and which had stressed that punishment is only necessary because 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.<sup>7</sup>

## **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 receive 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

---

<sup>7</sup> 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.*”<sup>8</sup>

## **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.<sup>9</sup>

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.<sup>10</sup>

---

<sup>8</sup> MEZEY – LŐRINCZ, *op. cit.*, p. 85.

<sup>9</sup> 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.

<sup>10</sup> 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).<sup>11</sup>

Prisoners' work sentences were based on their abilities, background and inclinations. As a general rule, prisoners had a wide choice of work sentences.<sup>12</sup> 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.*"<sup>13</sup> 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.<sup>14</sup>

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.

---

<sup>11</sup> *Ibid.*, p. 192.

<sup>12</sup> 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. §

<sup>13</sup> SZÖLLŐSY, *op. cit.*, pp. 192–193.

<sup>14</sup> *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.<sup>15</sup>

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.<sup>16</sup> As Oszkár Szöllősy writes: "*If the prisoner were completely prevented from communicating with their relatives and*

---

<sup>15</sup> *Ibid.*, p. 200.

<sup>16</sup> 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.”<sup>17</sup>*

### **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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

---

<sup>17</sup> SZÖLLŐSY, *op. cit.*, p. 184.

<sup>18</sup> MEGYERY, *op. cit.*, pp. 518–519.

<sup>19</sup> SZÖLLŐSY, *op. cit.*, p. 185.

<sup>20</sup> *Ibid.*, p. 185.

<sup>21</sup> *Ibid.*, p. 120.

<sup>22</sup> 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 20<sup>th</sup> 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.<sup>23</sup>

By the beginning of the 20<sup>th</sup> 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.<sup>24</sup>

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

---

<sup>23</sup> MEGYERY, *op. cit.*, pp. 395–396.

<sup>24</sup> 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.<sup>25</sup>

#### **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.<sup>26</sup> Mediation institutions were

---

<sup>25</sup> *Ibid.*, p. 182.

<sup>26</sup> 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.<sup>27</sup>

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.”<sup>28</sup> 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.<sup>29</sup>

### **5. Summary**

---

<sup>27</sup> Ibid, 48–51. §§

<sup>28</sup> MEGYERY, 1905., p. 230.

<sup>29</sup> 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.