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Folk tradition as reflected in the court decisions of the Hungarian courts in the 19th and 20th centuries. The study on legal ethnography

Abstract

Among the numerous interesting and remarkable topics of applied law related to the period between the two world wars, this study focuses on a very special aspect of judicial practice of that time. It attempts to trace archaic standards, legal folk traditions, as reflected by court decisions or brought up by the parties during the litigation process. Based on this approach, studies and case-studies published in a Hungarian ethnographical journal, *Ethnographia*, were re-evaluated in order to exploit a rich historical source and extract interesting legal historical information that had not been directly expressed before.

Key words: legal history, legal cultural history, customary law, legal folk custom, legal tradition, ethnography of law, folk law, legal anthropology, *Ethnographia*, forensic ethnography, beliefs, superstition, witchcraft, fraud, murder

Słowa kluczowe: historia prawa, historia kultury prawnej, prawo zwyczajowe, zwyczaje ludowe, tradycja prawna, etnografia prawa, prawo ludowe, antropologia prawna, „Ethnographia”, etnografia medyczna, wierzenia, zabobony, magia, oszustwo, morderstwo

The 19th century witnessed a growing interest in the studies of folk customs. This tendency was stimulative of the development of the research fields that in various languages were referred to as *rechtliche Volkskunde*, *ethnography of law*, *folk law*, *folklore juridique* etc.¹ In the German research, much emphasis was laid on the study of folk law as a part of customary law. The folk law was detectable in the folk culture, fairy tales, proverbs and songs. While inspired by this tendency, Jacob Grimm began to collect the *legal antiquities*, Kohler tried to compare the law customs of the European nations and to explore the parallels among them. The collections of legal tradition may have also inspired the efforts of Friedrich Savigny who, while contesting the lines along which

¹ Only a few possible interpretations: customary law, unwritten law, common law, indigenous law, primitive law. *Folk Law I–II. Essays in the Theory and Practice of Lex Non Scripta*, eds. A. Dundes, A. Renteln-Dundes, New York–London 1994, p. XIII.

the French Code Civil was founded, demanded that *Volksgeist* should be taken into consideration on occasion of drafting a new German Code of Civil Law.²

Later, also the Hungarian authors, while making their research in the field of Hungarian legal ethnography prepared a fertile soil for the incorporation of some legal folk tradition into the codified civil law.³ This was observable when the legislator allowed the courts to follow local tradition in the area of settling the disputes about neighbours' rights or those arising from trespass to land. In such cases *local customary use* and *local customary standards* were allowed to be applied in order to find the right solution.⁴

Apart from the civil law, also the area of penal law abounded in what might be reminiscent of the folk tradition. Legal ethnography research was engaged in detecting the latter. From the perspective of the lawyers who adjudicated penal cases the knowledge of legal ethnography was helpful in making the judges understand the motives of those accused of certain offences and also their victims since the frame of mind of both the former and the latter was often formed along the lines of what the generation-bred local custom required or along the lines of superstitious beliefs. The latter made the simple men vulnerable to the pressure of Shamans or magicians ruthlessly exploiting their naivety.

What contributed to the enlargement of our information on the Hungarian folk customs, also in the area where their cultivation could cause conflict with penal law, was the journal "Etnographia".⁵ It began to come out in the 1890s due to the effort of the Hungarian Ethnographical Society.⁶ In the activities of the Society there were engaged attorneys, notaries, district judges, academic teachers and other intellectuals. They emphasized the importance of arriving at a deeper insight into the real life of the people, their festive traditions and customs. They believed that this might facilitate the understanding of such acts of simple folk that might bring the latter sometimes to the penal accountability.

Apart from publishing thorough studies on folk customs and tradition the journal tended also to be a "collecting pool" of diverse information and news referring to folk life. Sometimes the reports limit themselves only to describing the uniqueness of tra-

² E. Tárkány Szücs, *Results and Task of Legal Ethnology in Europe*, „Ethnologica Europaea” 1967, p. 195–217; J.T. Nagy, *European Perspectives of Studying Hungarian Ethno-Judicial life* [in:] *Institutions of Legal History with special regard to Legal Culture and History*, eds. G. Béli, D. Duchonová, A. Fundarková, I. Kajtár, Z. Peres, PTE Állam- és Jogtudományi Kar-Institute of Slovak Academy of Sciences, Pécs–Bratislava 2011, p. 377–385.

³ J.T. Nagy, *A jogi néprajz a hazai kutatások tükrében* [Legal Ethnography from a Domestic Perspective] [in:] *Jogi néprajz-jogi kultúrtörténet* [Legal ethnography-Legal Cultural History], eds. B. Mezey, J.T. Nagy, ELTE Eötvös Kiadó, Budapest 2009, p. 83–95; E. Tárkány Szücs, *Magyar jogi népszokások* [Hungarian Legal Folk Customs], Budapest 1981.

⁴ An ample examples for community jurisdiction can be found in the following literature. M. Kőhegyi, J.T. Nagy, *Bónis György és társai jogi népszokásgyűjtése Tápén. (Forrásközlés)* [György Bónis and his Colleagues' Research on Folk Law in Tápé (source publication)], vol. I–III [in:] *Studia Ethnographicae* 1–2, 4, ed. I. Bárkányi, Móra Ferenc Múzeum Évkönyve, Szeged, 1995, p. 195–250, 1998, p. 185–235, 2003, p. 233–245.

⁵ The journal was named *Népélet* [Folk life] between 1923–1925 and *Etnographia-Népélet* [Ethnography – Folk life] between 1926–1948.

⁶ Original name at the foundation: *Magyarországi Néprajzi Társaság* [Hungarian Ethnographic Society] (1889). The chair, Hunfalvy Pál has also collected legal folk customs and Archduke József, studying the gypsy minority, became its patron.

ditional beliefs among the simple-minded folk, but sometimes they describe how the individuals, by surrendering to traditional beliefs and superstition, either caused harm to others or violated public order. In some other cases they might become the victims of various swindlers who drew upon their credulity. Particularly the column entitled *Forensic Ethnography*⁷ smuggled interesting information on cases of legal nature, those in which the folk-tradition or superstition-based activities of individuals might render these individuals tortiously liable for the damage done, or responsible in terms of penal law. Some cases were reported in their early stage, when the proceedings were not yet completed. Therefore we do not know how they ended. In some other cases the final outcome is given. Anyway, they all provide the material worthy of note for the legal historian and everyone interested in the folk tradition of the past.

What was depicted were the folk beliefs including the faith in various types of superstition and magic. Thus we learn that the piece of thunderstricken tree was considered to be an effective cure against the toothache.⁸ From what was reported we also learn of the belief in haunting individuals, particularly those who died of violent death and were supposed to visit their relatives.⁹ The common folk belief had it that the right method protective of such visits consisted in digging up the grave of the deceased, quartering his body, sometimes nailing it to the coffin and burying him again. The acts of that type might be stimulative of instituting the penal proceedings on the basis of damage and abuse.

Some part of the reported information could be dramatic like that on the abandoning and starving to death of a three-year old boy who was regarded as so called *Garabonciás* (something close to a magician or a rainmaker) (1904).¹⁰ Also dramatic was the report on beating to death by the inhabitants of the village of a woman who was considered a witch (1905).¹¹ The information on further developments in these cases is missing. Also we do not know what was the cause of “release” of the man who fired a mortal shot at the robber who, at the Good Friday’s night, was found digging the man’s garden in search of treasure (1906).¹²

Some cases refer to the fraud-based abuse. Simple people were often found to be naïve individuals, and the folk tradition to which they stuck provided a fertile soil for the ease with which they yielded to the dishonest practices. Thus they gave ear to swindlers who offered them healing magic that allegedly cured the diseases they suffered from, or attracted them by invented stories of alleged treasure to which the victims might have an access upon making appropriate expenditures from their property. We also learn of the individuals who offered removing witchcraft from the bewitched houses, and col-

⁷ For a rather long period (1898–1910) *Forensic Ethnography* was a constant column of the most important ethnographical journal of Hungary. Although its start and actual operation is in the period before 1918, its resource value and the references to ethnographical studies make it worth to pay attention to it. *Forensic Ethnography* was published 20 times during the 12 years, it reported 34 legal (mainly criminal) cases in connection with ethnography and folk beliefs, in 10 cases the verdict was announced, 13 of the cases were either in process or the court procedure had already started, while in 11 cases we can only talk about a sharp track of news.

⁸ “Ethnographia” 1905, vol. 16, p. 318.

⁹ *Ibidem*.

¹⁰ “Ethnographia” 1904, vol. 15, p. 240.

¹¹ “Ethnographia” 1905, vol. 16, p. 318.

¹² “Ethnographia” 1906, vol. 17, p. 183.

lected a remarkable gratification for that. When tried on the basis of complaints of those who considered themselves to be cheated, they were punished with rather short imprisonment and fines.

An interesting case of the man who fully surrendered to the belief in bewitchment was that of András Schukkert, a wealthy farmer (1903). He went as far as applying to the court for instituting the proceedings against the one whom he suspected of practicing witchcraft on his person. The point was that Schukkert was bedridden for two years. The treatment applied to cure his disease brought no successful results. He therefore came to conclusion that someone must have bewitched him. He consulted Puskas Szabo, a home-bred *exorcist of Fadd* who suggested that István Szalay, Schukkert's son-in-law, might be responsible for Schukkert's condition. Schukkert and his wife drove István Szalay of their home and persuaded their daughter, Szalay's wife, to leave her husband. They lodged a complaint against Szalay with the district court blaming him for the misfortune that Schukkert experienced. Szalay however also lodged a complaint against his parents-in-law accusing them of slander. During the trial the witnesses confirmed that Schukkert indeed circulated the defamatory opinion on Szalay by blaming him for practicing witchcraft on him. Apart from Szalay's parents-in-law also Puskas Szábo was tried. In the Court he denied that he inspired Schukkert to take hostile steps against his son-in-law but admitted that he was engaged in healing people who were under the influence of evil spirits and that he collected money for his activities. The court found him guilty of endangering public health.¹³

There was also reported one case (1903) in which the fact that the prosecuting agency learned of the local beliefs set the penal investigation on a right course. This was the case of a young woman who committed suicide, yet the fact that the rope she used was found to be too short raised the suspicion of the prosecuting officer. It was only the village judge who, having full knowledge of the folk tradition, helped explain what in fact happened. The point was that originally the rope was sufficiently long but its fragment was cut to pieces which were collected by the villagers. The latter believed that a piece of such rope, when applied for rubbing the bodies of the cattle, could successfully secure the weight gain of the animals.¹⁴

The cases which may attract larger interest are those in which the superstitious beliefs contributed to causing death of the victim. In that context we learn of a young girl who suffered from heart attack that resulted from her having a hot bath containing 93 different herbs, or the death of a young man who drank love elixir after an unsuccessful love magic.¹⁵

Particularly interesting are those cases described in the forensic column of "Ethnographia" which contain the reports of murders at the background of which the folk beliefs and folk tradition are detectable. Thus we learn of Ferenz Wohlmuth (1909) who, inspired by local beliefs, practiced magic in order to find who bewitched his cow. He therefore produced a cross of the fur of the cow and then put it on the milk collected from the animal. He then sprinkled the threshold of his household with the milk and waited for the first visitor to his house. The superstitious tradition had it

¹³ "Ethnographia" 1903, vol. 14, p. 80.

¹⁴ *Ibidem*, p. 160.

¹⁵ "Ethnographia" 1899, vol. 10, p. 79.

that such visitor was exactly the one responsible for the bewitchment. In this particular case it was the woman of the neighborhood who arrived. Wohlmuth rushed at her, started beating her and eventually strangled her. When tried by the court, he emotionally reacted demonstrating his deep belief that his victim was a witch. The court must have taken into consideration his tradition-based conviction and the emotion in which he acted as mitigating factors since it condemned him only for eight month imprisonment for lethal mayhem committed in strong emotion. The upper instance court raised the penalty to eighteen months.¹⁶

In the context of homicide the case of István Lovász (1904) appears as a non-typical one since in this case the accused was motivated to the commission of the crime by emotionally contradicting the generation-bred folk custom. The point was that in some part of Hungary the tradition had it that the young man who planned a marriage with a girl and who paid a visit to her parents' house in order to declare himself to her, was expected to leave his jacket on a sofa allegedly *forgetting* to take it along. When next day the man found the jacket laid outdoors this meant that the parents of the girl had not accepted him. This was exactly what happened to Lovász but he, instead of putting up with the tradition, reacted highly emotionally. He lay an ambush for the girl and when she appeared in the backyard of her house he rushed at her and stabbed her to death. The court found him guilty and condemned him to twelve years' imprisonment.¹⁷

In "Ethnographia" the Forensic Ethnography column ceased to appear in 1919 but the studies on legal tradition in the Hungarian folk culture – also in a comparative dimension – were continued by such researchers as Károly Tagányi, Sándor Makoldy, Galimdsán Tagán, István Tálasi and others.¹⁸ Makoldy's research was focused mostly on the tradition of kidnapping women with matrimonial purpose in view, the custom being still deeply rooted in some part of Hungarian Monarchy, though mostly among the Serbian population. While punishing the offenders accused of this kind of kidnapping, the courts tended to treat the aforementioned tradition as a mitigating factor.¹⁹

¹⁶ "Ehtnographia" 1906, vol. 20, p. 256.

¹⁷ "Ethnographia" 1904, vol. 15, p. 83.

¹⁸ H. Wlislöcki, *Czigány tolvajlási babonák* [Gypsy Theft Superstitions], "Ethnographia" 1891, vol. 2, p. 394-399; F. Széli, *Törvénykezési adatok alföldi babonákról* [Regulation Data on Superstitions in the Great Hungarian Plains], "Ethnographia" 1892, vol. III, p. 110; B. Munkácsi, *Adalékok a magyar halotti szokások pogány hagyományaihoz* [About the Pagan Customs of Hungarian Traditions Concerning the Dead], "Ethnographia" 1900, vol. 11, p. 97-109; S.P. Osztern, *Legálisan vád alá helyezett állatok* [Legally Tried Animals], "Ethnographia" 1908, vol. 19; *Pápainé ballada* [The Song of Pápainé], "Ethnographia" 1918, vol. 29, p. 243-245; S. Makoldy, *A nőrablás és a rablöházasság szimbolikus maradványai hazánkban* [Symbolic Remnants of Wife Robbery and Robbery Marriage in Hungary], "Ethnographia" 1921, vol. 32, p. 40-60; *idem*, *A káromkodás elterjedése és büntetése Magyarországon 1850-ig* [The Distribution and Punishment of Cursing in Hungary until 1850], "Ethnographia" 1926, vol. 37, p. 122-131, 169-182; G. Tagán, *A lólopás és ezzel kapcsolatos bíraskodás és büntetés a kirgizeknél* [Trying and Punishing Horse Theft among the Kirgizians], "Ethnographia" 1936, vol. 47, p. 305-310; I. Tálasi, *A bakonyi pásztorkodás* [Herding in the Bakony], "Ethnographia" 1939, vol. 50, p. 9-37; J. Csalog, *A hazajáró halottak elleni védekezésnek egy különös esete Gerjenből* [An Unusual Case of Defence against Haunting Deads in Gerjen], "Ethnographia" 1950, p. 231-233.

¹⁹ Dealing with a legal culture historical approach of the issue: I. Kajtár, *Bevezetés a jogi kultúrtörténetbe* [Introduction to the History of Legal Culture], Dialóg Campus Kiadó, Budapest-Pécs2004, p. 117-127; B. Mezey, *Szokásjog és szokás határán: a jogszokások* [On the Boundary of Customary Law and Traditions: Legal Traditions] [in:] *Jogi néprajz-jogi kultúrtörténet* [Legal Ethnography – Legal Cultural History], eds. B. Mezey, J.T. Janka Teodóra, ELTE Eötvös Kiadó, Budapest 2009, p. 13-25.