Krakowskie Studia z Historii Państwa i Prawa
2013; 6 (4), s. 423–427
doi:10.4467/20844131KS.13.025.1700
www.ejournals.eu/Krakowskie-Studia-z-Historii-Panstwa-i-Prawa

Kinga Császár
(University of Pecs)

Some Remarks on Judicial Decisions in Penal Cases as Made by Royal County Court of Kaposvar (1879–1918). The Question of Female Offenders and Female Victims

Abstract

The article presents the issue of judicial decisions and court practices concerning criminal cases in Hungary in the years between 1879 and 1918. The first part contains a brief overview of Hungarian criminal law's evolution in the 19th century with a strong emphasis on the milestone being the implementation of Csemegi's Criminal Code of 1880. For example, whereas in the period before the codification court rulings often included penalties or repressive measures of Catholic origins, the new code modified the Hungarian criminal law to a great extent. The studies of the records of the Royal County Court of Kaposvar have enabled the author to present a reader with the picture of a woman – offender, and a woman – vitim characteristic of Hungary at the end of the century. The article presents, inter alia, statistics related to the sex of an offender, and particularly problematic questions concerning cases of abortion, infanticide, rape or adultery. The analyzed judicial decisions show particular court practices characteristic of some cases, for example those of adulteresses, that lead to significant deviation from the normative content of Csemegi's criminal code.

Key words: penal law, Hungarian law, Csemegi Code, adultery, abortion, infanticide

Słowa klucze: prawo karne, prawo węgierskie, Kodeks Csemegiego, cudzołóstwo, aborcja, dzieciobójstwo

1. Introductory remarks

The objective of the research, whose summary is demonstrated in the present paper, was the examination of judicial practice of the Royal County Court of Kaposvar between 1879 and 1918. The research focused on the treatment of women both as female offenders and as female victims. In the research an attempt was made to compare the treatment of offences in which women were victims with those that were committed against property.

Publikacja objęta jest prawem autorskim. Wszelkie prawa zastrzeżone. Kopiowanie i rozpowszechnianie zabronione.
Publikacja przeznaczona jedynie dla klientów indywidualnych. Zakaz rozpowszechniania i udostępniania w serwisach bibliotecznych

The paper was based on the archival material that covered 40 years between 1879 and 1918. The number of cases that were studied amounted to 307, all of them being stored in the Archives of Somogy County.[1]

2. Some remarks of legal history nature

It is well known that in Europe the new era in the development of penal law came up with the theory pronounced by Cesare Beccaria in his *Dei delitti e delle pene* published in 1764. His ideas gained publicity in various countries.

In Hungary, before the Code of Karoly Csemegi came into force in 1880[2], the penal law was not uniform. There was no one criminal code. In one and the same county different sources of penal law might be applied, which led to the lack of legal security. Some attempts to reform that branch of law were made in 1848. However no comprehensive reform of penal law followed.[3] In 1861, the old penal law statutes and judicial practice were restored. Therefore, while adjudicating penal cases, the judges relied on the old law, on their discretion and on legal literature. In order to fill the legislative gap detectable in the post – 1861 era Tivadar Pauler, Hungarian jurist, produced a coursebook on penal law. It was published in 1864.[4]

The already mentioned Csemegi Code of 1880 was of fundamental significance. Relying on the earlier penal law and Christian tradition, the Code turned certain pieces of immoral and harmful behaviour into regular offences. This referred for instance to procured abortion, abduction of women, bigamy, adultery, etc.[5] As regards the latter, both adulterer and adulteress were subject to penalties for the act that they committed if the latter led to the breaking of matrimonial bond. This solution deserves some attention since in that epoch there was still detectable a lenient attitude toward an adulterer when compared with an adulteress.

In the area of penalties the Csemegi Code departed from the tradition of imposing on the offenders certain penalties that were of ecclesiastical nature like the fast which in the earlier epoch might be combined with imprisonment. Thus for instance in 1879, just before the implementation of Csemegi Code, a certain lady – for her fraternizing with robbers – was condemned to two months of imprisonment aggravated by fast applied one day a week.[6]

[1] The present paper is an abridged version of a longer Hungarian study. In the essay above, all relevant legal cases and other sources are mentioned.

[2] Act 5 of 1878.

[3] L. Hajdu, *Az első (1795-ös) magyar büntetőkódex-tervezet* [The first draft of Hungarian Criminal Code (1795)], Budapest 1971, 21, and Part II. 603.

[4] T. Pauler, *Büntetőjogtan I.* [Doctrine of Criminal Law I.], Pest 1869.

[5] *A magyar büntetőtörvénykönyv. A bűntettekről és vétségekről (1878: 5. tcz.) és teljes anyaggyűjteménye* [The Hungarian Criminal Code. About crimes and defaults (1878: 5.) and their entire sources], ed. T. Lőw, Budapest 1880, Part II. 385–406.

[6] SML, 1879–1899, Box VII.12.b.1., B.3481/1879.

Publikacja objęta jest prawem autorskim. Wszelkie prawa zastrzeżone. Kopiowanie i rozpowszechnianie zabronione.
Publikacja przeznaczona jedynie dla klientów indywidualnych. Zakaz rozpowszechniania i udostępniania w serwisach bibliotecznych

3. Some observations emerging from the judicial practice of the Royal County Court of Kaposvar between 1880 and 1918

While studying all 307 cases adjudicated in the discussed period by the Royal County Court of Kaposvar and preserved in the custody of Archives of Somogy County, we may make some observations on the type of crime committed in that epoch and also on the typical female offender and the typical female victim as found in the aforementioned source material. Generally speaking most of offences that were committed were those committed against property. The high number of thefts was illustrative of the impoverishment of the society. The poverty might be the trouble that plagued the 65% of the Hungarian people of the time.

The proportion of women as offenders in the studied cases was small and amounted to 15%. We can find women as committing thefts or being involved in receiving stolen goods.

The punishments provided for thefts depended on the value of stolen goods but not only: also aggravating circumstances in which the theft was committed were taken into consideration (altogether the statutory law provided for 12 types of such circum stances). And indeed they might aggravate the penalty imposed on the perpetrator regardless of the value of stolen goods. This referred for instance to stealing the liturgic objects or commiting a theft accompanied by the breaking into someone's house. More severe penalty would also be inposed on a servant who dared steal something from the house of his employer. Also recidivism might considerably increase the punishment.

As regards the offences in which women might be involved the question of abortion deserves particular attention. The law was more severe to those female offenders who committed an act of abortion when they got pregnant while in marriage. Those who got pregnant out of marriage could count on lighter penalty.

Although in the material that was subject to the present research no cases of infanticide were found, it is nevertheless interesting to comment on the regulations of this offence in the Csemegi Code. The latter provided for a separate treatment of mother who killed her child under childbirth or right after childbirth provided that the child was born out of marriage. Other cases of infanticide were treated as common homicide and were threatened with more severe punishment. Lighter punishment provided for in the earlier case was due to the belief that woman as a rule feels ashamed of getting pregnant while out of marriage. This might in some way justify her criminal impulse.[7]

Generally speaking sexual offences were not common in the cases tried by the Kaposvar Court in the discussed period. Out of 357 criminal acts detectable in the research material only 25 were those that concerned women as victims, and out of this proportion only 40% were committed as sexual offences. Before Csemegi Code came into force the traditional approach was that of severe punishments for sexual offences. The Csemegi Code changed this and departed from providing for the minimum limit of punishment for rape, thereby allowing the judges for a wide proportion of discretion in measuring out

[7] *A magyar büntetőtörvénykönyv...*, p. 495–497.

Publikacja objęta jest prawem autorskim. Wszelkie prawa zastrzeżone. Kopiowanie i rozpowszechnianie zabronione.
Publikacja przeznaczona jedynie dla klientów indywidualnych. Zakaz rozpowszechniania i udostępniania w serwisach bibliotecznych

the penalty for that offence.[8] It is worthwhile to note that, according to the Csemegi Code, the judges could impose even 10 years of imprisonment on the perpetrator of rape, but they were far from doing this. Besides, the tendency of the earlier law was to punish the sexual offenders when they committed their acts against the upper-positioned women ("fine" women). The Csemegi Code changed this and adopted a principle of equality. Now all women that were harmed by this kind of offences were protected.

When we study the adjudication of the Kaposvar Court we can find the tendency toward imposing lighter punishments on the perpetrator when the victim was considered to be a loose woman. A good example of the stance adopted by Kaposvar Court on such cases was the trial in 1901 of nine males having a violent sexual intercourse with their female victim. The punishments that the Court imposed on them were mild and varied from 6 to 8 months of imprisonment since the Court relied on a poorly confirmed evidence that the victim had a lot of sexual partners before and that she allegedly – in the case that was tried – did not resist. Only one perpetrator was punished with 1 year and 6 months of imprisonment since he inflicted a light bodily harm on the victim.[9]

Let us add that according to the rules of Csemegi Code only men could commit rape as well as the act of seduction or the act of sexual perversion and only when their victim was a woman. And specifically the act of seduction could be committed only by a man and only against honest girl who has not reached the age of 14. The phrase "honest girl" excluded loose women. The acts against boys were not included.

What also requires some attention is the question of bodily harm inflicted on woman as a result of family conflicts. Such offences were prosecuted only on request of the injured party. In fact the bodily harm might sometimes camouflage matrimonial sexual assault. However, the cases that consisted in inflicting bodily harm on someone in family were infrequently adjudicated by the Kaposvar Court since the tendency of the time was well expressed in the parliamentary debate on the problem: "washing families' dirty linen in public must be the last resort."[10]

4. Final remarks

The study of criminal cases tried by the Kaposvar Court in the discussed period allows to arrive at a conclusion that though the penal law of the time provided for the possibility of imposing hard punishments on the perpetrators of deliberate sexual offences whose victims were women the practice of the Court followed its own line and showed considerable leniency vis-à-vis the male perpetrators if the victim could be referred to as a loose woman.

The penalties imposed on those who committed the offences against property, particularly the theft, were – in the judicial practice of the discussed Court – larger. The se-

[8] *Ibidem*, p. 385–406.
[9] SML 1901. Box VII.12.b.2., B.6804/1901.
[10] *A magyar büntetőtörvénykönyv…*, p. 539.

Publikacja objęta jest prawem autorskim. Wszelkie prawa zastrzeżone. Kopiowanie i rozpowszechnianie zabronione.
Publikacja przeznaczona jedynie dla klientów indywidualnych. Zakaz rozpowszechniania i udostępniania w serwisach bibliotecznych

verity of punishments depended both on the value of stolen goods as well as on some aggravating circumstances in which the theft was committed.

The aggravating circumstances would sometimes result in a severe punishment irrespective of the value of the stolen objects.[11]

[11] SML 1879–1899. Box VII.12.b. 1., B.6074/1890., SML 1901. Box VII.12.b.2., B.6804/1901.

Publikacja objęta jest prawem autorskim. Wszelkie prawa zastrzeżone. Kopiowanie i rozpowszechnianie zabronione.
Publikacja przeznaczona jedynie dla klientów indywidualnych. Zakaz rozpowszechniania i udostępniania w serwisach bibliotecznych