

Blanka SZEGHYOVÁ, Pressburg

Sex Crimes in Hungarian Towns in the Age of the Protestant Reformation*

The study examines typical patterns and individual strategies of urban courts in Hungary in the second half of the 16th century when dealing with sex crimes. Secular authorities took over control of sexual behaviour and marital problems, previously exercised to a large extent by the church. The councillors had a relatively wide scope of measures and punishments that they could choose from and decided according to the individual circumstances of each case. Most cases involved fornication and adultery; other sex crimes appeared in court more rarely.

Keywords: 16th century – Hungary – punishment – sex crimes – towns – urban judiciary

Introduction

In my paper I will look in detail at strategies of urban courts in Hungary against sexual offences in the second half of the sixteenth century. The goal is to identify their usual or typical approach as well as any unusual methods applied under specific circumstances. So far, archival judicial sources from the following four Upper Hungarian towns (today in eastern Slovakia) have been researched: Košice [Kaschau, Cassovia, Kassa], Levoča [Leutschau, Leutsovia/Leutchovia, Lócsce], Bardejov [Bartfeld, Bartpha, Bártfa, Bardiów] and Prešov [Preschau, Eperiessinum, Eperies/Eperjes]. Although the survival of municipal records is at times inconsistent, several relevant judicial books of Hungarian towns from the second half of the sixteenth century have been preserved.¹ The metropolis of the region was the

town of Košice, where numerous sex crime records have been kept in the archive. All four towns benefited from royal privileges that enabled them to exercise municipal autonomy. The magistrates consisted of the judge (iudex/Richter) and twelve councillors, who together had supreme jurisdiction over all offences that occurred within the territory of the town as well as in surrounding areas and villages that belonged to the town.

* This study was supported by the Slovak Research and Development Agency under the contract no. APVV-15-0349 and by Scientific Grant Agency VEGA by contract no. 2/0028/19

¹ Municipal Archive Košice (AMK): Pur, Protocollum iudicia et Poenas malefactorum ab Anno 1556 usque 1608 (further on Protocollum iudicia); State Archive in Prešov, Archive of Prešov Magistracy (AP): No. 2685

Kniha mestského súdu 1555–1560 (Book of the municipal court); State Archive Prešov, Archive of Bardejov Magistracy, workplace in Bardejov (AB): Súdne zápisy a účty mesta 1559–1649 (Judicial municipal records and accounts), without shelfmark; Regional Archive in Levoča (Spišský archív v Levoči), Archive of Levoča Magistracy (AML), No. 3. XXI.1. Malefitez Buch 1550–1643.



Picture 1: A detail from Lazarus' map of Hungary, printed in 1528 in Ingolstadt as "Tabula Hungariae"; the four researched towns marked in dark capsules.

Apart from religious divisions and conflicts, the sixteenth century also witnessed several social changes. In many places, the secular urban authorities took over control and the responsibility for moral discipline in the cities and replaced the former ecclesiastic jurisdiction over sexual and marital affairs.² In Hungary, the exact date when and process of how the secular town authorities took over the jurisdiction over sexual matters previously exercised by the church is not certain. However, from the middle of the sixteenth century, which is the time when the majority of the preserved judicial books started, it seemed to be well in practice.

In Hungary, so far there has been no systematic research available on medieval urban judicial practice. Therefore, at present, it is difficult to compare the pre-Reformation development with

that after the spread of the Reformation, and the extent of changes brought about by the protestant Reformation. However, partial research results suggest that sex crimes constituted only a small part of all criminal occurrences recorded in the late medieval sources.³ In comparison, the portion and scope of early modern sexual delicts seemed larger and wider, with sex crimes constituting usually about one third of all the criminal cases.⁴ The disproportion might be influenced by other factors as well, such as a smaller number of preserved judicial sources from the medieval period, but also by somewhat different ways of and reasons for recording criminal cases. While in the Middle Ages we found that criminal cases were usually written down in town books among other records of various mixed content, in the early modern period there were already specialised judicial books such as court sessions records, sentence books or depositions. The other possible cause is that criminal cases were recorded in medieval town books often in the form of proscriptions, i.e. as declarations on the proscribed who had committed a crime, usually a murder, revolt against authorities or other acts of violence. Sentences for crimes are documented only sporadically.

Nonetheless, the only known specialised medieval judicial book "Aechtbuch" (1435–1519) that has been preserved in Bratislava seems to support the assumption of a small number of sex crimes prosecuted in the pre-Reformation period.⁵ The book contains 48 criminal cases, out of which only six are sexual delicts, including one incest, two rapes, and three cases of adultery,

³ CSUKOVITS, *Zločin a trest*; ŠTEFÁNIK, *Kriminalität*.

⁴ Analyses of the urban judicial practice of the 16th century can be found in: SZEGHYOVÁ, *Súdnictvo a súdna prax*.

⁵ Municipal Archive Bratislava: *Protokolle aus den Verfahren in Kriminalangelegenheiten. Aechtbuch (1435–1519)*.

² MATTHEWS-GRIECO, *Body* 64–66; SCHILLING, *Discipline* 26–28; PO-CHIA HSIA, *Social discipline* 122–123.

sexual crimes thus constituting 12.5 % of all the recorded cases.⁶ Moreover, the two sexual delicts frequently prosecuted by magistrates in the early modern period – fornication and prostitution – did not seem to appear in the medieval municipal sources. A likely reason might be that in the late Middle Ages these were considered less serious and dealt with by the church authorities, who employed different sanctioning measures. As for prostitution, the pre-Reformation attitude was more tolerant, and in the late medieval period several towns still had legal brothels under their control. There is evidence that brothels existed in several towns of Hungary in the fifteenth and in the beginning of the sixteenth century.⁷

Despite partial research results and their preliminary character, it can be assumed that the development in Hungary followed similar trends as in Western Europe, where urban authorities since the Reformation had started to look much more closely at the everyday life of the urban community. Increasingly, they focused on various aspects of human behaviour, not excluding sexuality but rather quite the opposite. Among the most common were cases of fornication and adultery, whereas cases of other immoral or improper behaviour such as desertion of a husband, procuring (pimping), bigamy, rape or incest were less frequent. Cases of infanticide are a special category, sometimes counted among sexual offences due to their apparent correlation to the criminalization of all extramarital relationships and the high moral expectations of early modern women.

The friend in need

Before looking at the concrete strategies and solutions that municipal authorities applied in courts when dealing with cases of sex crimes, let us look at the commonplace practice of intercessions. Court records and sentences frequently mention supplications and pleas to mitigate the punishment. The judges often let themselves be convinced and remitted the sentence or changed it to a more lenient one. These appeals were made in the name of the accused by their family members, friends, neighbours or guild associates. Sometimes, local nobles, military captains and officials (Košice was the seat of the captaincy) are named, at other times, records contain only a general reference to intercessions of some/many nobles, or other honest secular as well as church people. However, it is questionable whether these prominent intercessions were made because of the personal acquaintance and relations with the condemned or just as conventional acts of compassion. The willingness to intercede on somebody's behalf did not necessarily depend only on the popularity of the accused, but rather on his familial ties and perhaps also on work or business contacts. Punishment meant shame for the whole family; for some it could mean a substantial loss of income, social degradation and possibly poverty.

In adultery cases it was often the attitude of the betrayed spouse that was of crucial importance and could determine the fate of the accused. In Bardejov in 1564, they mitigated the punishment of Jacob, a shepherd from Tarnov, who had committed adultery, after an intercession from his wife. Instead of being beheaded, he was whipped at the pillory and banished.⁸ Similarly, the wife's intercession helped to mitigate the sentence in the case of Simon Welesch, convicted

⁶ ŠTEFÁNIK, *Kriminalität* 47, 56–59.

⁷ For more details on terminological questions connected to prostitution and on brothels in Hungary see SZEGHYOVÁ, *Disciplining Women*.

⁸ AB, *Súdne zápisy a účty mesta 1559–1649*, record no. 10.

of adultery and incest with his sister-in-law.⁹ In 1561, Erasmus Brechtelt donated life to his wife and his journeyman, as the records phrased it, who had been caught together in bed. Instead of being given the death penalty, the journeyman was only fined and banned from practicing his craft in the town. The woman, since Erasmus did not want her dead but neither wanted her to come back, was banished.¹⁰ In 1579, the court decided that Sebastianus Kurtheos, who had fled the town out of fear of punishment for the adultery he had committed, could not return because his wife did not want him back.¹¹



Picture 2: Coloured view of Košice “Cassovia, Superioris Hungariae Civitas Primaria, depictum ab Egidio van der Rye Belga, Comm. Georgius Houfnaglius anno 1617”, in: Georgius BRAUN, Franciscus HOHENBERGIUS, *Civitates Orbis Terrarum* (Köln 1612–1618) vol. 6, no. 31.

Oaths save the honour and avert the punishment

In some cases where accusations were viewed as doubtful or unsupported by evidence, magistrates let the accused purge themselves by oaths. In 1561, Jurg Riemer purged himself after he had been suspected of being the father of two children that had been born to a widow of Miklos Diak (Micklosch Diackin).¹² He swore that he had never fornicated with Gersch and had no

share in the birth of her children. In a similar way, Thomas Wig was purged in 1579 after he had been accused by an older woman, Ursula Syketh. She claimed that he had given her his promise to marry her before she consented to have sex with him, but then had not kept it.¹³

A curious example of a seemingly contradictory and hardly comprehensible court reasoning comes from Košice in 1563. Ladislaus Lakatgiarto from the suburbs of Košice accused his wife and Blasius Bogdany of adultery. Ladislaus claimed that he had wanted to kill the adulterer after he had caught him with his wife in the middle of the night; though wounded, Blasius managed to escape.¹⁴ For some reason the court found Ladislaus’ testimony insufficient and let Blasius publicly purge himself from the accusation. In addition, Ladislaus had to pay him “vivum homagium”, i.e. damages of 20 guildens for the injury caused. His wife was pardoned and they were both admonished to live piously, honestly, virtuously and peacefully together and not to arouse any suspicions of similar or other misdeeds. Moreover, Agnetha was reprimanded to avoid drinking, all vices and thefts, and threatened with the death penalty, should even a small suspicion arise of any adultery, drunkenness or other evildoing on her part in the future.

Admonitions and threats

While purgatory oaths were applied in cases where the courts tended to believe that the accused was innocent, admonitions were usually used when suspicions were considered not unfounded but proofs were missing. The sources studied contain only few such cases where the

⁹ AMK, *Protocollum iudicia*, Simon Welesch ein Mosner ehebrecher undt bluetshander.

¹⁰ *Ibidem*, Est ist tsumercken weil.

¹¹ *Ibidem*, Sebastianus Kurtheos.

¹² *Ibidem*, Sciendum.

¹³ *Ibidem*, Syket Orsyk.

¹⁴ *Ibidem*, Ladislaus Lakatgiarto suburbanus cum Agneta sua uxore ac quodam Blasio Bogdany ex oppido Zepsy.

accused were freed with only an admonition, but there might have been more of them that went unrecorded.

In 1565, the magistrate in Košice had a certain married woman named Helena imprisoned, after a convicted adulteress, Anna, had stated that she was also involved in adultery or perhaps prostitution (*scortari fuisse*). However, as Anna revoked her statement before her execution and, moreover, many honest women pleaded for Helena, giving evidence of her good virtues, she was freed with not more than an admonition that she should live honestly and not raise any suspicions, otherwise she would be punished.¹⁵ Another imprisoned woman, who had left her husband Matthias from the suburbs “without a just cause”, probably would have been punished more severely, had not her husband interceded for her, so that in the end she was released in 1565 just with an admonition to live more honestly.¹⁶

In 1569 a German woman called Regina, who lived in Košice in the house of Franciscus Aurifaber, where also a German military vice-captain, Lazarus Holtzschuch, was lodged, was summoned to the council and admonished to behave piously and virtuously and to carefully avoid any unchastity and fornication. She was warned that if she was caught in such a crime or indecency, she would be punished.¹⁷ In the case of Beresch Marton, who was suspected of adultery with Barbara, Gergel Koler’s wife, while living in their house, the court in 1572 ordered him to move out of the house in order to free himself from the suspicions. At the same time, he was admonished to henceforth behave honestly and marry again.¹⁸

Yet, mere admonitions and threats were usually just an addition to some other punishment, such

as monetary fines or banishment. In 1564, a journeyman butcher, Emericus, was caught in the act of fornication with a maid, Gerusch, and under the threat of the death penalty was ordered to marry her. However, the magistrate reconsidered the verdict when it turned out that the girl did not have the best reputation, so in the end and after many intercessions, the young man was condemned to a fine and a reprimand to improve his life and keep away from shameful follies.¹⁹

Post hoc marriages save the order and sinners

The case of the journeyman Emericus was not the only one where magistrates tried to legalise the sexual relationships of unmarried people. By ordering them to marry, sometimes under the threat of the death penalty, should they refuse, authorities attempted to restore the order. Matrimony post hoc seemed to be a solution that would to a certain extent redress the harm done and save sinners from worse punishment.

The court record from 1568 did not mention what kind of penalty was originally intended for Joannes Gebberth, who had a sexual relation with his maid. However, while they were both imprisoned, many people interceded on his behalf, so the councillors in the end took mercy and asked him to marry the girl and give her a wedding present.²⁰ In 1579 they accused Simon Restcario and a young maid, whom he had “deflowered” after assuaging her with marriage promises. The case was more complicated, because Simon in the meantime wanted to marry a widow in Prešov. The court had them both imprisoned for a long time, but after many intercessions decided that he would be pardoned, provided that he marry the maid and appease

¹⁵ Ibidem, Helena.

¹⁶ Ibidem, Mulier deserens virum.

¹⁷ Ibidem, Mulier suspectae vitae.

¹⁸ Ibidem, Suspectae vitae.

¹⁹ Ibidem, Fornicator Emericus.

²⁰ Ibidem, Joannes Sarctor.

the widow. After promising to seriously improve his life, he was eventually fully restored.²¹ There are several other examples of ordered marriages in cases of fornication, some mentioning that the wedding took place in the “Butteltuben” (the better part of prison where its caretaker, the “Buttel” or “Gerichtsdienner”, lived). Such were the cases of Pal and Angleth, servants of Mihál Tökes in 1563, in the same year that of Andreas Aranypathaky and Sophia, also a servant and a maid, who used to work at Nicolas Rypiczzer’s house, two years later Sophia Fabian, a saddler’s widow and the journeyman Janos, and in 1570 Urbanus Lanus and the pregnant Catherina, a daughter of Peter Aztalgyartho.²²

Money or work saves the honour and the matrimony

The necessity to marry for those who fornicated was not the only requirement they had to fulfil in order to be allowed to stay in town and resume their previous lives. Often, those who were offered a chance to be freed and had their honour restored were those who could afford to pay a fine. Thus, more better off or prominent accused could legitimize their relationship and avoid the punishment by paying the fine. For example, in 1554, Georgius Halbschuch from Levoča had to marry Kilan Kramer’s daughter and pay a fine of forty guldens.²³ In Košice in 1562, Erasmus Brechtelt, who had a baby with his maid, had to promise to marry her and pay twenty guldens.²⁴

In some cases, the court did not insist on marriage and was satisfied with the fine only, at least on the man’s part. Women were usually treated differently, as will be shown later in several examples. Upon discovering that Elizabeth, a 40-year-old widow, had given birth to a baby and was imprisoned, the father of the baby, a young man known as Joannes Literatus, fled the city. While Elizabeth was being flogged at the pillory and banished, Joannes, thanks to intercessions on his behalf, was given mercy. He was reprimanded to behave modestly as appropriate for a young man, and threatened with a proper punishment without any mercy should he be caught in a similar crime or immorality in the future. After having paid the fine of fifty guldens, he could return and resume his life and work.²⁵

There were even some examples of adultery cases that were punished by a fine only, even though this was a crime for which one could expect even the death penalty. A suburban judge, Thapaztho Myhal from Košice, was imprisoned in 1569 because of adultery suspicions and later fined three guldens.²⁶ The fines seemed to reflect the degree of guilt, but also one’s financial possibilities. In the previous year, married Georg Dobos, a guard at the town gate in Košice, fled the city when his affair with his maidservant Sophia was discovered. After many intercessions he was allowed to return under the condition that he would pay one hundred guldens.²⁷ Several months later he finally returned and payed the fine.²⁸

Occasionally, even a woman accused of adultery could be pardoned, provided her husband forgave her, wanted her back and was willing to pay a fine for her. In 1570 the court in Košice pardoned the wife of Emericus Fazekas, Anna,

²¹ Ibidem, Simon Restcario.

²² Ibidem, Fornicatores; Andreas Aranypathaky cum Sophia; Sophia Fabian Sattlerin; Urbanus Lanus cum Catherina (1570).

²³ AML, XXI.1. Malefitz Buch 1550–1643, p. 7.

²⁴ AMK, Protocollum iudicia, Erasmus Brechtelt.

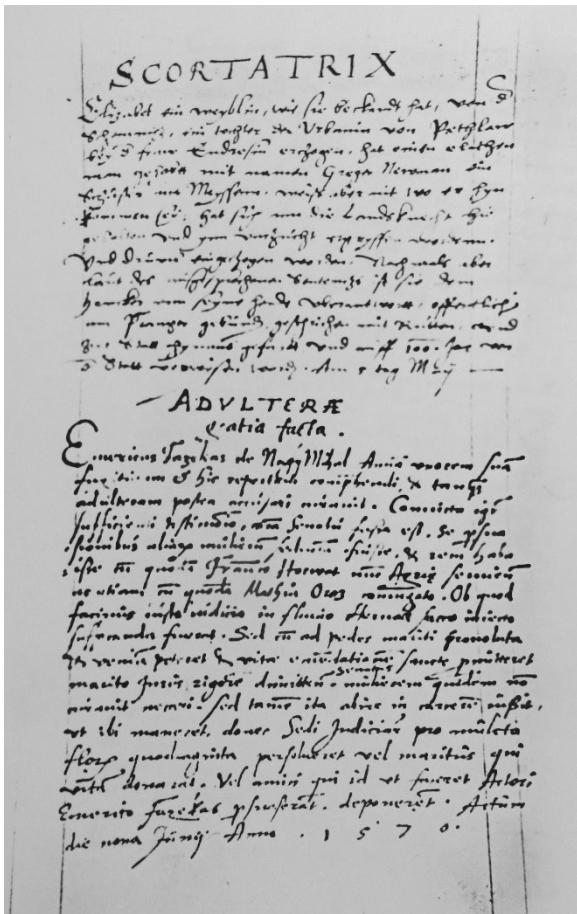
²⁵ Ibidem, Joannes Literatus.

²⁶ Ibidem, Suspectus de adulterio Thapaztho Myhal.

²⁷ Ibidem, Dobos Georg.

²⁸ Ibidem, Georgios Dobos.

who had run away and committed adultery with two men. Originally, she was condemned to be drowned, but her husband, who had first accused her, later changed his mind when she begged him for mercy with promises of improvement. Eventually, he pleaded to the court to release her, which then decided that she should stay in prison only until he or her friends paid the fine of forty guildens.²⁹



Picture 3: A page from the sentence book from Košice: *Pur, Protocollum iudicia et Poenas malefactorum ab Anno 1556 usque 1608*.

The fines were usually given to the council, who then decided what to do with them, occasionally mentioning the purpose for which the money would be spent. In 1566, after many intercessions and in view of his otherwise honest life, Mathaeus Hetzei was given mercy for his relationship with a certain Frosina, who had got

²⁹ Ibidem, *Adultrae gratia facta*.

pregnant. He was able to get away with a fine of twenty guildens; half of it was to be kept for the council, the other half was to be used for public works.³⁰ In a similar case in 1569, the whole sum of the fifty guildens fine that young Joannes had to pay for his relationship with the widow Elizabeth was to be used for public works.³¹ In the previous year the fine of one hundred guildens that Georgius Dobos had to pay in 1568 for his affair with his maid had been divided so that one half went to the council, while the other half was used for the reparation of the pavement in the city where it was necessary.³²

An alternative to monetary fines were public works, supposedly for those who were thought worthy of being spared from a heavier penalty but assumedly could not afford to pay fines. The already mentioned Joannes Gebberth Sarctor, who had to marry his maid in Košice in 1568, was ordered to dig out fifty fathoms of earth at the fortification.³³ Such pragmatic punishments were occasionally ordered in Košice and not only for sexual offences. With sex crimes, such fines and public work seemed to purge the honour of the accused, and for those who were married, their matrimony was rescued, so they could stay in the town and resume their usual lives and work.

In one peculiar case from Košice, however, the specific mode of an imposed punishment of public work had also a shaming or dishonouring element. In 1566, Joannes Aztalgiartha and his wife Sofia were found guilty of procuring (lenocinium), after Sofia had brought a prostitute to her husband's bed. Both were imprisoned and after many people had interceded on their behalf, they received a milder punishment. As a form of public work, they had to dig at the

³⁰ Ibidem, *Ipse aut Mathaeus Hetzei*.

³¹ Ibidem, *Joannes Literatus*.

³² Ibidem, *Georgios Dobos*.

³³ Ibidem, *Joannes Sarctor*.

fortification with their feet chained together.³⁴ Perhaps this saved (at least formally) their matrimony and they could stay in town, but the chains suggest that their honour was tainted from then on.

Banishment

As was already demonstrated by past examples, single and even married men, especially those better off, had a chance to avoid proper punishment for fornication and adultery and get away with only a fine. Their female counterparts in sin, however, were often less lucky and were usually banished from the town. For example, in the already mentioned case of 1568 from Košice, after the married Georg Dobos had paid the fine, he could eventually return to his life and work, whereas his maid with whom he had a sexual affair, was flogged at the pillory and banished forever.³⁵

Banishment was the most common penalty for fornication and husband desertion, but it used to be imposed as a milder alternative also in some adultery cases, occasionally even for other sexual crimes, such as bigamy, rape and in cases of suspected, but not fully proven infanticides.

Usually, the punishment of banishment was permanent without a chance to return, expressed by the words "banished forever" or "never to return". Sometimes, the sentence specified also an exact distance that the banished should stay from the town. Most often, the expression "to keep away from the town for ten/twelve miles" was used.³⁶ It is doubtful

whether such limits were meant literally or if it was just a figure of speech. The symbolic meaning is, however, evident in references to space limits. For example, when in 1571 two women, one named Catherina and the other Anna from Poland, were found guilty of fornication, they were banished "auff hundertt jar und hundertt meil" (for hundred years and hundred miles).³⁷ "For one hundred years" also, two other women guilty of fornication were banished, one in 1570, the other in 1579.³⁸ Similarly, in 1568, Sophia was banished for her sexual relations with German soldiers "for ten miles and one hundred years and one day".³⁹

The act of banishment could be performed in several forms. The most merciful was banishment without public ritual, i.e. merely by order to leave the town quietly and with a chance to sell one's property beforehand. The public ritual could include the exhibition and flogging at the pillory, after which the condemned were led out of the town by the bailiff ("Gerichtsdienner") or by the executioner. Flogging and banishment carried out by the executioner entailed a greater degree of shame. Therefore, if some mitigating circumstances were known, the pillory was omitted and the bailiff was involved. Often this was based on the young age of the offenders, who were given the chance to improve in the future. For example, because of hope for her amendment, a certain Hedvig was led out of town for her relationship with a "Landsknecht" only by the bailiff.⁴⁰

Often, the banished were threatened by a stricter punishment should they return, sometimes only in general terms, without specification. In 1560, Ilona from Košice was accused of a dishonest life, because she had in the past fled the town

³⁴ Ibidem, Joannes Aztalgyartha et uxor eius Sophia.

³⁵ Ibidem, Dobos Georg.

³⁶ Ibidem, for ten miles: Mulier meatrix (1558); Ilona vonn Epperes (1560); Ilona consors qondani Mathei Kowach (1560), Ein Weibes Bylt (1562), Juliana fornicatrix (1567); Garay Anglet (1568); for twelve miles: Czwey weiber beyde Gersch genent (1561), Ein Weibes Person Ilona (1561), Adultera mulier (1571).

³⁷ Ibidem, Scortatrices foeminae relegata.

³⁸ Ibidem, Scortatrix (1570), Syket Orsyk (1579).

³⁹ Ibidem, Sophia.

⁴⁰ Ibidem, Hedvig von der Schweidnicz Tomae Millers von Gera tochter (1574).

with a lover, abandoning her husband. Later, when her husband was already dead, she returned to the town and was condemned to banishment. She was led out of the town by the bailiff and was to stay away for ten miles from the town forever. Should she reappear in neighbouring villages or in the suburbs, she was to be punished strictly by the law ("rigore iuris").⁴¹ In some cases though, the threat was quite specific. When a certain vagrant woman named Dorko was found in the town, not knowing nor caring where her husband was, the magistrate banished her with the threat that should she return, she would be sewn into a sack and drowned.⁴²

It seems that magistrates used such threats for intimidation with the hope that they would prevent offenders from returning. However, it is obvious from several examples that those who reappeared in the town despite banishment were not automatically punished by a stricter penalty, which would normally have been capital punishment; instead, most of the time they were condemned again only to flogging and banishment. In 1557, two women previously banished for immorality were found in the town of Košice and banished once more with the threat that should they come back they would be drowned.⁴³

Banishment for a limited time

In the sources studied there were eight sexual delicts cases in which the court banished the condemned for a limited time only. One of them comes from the town of Prešov, the rest from Košice, and there were banishments for a limited period of one, two, three, six or ten years. In Prešov in 1558, the judge accused his servant Peter of disgracing his virgin maid, right in his

own house. Peter was suspected of rape and threatened with the death penalty, but it turned out that they were engaged and that the girl had consented voluntarily. On the intercessions of some important burghers, nobles and honest women, they were eventually ordered to leave the town secretly and not to come back for a year. If during that time the council were asked by honest men to let them return, they might be allowed to do so, provided that they would both live honestly in the meantime.⁴⁴ In three other similar cases of fornication from Košice, young couples were banished for one, three and six years.⁴⁵ All of them were already mentioned couples that had been required to marry in prison. After the prescribed period, they could ask for permission to come back under the condition that they had lived honestly during their time in exile.

In 1580, a widow named Sophia was banished for ten years because of her sexual relation with Urbanus Waraliensis, an adulterer and a thief, who had been executed the previous year. She had to sell her house in a nearby village that was under the jurisdiction of the town and was forbidden to come back to the town and to the areas belonging to it, which included not to appear in the town during market days.⁴⁶ For the same period of ten years, a married couple was banished in 1571. They were the already mentioned pair of Janus Aztalgiarto and his wife Sophia, condemned in 1566 to public works for procuring. Janus was found guilty of procuring once more and furthermore, he was also accused of thefts. This time, the involvement of his wife was not mentioned, but perhaps her participa-

⁴¹ Ibidem, *Ilona consors qondani Mathei Kowach*.

⁴² Ibidem, *Mulier suspectae vitae* (1577).

⁴³ Ibidem, *Meretrices diabolares*.

⁴⁴ AP, no. 2685, *Kniha mestského súdu 1555–1560*, pag. 141.

⁴⁵ AMK, *Protocollum iudicia*, 1 year: Urbanus Lanus cum Catherina (1570), 3 years: Andreas Aranpathaky cum Sophia ex oppido Iglo Scepusien (1563), 6 years: *Fornicatores* (1563).

⁴⁶ Ibidem, *Sophia mulier vidua*.

tion or at least knowledge was either assumed or taken for granted. Also, their past might have played a role when the court decided that both had to leave.⁴⁷ Perhaps a similar logic of joint responsibility combined with a lack of evidence was implicated also in the case of Gallus Schuster in 1570. He accused his wife of adultery, but with insufficient proof and the wife's denial even during torture, the council decided that they both had to leave and avoid the town for the period of one year and one day.⁴⁸

Exceptionally, the council would give the accused the option to choose between two punishments. For example, in 1574, Elizabeth, the widow of Marton Witez in Košice (Witez Martonin), who lived in the suburbs, got pregnant by her servant Kadas Lucacz. They were either to be banished for five years and pay a fine of 40 guldens, or pay only half of the sum but then stay away from the city for twice as long. They chose the lower fine and the longer exile.⁴⁹ The choice was given also to a widow of Lenart Fleischer, named Catherina, who had allegedly made a marriage promise to her servant and slept with him in the nights. She was given eight days to decide whether she would marry him and stay in the town, or whether they would sell their things and be banished forever.⁵⁰

Pillory and shaming

Most of the sentences of banishment also included a shaming element, usually the exhibition of the condemned at the pillory and flogging. As was already mentioned earlier, the punishment at the pillory could be executed either by the bailiff or by the executioner, with

the latter case considered even more dishonourable. When a certain Margaretha was convicted of adultery and thefts in 1560, she was tied to the pillory with a stolen piece of bacon hanging from her neck, and her guilt was publicly proclaimed. Then she was flogged by the executioner and shoved out of the city with the warning not to approach the vicinity of the town closer than ten miles ever again.⁵¹

For sexual delicts, other accompanying rituals might have been employed that symbolized the loss of virginity in cases of girls accused of fornication. These were the wearing of a straw wreath during the act of banishment or the act of publicly tearing up a girl's headwear, a symbol of virginity, and covering their hair instead. In Bardejov in 1588, they banished a maid named Sophie for life, because she had got pregnant. Before the act of banishment, the bailiff led her round through the streets of the town with a shameful straw wreath on her head.⁵²

Occasionally, even though the pillory was involved, the beating part was left out, if some mitigating circumstances were known. Pregnancy was quite often taken into consideration when authorities decided on the mode of punishment. It was stated as the reason for the more lenient treatment received by a certain pregnant woman in 1573 for her relationship with a married man. Instead of being flogged at the pillory, she was only imprisoned for some days and then banished by the bailiff. Her lover, a Polish man named Jacobus, who had abandoned his wife and children and had come with her to Bardejov, was tied to the pillory and flogged with three canes (*tribus vrigis caesus*) by the executioner.⁵³ Little children as well as her bodily weakness (*ihres leibes schwachkeit*) were the

⁴⁷ Ibidem, Azthalgartho Janos.

⁴⁸ Ibidem, Gallus Schuster sampt seiner hausfrawen Ursula.

⁴⁹ Ibidem, Kadas Lucacz und fraw Elizabet Witez Martonin.

⁵⁰ Ibidem, Hannes Fielbauch fleischer.

⁵¹ Ibidem, Margaretha uxor Gregory Chapo.

⁵² AB, Súdne zápisy a účty mesta 1559–1649, record no. 53.

⁵³ AB, Bardejov, Súdne zápisy a účty mesta 1559–1649, record no. 19, 20.

reasons why the court lessened the sentence in the case of Ilona, who had a relationship with Micklosch Nagy, after her husband had left her. Instead of being flogged, she was only displayed and proclaimed at the pillory and then led out of the town by the executioner.⁵⁴

Sometimes, a few details on flogging rituals were mentioned, such as the instrument used (in German: Rutten, Besen, in Latin: virgis, ferulis, flagris, scopis caesa/-us, castigata), or the quality (bene/acerbisimae caesa) or quantity of the beatings. For example, in 1566, before the executioner led Clemens and Sophia, a couple sentenced to flogging and banishment for fornication out of the city, he had tied them to the pillory, where the woman received four strokes and the man six.⁵⁵ To the same number of strokes another couple – Nicolaus and Agatha – were condemned, after having been found guilty of the same delict in the same year and town.⁵⁶ In 1566, a married woman named Anna, who had become pregnant while her husband lived in another town, was condemned to eight strokes for adultery.⁵⁷

The harshest treatment at the pillory for a sex crime had to be endured by Paul Mester. Yet, considering that he had committed bigamy, he received a very mild punishment. Paul had left his first wife Barbara and a child, and for almost thirty years lived with a woman named Martha. Meanwhile his abandoned wife Barbara, not knowing what had happened to her husband, moved to her sister's place in a village, where she married another man. The case came to the court only after the death of Martha, when Paul came to Košice and married a widow from the suburbs. Formally, both spouses, Paul as well as

Barbara, had committed adultery. In view of the circumstances, namely the fact that Paul had left Barbara a long time ago and without a legitimate cause, Barbara was allowed to remain with her second husband, whereas Paul was to be sentenced to death. In the end, the council showed mercy due to some unspecified reasons and his old age. He was given into the hands of the executioner, who led him out of the prison to the pillory, where he was proclaimed by the bailiff. The executioner gave him nine strokes using three rods, and afterwards led him through the streets with tied hands, flogging him on the way out of the city. He was banished forever for twelve miles and warned not to marry again while Barbara lived, otherwise he would be executed.⁵⁸

The terminal solution – elimination

The majority of sex offence examples were met with the above-mentioned strategies and punishments. However, some sex crimes were considered so serious that they automatically entailed capital punishment. Such crimes were bigamy, incest and sodomy (same-sex acts or bestiality).⁵⁹ The list of worst offences also includes infanticide due to its obvious and close relation to sex crimes. All these crimes rarely appear in the judicial sources, and in almost all cases the condemned were punished by death. The difference was only in the mode of execution. Whereas those condemned for incest were usually burned and bigamists beheaded, women accused of infanticide could expect various

⁵⁴ AMK, Protocollum iudicia, Ilona von Zikzo.

⁵⁵ Ibidem, Fornicatores.

⁵⁶ Ibidem, Nicolaus ein Mulnerknecht der geburt von Barthfeldt mit einem weib Agatha von dem dorff Zunye.

⁵⁷ Ibidem, Anna.

⁵⁸ Ibidem, Paul Mester von der Klein Eyde (1563).

⁵⁹ In the studied sources in the given period, no cases described as sodomy were found, though one paedophilia case might fall into the category. The case will be described in the rape section.

kinds of death penalty.⁶⁰ The concrete choice of punishment was influenced by local customs. While in Bardejov the women found guilty of infanticide were drowned, in other towns studied impalement in the grave alive was usually employed in such examples. Both represented “female” kinds of punishment, executed on women only. When judges wanted to mitigate such executions due to some intercessions or other circumstances, they would change them to beheading. If the guilt was not proven satisfactorily, they would at least banish the suspected women.

The customary punishment for adultery was beheading, but in practice the punishment that the condemned would receive depended to a large extent on various other circumstances of each case. Therefore, penalties for this crime had the widest scope, and as we have seen, adultery sentences included mercy, admonishments, fines, but mostly the pillory and banishment. Equally frequent for adultery was, however, capital punishment. Local customs seemed to play a decisive role too. Whereas in Bardejov and Levoča almost all preserved adultery cases were punished by beheading irrespective of gender, in Košice, the majority of adultery examples were penalised more leniently, mostly by flogging and banishment. And, if the death penalty was involved, men would be beheaded, whereas women were drowned. Hence, it can be stated that in Košice from all the sex crimes, adultery was the one in which the judges could literally decide over life or death of the accused. In this light, it might be not so surprising that the only known example in the period studied

of a bigamist who escaped the death penalty and received a milder punishment comes from Košice.⁶¹

In Košice, they dealt with another serious case of bigamy also in 1564. They did not name it bigamy though but used only the term adultery. Joannes Werebely had four wives in his life. The first one died of a disease, so that was legally safe. He abandoned his second wife and a year later married for the third time. His third marriage did not last long, as they were divorced the following year in 1564. In the same year he married his fourth wife, named Sophia. It was this newest fourth wife together with the second, abandoned one, who accused him of adultery. When he was imprisoned, he confessed also to several robberies and thefts, so it is rather surprising that the court condemned him to death by beheading rather than to some harsher mode of execution typically applied to highwaymen.⁶²

Rape

Lastly, a concise look at the rape cases. Not only do they represent valuable testimony to the attitude of the authorities to this crime, but rapes also throw some light on the perception of violence and sexuality in the given period. There are only few preserved cases, which makes it difficult to draw definite conclusions. In Košice in 1563, they flogged and banished a servant named Janos, who had broken into a house and attempted to rape a young maid.⁶³ It seems that mercy was possible even in rape cases, as it turns out from the case of Andreas Sipos, who was accused of adultery in 1566. The record mentions his previous bad deeds, among them

⁶⁰ Incest – Bardejov: AB, Súdne zápisy a účty mesta 1559–1649, record no. 9, AML, No. 3. XXI.1. Malefitz Buch 1550–1643, record from 11th August 1556; AMK, Protocollum iudicia, Simon Welesch ein Mosner ehebrecher undt bluetslander (the sentence mitigated to beheading); Bigamy – Bardejov, AB, Súdne zápisy a účty mesta 1559–164, record no. 29; cases from Košice will be mentioned below.

⁶¹ AMK, Protocollum iudicia, Paul Mester von der Klein Eyde. The case is described in the previous section.

⁶² Ibidem, Joannes Werebely Adulter insignis.

⁶³ Ibidem, Janos, ein knecht.

the rape of a virgin, for which he had been absolved thanks to some intercessions.⁶⁴

The death penalty for raping an adult woman in the period and sources studied was pronounced only in one, particularly scandalous example of a gang or group rape. The scribe commented on it that it was such an outrageous case that nobody remembered anything similar having happened before. Seven village youngsters waited near the upper suburbs for some newlyweds and their friends returning home from their wedding. They abducted the bride and in the nearby field raped her one by one. Then they quickly abandoned their homes and parents and fled away. The authorities managed to catch only one of them, who was captured in the suburbs and imprisoned in the town. He was condemned to a severe punishment – he was to be tied to a horse tail and dragged to the gallows, where he was to be broken by the wheel and put on the wheel afterwards. Eventually, he was given mercy and was only beheaded instead.⁶⁵

One might assume that if children were the victims, the death penalty would be inevitable. For example, in 1590, a man who had attempted to rape a seven-year-old girl in Bardejov was beheaded, but there are two other cases from Košice where the offenders got much more lenient treatment.⁶⁶ In 1566, a man called Blasius, convicted of raping a small girl, was caught in the forests near Košice with parts of chains around his neck after he had escaped a prison in the village Široké. When the mother of the victim found out that he had been imprisoned in Košice, she came to the town and made peace with him (*concordiam fecit*). The magistrate, however, did not allow him to escape completely without penalty and decided that he should be banished forever.⁶⁷

⁶⁴ *Ibidem*, Andreas Sipos.

⁶⁵ *Ibidem*, Antonius Zakolay facinorosus juvenis.

⁶⁶ AMB, Súdne zápisy 1559–1649, record no. 58.

⁶⁷ AMK, Protocollum iudicia, Blasius de Bathor.

Even more shocking seems another example from the same town and year, in which the offender was a former teacher; he was a recidivist and some of his victims were children of the same sex. Demetrius Thuri, an educated man, previously a rector of the school in oppidum Munkacz, was accused in Košice of a rape attempt against a six-year-old girl. The record mentions his previous similar acts on a boy in the suburbs and another girl in a nearby village. Likewise, the alleged reason why he was forced to secretly flee Munkacz was that he had committed the same crime against a boy. The term rape was not directly used and the scribe named his deeds as “*foeditas*” and “*opus contra naturam*”. The councillors reasoned that he would deserve capital punishment, but they let themselves be assuaged by some members of the clergy and condemned him only to flogging and banishment for ten miles and one hundred and one years.⁶⁸

Conclusion

By the middle of the sixteenth century, sexual offences constituted quite a sizeable portion of the criminal agenda at the urban courts in Hungary. In fact, it was the most frequently punished category right after thefts. For magistrates it was a relatively new responsibility, power and competence, and it is interesting to see which strategies they employed when dealing with sexual delicts, especially with those that had been formerly handled by the church. In Košice, during 45 years in the second half of the sixteenth century, there were almost 150 people condemned for sex offences, more than two thirds of them women.

As has been demonstrated, the most frequent sexual crime accusations included fornication and adultery. Fornication in the sources was

⁶⁸ *Ibidem*, Demetrius Thuri Literatus.

usually referred to as “scortum, stuprum, fornicatio, illicitam consuetudinem” in Latin, and as “unczucht” or “hurerey” in German. Both offences covered also prostitution cases, since prostitution was not defined by any special term in the judicial sources; the decisive factor for classifying it into one category or the other was just the single or married status of a woman.

Fornication, desertion of one’s spouse and adultery could be penalised by various sanctions, but the most frequent were the pillory and banishment. Nevertheless, fornication, unlike adultery, was never punished by the death penalty. Moreover, penalties for sex crimes were influenced by several circumstances, such as social standing, familial ties, wealth, gender, age, good reputation, number and weight of intercessions, and also on local customs. As for the gender factor for example, there were instances in which men got away with a fine only, whereas

women were flogged and banished for the same crime. At the same time, fornication cases represented the category for which women were condemned most often. Also, there were special kinds of death penalties reserved for female offenders, namely drowning (in some towns for adultery, in others for infanticide) and impalement in the grave alive (for infanticide only).

Sentences for other sexual crimes were infrequent, but they were considered more serious and typically punished by death. Rape cases were seldom and decided upon very inconsistently; the verdicts included mercy, banishment and the death penalty. There was no special term for sexual abuse of children in the judicial sources studied. Also, the examined rape cases suggest that in general the society was less sensitive to sexual violence, including the abuse of children.

Punitivie patterns and numbers of the condemned for sex crimes in Košice 1556–1600°

| Strategy | CRIME / PUNISHMENT | Husband desertion | | Fornication Procuring | | Adultery | | Bigamy | Rape | Incest | Infanticide | SUMMA | | | |
|-----------------------|---------------------------------|-------------------|--|-----------------------|-----------------|----------|----------|--------|------|--------|-------------|-------|----|----------|----|
| | | Females | | F | M | F | M | | | | | F | M | Together | |
| ALLOWED to STAY | Mercy and admonition | 1 | | 1 | | 5 | 1 | | | | | 7 | 1 | 8 | |
| | Purgatory oath | | | | 2 | | | | | | | 0 | 2 | 2 | |
| | Fines / public work | | | 1 | 9 | 1 | 2 | | | | | 2 | 11 | 13 | |
| | Order to marriage | | | | 5 couples | | | | | | | | 5 | 5 | 10 |
| | Banishment for a limited time | 1 | | | 1 F + 5 couples | | 1 couple | | | | | | 8 | 6 | 14 |
| EXILE | Banishment | 2 | | 21 | 1 | 4 | 5 | | 1 | | 1 | 28 | 7 | 35 | |
| | Banishment & pillory | | | | | 1 | | | | | | 1 | 0 | 1 | |
| | Banishment & Pillory & flogging | 1 | | 24 | 5 | 9 | | 1 | 2 | | | 34 | 8 | 42 | |
| | Beheading | | | | | | 2 | | 1 | 1 | | 0 | 4 | 4 | |
| | Drowning | | | | | 5 | | | | | | 5 | 0 | 5 | |
| DEATH PENALTY | Impalement in the grave alive | | | | | | | | | | 1 | 1 | 0 | 1 | |
| | SUMMA | 5 | | 58 | 27 | 26 | 11 | 1 | 4 | 1 | 2 | 91 | 44 | 135 | |

To make the table concise and comprehensible, it does not differentiate among main culprits and their active or passive associates, as long as they all received the same punishment, neither between perpetrated acts and attempts, nor between proven crimes and mere suspicions, provided that accused were punished also for attempted, not only committed crimes and for suspected, but not quite attested ones. In some cases the categorization of offences was not unambiguous and therefore presented numbers might slightly differ, subject to crime classification and interpretation. If a case included more than one punishment (e.g. fines were often combined with an order to marriage and/or banishment for a limited time), only the strictest punishment is indicated.

Complicated cases that involved also accusations other than sex crimes were not included in the table. There were ten such cases, in which twelve people were condemned. They contain examples of fornication, procuring, adultery and bigamy that were combined with thefts, violence, embezzlement, murder and robberies. One couple was banished for a limited period (procuring and thefts), one woman was banished forever (fornication and thefts), two women flogged and banished (adultery and thefts), four men beheaded (adultery with thefts; violence; robberies and murder), one man hanged (bigamy attempt with embezzlement) and two women drowned (adultery with thefts and adultery with murder arrangements).

Korrespondenz:

Blanka SZEGHYOVÁ, PhD.
Slovak Academy of Sciences
Institute of History
P. O. Box 198 Klemensova 19
814 99 Bratislava
blanka.szeghyova@savba.sk
ORCID-Nr. 0000-0002-7324-4482

Abkürzungen:

- AB State Archive in Prešov,
Archive of Bardejov Magistracy,
workplace in Bardejov
- AML Regional Archive in Levoča (Spišský archív),
Archive of Levoča Magistracy
- AMK Municipal Archive Košice
- AP State Archive in Prešov,
Archive of Prešov Magistracy

Siehe das allgemeine Abkürzungsverzeichnis:
[<http://www.rechtsgeschichte.at/files/abk.pdf>]

Literatur:

- Enikő CSUKOVITS, Zločin a trest v stredovekej mestskej praxi. Trestné prípady banskoštiavnickej mestskej knihy zo 14.–15. Storočia, in: Z Bardejova do Prešporku. Spoločnosť, súdnictvo a vzdelanosť v mestách v 13.–17. storočí (Prešov-Bratislava 2005) 128–148.
- Sara F. MATTHEWS-GRIECO, The Body, Appearance and Sexuality, in: Natalie ZEMON DAVIS, Arlette FARGE (eds.), *A History of Women. Renaissance and Enlightenment Paradoxes* (Cambridge 1993) 46–84.
- Ronnie PO-CHIA HSIA, Social discipline in the Reformation: Central Europe 1550–1750 (London-New York 1992).
- Heinz SCHILLING, Discipline: The State and the Churches in Early Modern Europe, in: Herman ROODENBURG, Pieter SPIERENBURG (eds.), *Social Control in Europe, vol. 1: 1500–1800* (Columbus 2004) 25–36.
- Martin ŠTEFÁNIK, Kriminalität im mittelalterlichen Preßburg. Aechtbuch. Das erste mittelalterliche Gerichtsbuch der Stadt Bratislava-Preßburg aus den Jahren 1435–1519, in: *Wiener Geschichtsblätter* 65 (2010) 47–60.
- Blanka SZEGHYOVÁ, Súdnictvo a súdna prax v mestách Pentapolitany v 16. storočí (Bratislava 2016).
- ID., Fornicatrices, scortatrices et meretrices diabolares. Disciplining Women in Early Modern Hungarian Towns, in: Andrea Bianka ZNOROVSKY, Christopher MIELKE (eds.), *Same Bodies, Different Women: Witches, Whores, and Handicapped. 'Other' Women in the Middle Ages and the Early Modern Period* (Trivent Publishing, 2019) 167–194.