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Crime and punishment. The operation of criminal jurisdiction in the cities in Transylvania during the Sixteenth Century

Abstract

Our work makes a comparative analysis of criminal courts in three Transylvanian cities: Sibiu, Brasov, and Bistrita, which are representative in two ways: first because as free municipalities their legal competence was well limited and secondly, because by their political, administrative and legal union of these autonomies, the legal powers were often subject to regulations.

In introducing the paper we went through the results of the specialty literature about the development of specific legal institutions, and by highlighting the preserved sources we evaluated our empirical analysis which defines the assumptions underlying the scientific endeavor. In presenting the historical facts of the analysis we outlined the constitutional relations and those features which led to the development of municipal institutions in the Sixteenth Century, in the context of local (municipal) and state trends that have influenced legislation and judicial practice. The analysis itself is treated in two parts: in the first part we made a sketch of the courts organizations and we outlined their skills in their institutional and local evolution, and also we presented the judicial proceedings in its characteristic features; and in the second part, within the possibilities, we tried to outline an image of the judicial practice in terms of concrete cases brought in front of the courts. In the Annex we have the transcription work of those sources that have proved typical in terms of our research: first, notes following the legislative and judicial activities, process documents relating to the judicial proceedings.

The results of the research on organization and jurisdiction of municipal courts show that since the second half of the Sixteenth Century, the courts would be organized and structured by territorial competence. Municipal courts are to base decisions court under a single legal regime no later than the last third of the century. However, in the organization and structure of the courts, cities retain their own customs on, and judging trivial conflict remains in charge of the lower courts. The great achievement of Saxon humanists and reformers *Das Eigen-*

Landrecht der siebenbürger Sachsen (1583) has really made the reform of the judicial process and not of the local institutions, its purpose is to forge the essential structural conditions of ordinary procedure.

At the beginning of the Sixteenth Century court forums organization and structure already have a strong, differentiated network. Municipal jurisdiction and authority spread over the territory of the districts whose powers were before in the cities. However, the courts organization remained relatively complex: the court and city magistrate were not the only competent bodies to settle disputes arising between inhabitants of the municipality, the minor population disputes were settled by the lower courts, and in its turn, the Church also had in a certain extent, an alternative role in prosecuting crime.

As far as the organization of the ordinary courts of the Saxon towns in Transylvania is concerned, the structure differences of district or seat type remained decisive. It seems that during the Sixteenth Century, under pressure from the Saxon University, there was an attempt of uniformity of structure and judicial powers in all municipalities, after which a structure assimilation of the college and district centers system was achieved, without institutionalizing the *coiudex* function. The ordinary courts presided over by mayor judges or royal judges have judged in the first instance all urban citizens and rural communities cases, to the extent that these cases have not applied for a special procedure and court. Judges have carried out the processes that had not been appealed, surveying the action of investigation and procedure. As part of court proceedings, judges had powers such as hearing the parties and witnesses, taking an oath and interrogation of the accused persons in criminal trials. In civil lawsuits and in those cases where the ordinary courts have resorted to a penalty decision, the complaint against their decision was made on to the city council; since the beginning of the Sixteenth Century the city magistrate fulfilled this role in all municipalities. The city magistrate had the power to solve criminal cases prosecuted in great trial, in the first instance.

In the appeal structure there is a difference between seat and district organization, the jurisdiction of districts has a more or less pronounced role given to the district assembly. Thus, during the Sixteenth Century in Bistrita is kept a body of 3 to 6 members of provincial Grafs with powers in arbitration of disputes (jury) of district municipalities and in Brasov - where the four privileged towns also received a special appeal cases from the surrounding villages – the decision made by the Brasov magistrate might have been appealed to the

assembly of Barsa (*Land Barcza*). The *Land Barcza* Assembly, composed of provincial gentlemen (magistrates) and city magistrates, met regularly, twice a year, just weeks before the regular annual meeting of the Saxon University.

During the appeal, the Saxon University has represented the superior court on the Saxon territory. Based on old freedoms of the Imperial Land, according to which a Saxon person could be cited only in front of the own judge, the town and village people could not be evoked in the Princely / Royal Table, or after the establishment of the Principality, in the Princely Table, but had the right to appeal ultimately to the country sovereign. This right meant a basic pillar for the privileged status in reaching perfection. In the Table, where the nobility enjoyed the right of priority, only the Saxon village could be raised in principle, not the person, or only under charges of committing a criminal offense. Criminal and civil processes were not very clearly differentiated, today's offenses solved in the criminal proceedings in that time were seen as civil actions settled through compensation of victims and punishment of the offenses, usually set for private offenses (contempt of honor, defamation, injury, violence), while public offenses were considered the serious criminal acts. In the Sixteenth Century, in serious cases the action was already turned on by default, samples and evidence necessary to condemn the accused persons were being collected by the competent courts. The exceptional form of the criminal procedure was established by the institution of pursuit of the criminals (*potera*). At the beginning of the Sixteenth Century, the Saxon cities already possessed the essential elements of the prosecution of criminals, municipalities enjoyed the rights and freedoms similar to those of counties: the territory of their administration were free to pursue, capture and judge public criminals, they could ask the other municipalities for the extradition of criminals; residents were allowed to track stolen goods (riding and burden animals), and on their own land municipalities have benefited from protection from abuse made by the noble troops. The notion of *potera* means the measures designed to prevent crime; the presence of patrol on the streets or roads contributed to maintaining public order and safety of residents.

The analysis of judicial sources shows that the formal sources of law was not given automatically, as it was not obvious in the behavior in public bodies either regarding the suffered damage or observed irregularities. By examining the preserved sources of law we see how the courts have resorted to establishing and implementing exemplary punishment primarily in extraordinary cases, defined by the legal terminology of the time in the notion of stellar court: in serious criminal cases (the executions of criminals for theft and robbery,

premeditated murder and serious forms of sexual offenses: incest, bigamy, sodomy are characteristic) and political offenses.

The frequency of occurrence of actions started with claims relevant for criminal law, we find four groups of offenses, which - if we do not include offenses of forgery, of whom qualified actions were to be judged in anyway in superior courts in the country, accounting for the high crimes of betrayal and minor forgery, forgery with weights and measures, etc. were resolved by lower courts (guilds, *vilicus*, etc) - corresponds to the structure of the criminal code *Das Eigen-Landrecht der siebenbürger Sachsen*. The actions brought before the magistrate can be divided into the following groups of offenses: offenses against property, crimes of violence, injury and sexual offenses. As far as possible to report the law (the norm) to the legal practice for a case which relied in addition to law also on customs, it seems, in its judgments, that the magistrate has closely followed the law, and his ruling was based only to a lesser extent on the judicial appreciation. The judicial practice was not particularly severe, the court sought to resolve cases in litigation in accordance with what was expected of the judges: offering the means of compromise between the parties. In many cases there was no need of sentences, either because the parties were reconciled in the meantime, either because the court sent home the parties, as their quarrel was found to be too trivial. Penalties are harsh, it seems, only when the interests of people in the punishment were evident, especially in defense of property (as it is understood that most of the death sentences were executed for theft), and offenses committed with a unusual cruelty and perversity: robbery, murder, infanticide, incest, rape, bigamy, etc. Not independent of the Protestant ethic, the court established fines primarily for the offenses that involved the morals, understanding the concept in its broad sense, which covers both lust and, to some extent, provocative actions: swearing and fighting, were considered consequences of unbridled, unsubdued, scandalous behavior. In these cases, it seems, justice becomes slowly the power tool in disciplining undesirable social behaviors.

Keywords
Municipal jurisdiction, criminal statutory law, judicial reform, judicial law practice, criminal groups

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