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Doctoral Thesis

The Value of Life in Cluj in the Last Two Decades of the 16th Century

Homicides

SUMMARY

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KEYWORDS:

early-modern judicial activity, judicial institutions, judicial practice, judicial procedure, legislation, criminality, crime and punishment, homicides, delinquent society, torture

SUMMARY

The thesis focuses on the homicide cases from Cluj in the last two decades of the 16th century. Our aim was a complex approach of the phenomenon from the point of view of both the judicial activity of the town, as well as of the relation between crime and the society of the town. Because of the lack of secondary literature a comprehensive analyses of the topic required first a detailed presentation of the judicial institutions and judicial practice of the town.

Chapter I presents the archival sources used in the research. The main corpus for our topic are the judicial protocols of the town. The protocols containing the minutes of the assembly of the hundred men (*centumviri*), the town accounts of the stewards (*dispensatores*) and those of the public prosecutors/inquisitors (*directores causarum*) provide as well valuable data for our research. Concerning the previous research of the topic a comprehensive study or a handbook is still missing, as well as a profound analysis of the different crime categories, or a systematic investigation of the judicial practice of the town.

Chapter II focuses on the office-holders engaged in the judicial activity of Cluj at the end of the 16th century. Our investigations concerning their biography, range of activities, their juridical knowledge, cultural and social capital have revealed that by that time the competences of different institutions in the town – including the juridical institutions – hadn't been clearly separated and dissociated yet. However, several signs can be traced already that reflect important changes towards the modernization of the judicial system of Cluj: the assembly of the *centumviri* controlled the activity of the judges and of the 12 jurors, being also responsible for creating the legal background for the judicial activity; in the appointments of the office-holders of the town – notaries,

procurators/advocates or prosecutors – their professional experience grew very much in importance; measures for a higher efficiency of the judicial activity had been taken, the most important among these being the establishment of the institution of the inquisitors of the town. They were charged to take action against criminals in cases that didn't involve private accusation, and they gained important authority in the management of the town's revenues as well. The data presented shows that the apparition of the institution stimulated greatly the development of the judicial practice of the town. The inquisitors were charged to take up the efforts of the town's magistrate to provide an institutional frame for the persecution and the punishment of the criminals. The growth in number of both the type of the crimes prosecuted, as well as the number of criminal trials started through private or public initiation at the court of the town proves a more effective committal of the criminals; furthermore, it clearly indicates the growing role of the justice in the disciplining process of the community.

Chapter III explores several aspects concerning the judicial practice of the town. The gathered data highlights that the law-court of the town had full jurisdiction in all types of crimes, and could intervene in all the cases that involved citizens, dwellers of Cluj without citizenship, people living on the outskirts of the town, as well as foreign criminals, either they committed their crimes on the territory of the town, or were only arrested there. Starting from the second half of the 16th century in the hierarchy of the courts of appeal the law-court of the town had to obey only the central authority of the prince. The prince, as a supervisor of the judicial activity of the town, didn't intervene in questions concerning the privileges, freedoms and the internal laws of the town. Most of the times he only gave certain indications for the magistrates, except for the cases of obvious abuse of the law-court of the town, when he expressed firmly his point of view. In its judicial activity the magistrate of Cluj had active relations with the neighbouring counties, with the magistrate of Sibiu (Hermannstadt), with the guilds of Cluj, or with the ecclesiastical law-court of the town, represented by the court of the Unitarian Superintendent of Transylvania from Cluj. The jurisdiction of the towns was sometimes contested by the ennobled citizens, but especially by the nobles from the counties, who owned properties in the town.

The same 3rd chapter identifies and analyses the phases of the judicial procedure in the homicide cases, and reveals several procedural elements which show that the judicial system of the town was in transition between the judicial practice of the middle ages and the modern procedure.

Chapter IV outlines those fundamental laws of the medieval Hungarian kings, the decisions of the diet of the Transylvanian Principality and the statutes of the magistrate of Cluj from the second half of the 16th century, that referred to the punishment of the murderers, and according to which the authorities tried to maintain the public discipline in the society of the time.

Chapter V comprises the most significant part of the thesis, which analyses the homicide cases of Cluj from the last two decades of the 16th century. The investigation is based exclusively on the crimes recorded in the judicial protocols of the time from Cluj. It tries to outline the legal norms on which the sentences of the cases were built, the punishments given in certain cases, as well as to reconstruct the social environment of the crimes by analyzing the social status of the participants, the causes, the locations, the temporal coordinates, and other specific circumstances of each case.

The gathered information revealed that at the end of the 16th century interpersonal violence – manifested rather outside, than within the families – was part of the everyday life of the town dwellers of Cluj. The simple unpremeditated cases and those committed in self-defence were the most frequent types of homicides, their majority being the tragic consequence of fights among the town dwellers. The research revealed that more conflicts arose between people of the same social status, than between persons belonging to different social categories. Through the analysis of the homicide cases one can notice that all the social categories of the town were involved in such actions. Yet there are very few instances where the criminals were citizens, and for example they never committed robberies followed by murders. Their percentage is higher though (almost 50%) in the cases of domestic crimes. However the majority of the murderers were servants working in the households, or in the bartons of the citizens. Being implicated frequently in all kind of crimes, they represented the category with the higher potential of delinquency. The outsiders, foreigners, present in the town only periodically, were another category of criminals. First of all the soldiers, who crossed the town on their way to battles or back,

represented a serious menace for the civil community of the town. Among the foreign criminals our historical records mention a polish man and some Italians as well, all of them being probably in the service of the prince. Other offenders were robbers living in the woods and in the fields around the town, shepherds from Feleac, serfs living in the villages next to the town or in more distant settlements, who usually spent their time in the taverns of Cluj.

As for the victims the sources show that all social categories of the town were directly affected by the homicide cases. The number of citizens as victims is higher than their number as criminals. The fact that the citizens resorted to homicide as a solution to their conflicts much more rarely in comparison to other social categories of the town reflects, that the social status influenced the attitude of the people towards violent conflicts.

The homicides were '*men's affair*', almost 90% of the crimes being committed by them. In a smaller proportion (12,5%) their victims came from among the members of their families (children, wife and mother-in-law), but the majority (77%) were men as well. Concerning the place of the women in these crimes the gathered data reveals that either offenders, or victims, they usually got involved in domestic conflicts. Thus, likewise in other parts of the early-modern Europe, in the society of Cluj of the time the range of activity of women was within the family, in the domestic environment, their main activities being the raising of the children and keeping the household. In around 20% of the homicide cases the victims were children. In the studied period the number of the prosecutions against infanticides has grown significantly, due to the efforts of the authorities to systematize their legal policy by prosecuting more effectively the women accused of such crimes. Thus, likewise in other parts of the early-modern Europe, the general endeavours of the authorities to naturalize motherly love and to transform the motherly instinct – "*as a natural and stable female characteristic*" (RUBLACK 1999, p. 165.) – in a constant of the collective mentalities can be traced in the society of Cluj.

The majority of the crimes were committed by younger, unmarried persons, just like the majority of the victims came from the same generation. Their juvenile enthusiasm and impetuosity, the needs for demonstrating courage, power and masculinity, doubled with a lack of experience and lucidity were the main motives for

their implication in serious crimes, without being aware of the grave, sometimes even fatal consequences that their acts could have on their lives.

In accordance with the ethnic realities of Cluj at the end of the 16th century, the majority of the people involved in these crimes were Hungarians, followed by Germans, and then Romanians. Among the criminals there was also a Polish servant of the prince, together with his Polish men, a Cossack and a few Italians. One must also observe that in conflicts among persons belonging to different ethnic communities, the main causes of violence were usually other than the ethnic differences.

Reflecting on the motifs that triggered these conflicts, one must note the continuous atmosphere of anxiety in the town starting from the second half of the 16th century – induced partly by the spread of the ideas of Reformation among the town-dwellers, and partly by the arrival of the refugees from the southern parts of the former medieval Hungarian Kingdom, that fell under Ottoman occupation – that had created a favourable background for different crimes, such as sexual offences, prostitution and homicide. Among the direct causes of the crimes the minor conflicts of the everyday life of the town-dwellers were probably the most common. Alcohol abuse was another important factor, just like the prevalent custom of weapon wearing in the town, although the laws of the town prohibited it. Still, the most conflicts among men arose when pride, vanity, honesty, personal honour, or the honour of a certain community (the community of a town, of the guilds) was violated. Others fought to prove their virility, courage and physical power. In their cases usually the enthusiasm of the youths, doubled by the lack of life experience led to violence. The violation of the specific roles of different social categories, and the immixture or interchange among these typical roles generated conflicts not only in the society of the town in general, but within the closed family circle as well. Tensions within the guilds of the town could also increase the criminality from the town. The presence of the foreigners, economical factors, imprudence, misfortune or misadventure sometimes also caused conflicts degenerating into homicide.

The nature of the crimes determined the locations and the timing of the homicides. In the cases of premeditated murders the criminals preferred the abandoned, deserted spots, and those hours in the day when human presence was the most improbable. Premeditated attacks occurred sometimes at the houses of the citizens as well. These were

usually committed during the night. In the cases of unpremeditated manslaughter the murders were enacted usually in places with intense human presence, in locations where different social categories of the town used to interact, in the places of convergence of the town dwellers. The most frequent locations of these kind of homicides were the taverns opened in the houses of the citizens. Thus these places bore a great potential of delinquency, being places of social interaction where friendships and hostile relations were present at the same time. In several cases the violent conflicts extended outside the tavern, on the streets of the town, and in this way the crimes gained an even higher publicity. Another frequent location was the market, that besides being a place of exchange, favoured personal meetings, and facilitated the cultivation of the friendships as well as the conflicts. Another category of the homicides was enacted within the family, an environment much more isolated from the outsiders, dominated by the authority of the parents, usually that of the man.

By investigating the different roles played by the criminals one can conclude that in the society of Cluj from the end of the 16th century, it is only in the cases of robberies followed by murders that one can trace a learned delinquency, with learned criminal roles enacted by professional criminals, who possessed the ‘art’ of steeling and robbing, and were usually grouped in organized gangs of professional criminals. However, these were not the most frequent crimes that took place in Cluj. Instead the cases of unpremeditated manslaughter committed under the influence of alcohol, or because of a sudden anger, or homicides by misadventure or imprudence were the most common cases. In these cases the actions didn’t root in a learned delinquency, rather in the common nature of every person to get involved occasionally in conflicts, that in certain circumstances could only end by the use of violence. As Natalie Zemon Davis stated, conflict has always been part of the life of every society, what made a difference among the communities and societies was the form and the intensity of the violent acts, by which these conflicts were solved. From this point of view one can conclude that the society of Cluj at end of the 16th century was not dominated by excessive aggression and violence.