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Petty offences Related to Smoking and Alcohol Consumption in Hungary in the Period before 1848

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Abstract

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The history of alcohol consumption in Hungary, like much of the rest of the world, dates back to the time before the state was founded. Smoking, on the other hand, became popular under Turkish influence in Hungary in the early modern period. Both vices were eventually regulated due to their wider detrimental effects on society and the possibility of resultant accidents. Though neither alcohol consumption nor smoking in general was strictly prohibited, legislation attempted to raise awareness of their serious consequences by imposing restrictions and sometimes even fines on perpetrators. In the absence of state regulations, many of these rules were found only in county and city statutory decrees, which were the legal regulations most often applied by courts due to a lacking hierarchy of legal references. After a brief introduction to the structure of Hungarian criminal law before 1848, the current article aims to provide insight into these alcohol and smoking regulations. In addition, a brief description of the afterlife of such provisions, through codification attempts of the 19th century and Act No. 5 of 1878, the first criminal code passed by the Hungarian Parliament, is provided in the conclusion.

Since the hierarchy of legal norms were defined by Hans Kelsen¹ with the Constitution at the top and the statutory rulings of local governments at the bottom, applicable law has been clear and uniform for courts. Customary law, which strongly characterizes the Hungarian legal system before 1848, is not included within Kelsen's structural order at all since it cannot be enforced under the rule of law, which emphasizes legal positivism and the primacy of written legal sources.² It is interesting to note that even later, when customary law failed to survive the abolition of the feudal system and the introduction of the rule of law, the Hungarian legal system was not always able to adhere to the rule of positivism due to historical circumstances. Even in the context of the proclamation of a constitutional monarchy and a stated commitment to enforcing the rule of law after 1848 or even the Compromise with Austria in 1867, in the absence of codified law,

- 1 KELSEN, Hans. *Pure Theory of Law*. Berkeley; Los Angeles : University of California Press, 1967, p. 221.
- 2 SEVEL, Michael. Legal Positivism and the Rule of Law. In *Australian Journal of Legal Philosophy*, 2009, vol. 34, no. 53, p. 53.

the courts had to be granted the power to rule according to existing customary law as late as the 19th century.³

Contrary to the aforementioned practice, in the period before 1848 it can be clearly seen that this legal hierarchy was nearly reversed from the bottom up, emphasizing the application of the *Tripartitum*, the collection of customary law by István Werbőczy, as the basis of private and procedural regulation from the 16th century onwards,⁴ as well as the *Praxis Criminalis* in the field of criminal law for non-nobles nationwide from the end of the 17th century.⁵ Besides customary rules, local governments in counties and towns were empowered with the ability to regulate their everyday lives in detail through statutory decrees adopted by self-government assemblies. After the Ottoman invasion of central parts of the country, only 35 counties remained in the Hungarian kingdom, with Transylvania becoming an independent principality defining its own legislation. A transfer of the royal court to Vienna then shifted the center of politics to the noble counties, whose authorities took over the administration and judiciary and shifted the focus from laws and decrees to customary law and local legal norms.⁶ Beyond these two sources, decrees of the Hungarian General Assembly and the Hungarian kings issued in the period before the war against the Ottomans in 1526 only ranked third in the priority of norms in force territorially.⁷ As Barna Mezey notes in his

- 3 This period began after the so-called *October Patent of 1860*, when Francis Joseph allowed Hungarians to restore the pre-1848 administrative and judicial systems, and pre-1848 laws were reinstated with provisional effect until codification was successful. The collection of current laws and customs prepared by a conference headed by the Lord Chief Justice in 1861, called the *Provisional Rules for the Administration of the Judiciary*, was intended to fill the gap until Hungary regained an independent legislature and codification was completed. In the absence of a crowned king to sanction the collection and a proper parliament to approve the bill, the set was applied by the courts in Hungary as customary law. KÉPESSY, Imre. Kérdések az Ideiglenes Törvénykezési Szabályok jogforrási jellegét illetően. In PERES, Zsuzsanna – BATHÓ Gábor (eds.) *Ünnepi tanulmányok a 80 éves Máthé Gábor tiszteletére: Labor est etiam ipse voluptas*. Budapest : Ludovika Egyetemi Kiadó, 2021, pp. 608–617.
- 4 KOLOSVÁRI Sándor – ÓVÁRI Kelemen. *Werbőczy István Hármaskönyve. Magyar Törvénytár*. Budapest : Franklin, 1897.
- 5 The *Praxis Criminalis* was a penal ordinance (Neue peinliche Landgerichtsordnung) issued by Ferdinand III for Lower Austria on 30 December 1656, which was translated into Latin by the Archbishop of Esztergom, Leopold Kollonich and placed on the agenda of the Hungarian General Assembly held in Pozsony/Bratislava, as a bill in 1687 to fill the gap of the non-existent Hungarian penal code. The bill was rejected by the Hungarian nobility because they “strongly adhered to Hungarian law,” but it was later published in the third edition of the Hungarian *Code of Laws* (Corpus Juris Hungarici) by Martin Szentiványi in 1696 and enforced as customary law by local and county courts, which explicitly applied to non-nobles as well. Nobles had to be tried in criminal cases according to the laws of the country and not according to the *Praxis Criminalis*, which led to a division of criminal law provisions according to social class. BÉLI, Gábor – KAJTÁR, István. Az osztrák (-német) büntető jogszabályok hatása a magyar jogban a 18. században (A *Praxis Criminalis*). In ÁDÁM, Antal (ed.) *Dolgozatok az állam- és jogtudományok köréből XIX*. Pécs : JPTE, 1988, pp. 29, 39.
- 6 BÉLI, Gábor. A Négyeskönyv 1573. évi interpolált változata és közjogi megoldásai. In MÁTHÉ, Gábor (ed.) *Quadripartitum kézirat azonosítása NK Iv. 1573*. Budapest : NKE, 2015, p. 355.
- 7 Since attempts to codify the criminal law failed again and again until the end of the 19th century, applicable state law was based on the various decrees and laws issued by Hungarian kings such as Stephen I, Ladislaus I and their successors. After a failed attempt by Leopold Kollonich in 1687, the Hungarian General Assembly of 1712–1715 decided to appoint a systematic commission to prepare a criminal code for the next session of the Assembly with Mihály Bencsik, a professor of the University of Nagyszombat/Trnava. Although the later General Assembly of 1722–1723 reiterated the need for codification, it never came. Later, both Maria Theresa and Joseph II issued decrees regulating criminal law, but neither remained in force for long and the Hungarian Gen-

article on the judicial reform of 1723 aimed at criminal justice, the situation in the field of justice in Hungary at the beginning of the 18th century was rather confusing, unregulated, and a host of controversial tendencies prevailed. The territorial judiciary was largely decentralized and tied to the nobility, plus courts were usually organs of administration and maintained differing structures depending on certain privileges, local statutes and traditions.⁸ Judges of the local courts and the landlords as judges of the manor courts—who were not obliged to study law before becoming judges—applied the legal norms they knew best, which influenced daily life, customary law and statutory decrees.⁹ State law and the acts of the General Assembly of the Hungarian Kingdom were referred to mainly in court proceedings of the nobility from the county courts upwards, a narrow but privileged stratum of Hungarian society before 1848. Ratifications of the General Assembly regained importance after the expulsion of the Ottomans and the restoration of state administration in the newly liberated territories under Charles III. In 1723, he enacted reforms in the judicial system that clarified the hierarchy of courts, applicable law and the route of appeals and remedies.¹⁰

Regulations on smoking in Hungary before 1848

Legislation was needed to respond to the rapid spread of smoking in Hungary in the early modern period under the circumstances detailed above, especially at the local government level.

Examining the history of this often fatal habit, many regulations on smoking have been enforced not only in the present day, but also in the past going back to the time when returning sailors brought back tobacco from the New

eral Assembly again decided to establish a systematic commission on codification at its sessions of 1791–1792. Although a new draft law was prepared, codification did not succeed this time either and the draft was forgotten. Two more attempts before 1848 are worth mentioning, one in 1827–1829 and another that gained greater, even international fame, the bill of 1843, which bears the signature of Ferenc Deák, the famous jurist and delegate of Zala County to the General Assembly of the Hungarian Reform Era. Both bills failed, however, and this legislative gap in the field of criminal law was filled temporarily by the *Austrian Criminal Code of 1852* before the Hungarian Parliament adopted the first *Hungarian Criminal Code* in 1878. See more: BÉLL, Gábor. *Strafrechtspraxis und Strafrechtswissenschaft in Ungarn im 18. Jahrhundert*. In MEZEY, Barna (ed.) *Strafrechtsgeschichte an der Grenze des nächsten Jahrtausendes*. Budapest : ELTE, 2003, pp. 110–121; BÓNIS, György. A Magyar büntető törvénykönyv első javaslata 1712-ben. In BERTIL, Emil – JENCS, Árpád (eds.) *Angyal szeminárium kiadványai*. 26. Budapest : Sárkány Nyomda, 1934; *Közönséges törvény a vétkekről és azoknak büntetésekről*. Buda : a Királyi Akadémia betűivel, 1788; BALOGH, Elemér. A magyar büntetőjogi dogmatika kezdetei. In *Jogtörténeti Szemle*, 2008, no. 4, pp. 1–8; BALOGH, Elemér. A magyar büntetőjogi kodifikáció genezise. In MÁTHÉ, Gábor – MENYHÁRD, Attila – MEZEY, Barna (eds.) *A kettős monarchia. Die Doppelmonarchie*. Budapest : ELTE Eötvös, 2018, pp. 247–277; HAJDU, Lajos. *Az első (1795-ös) Magyar büntetőköd-tervezet*. Budapest : Közgazdasági és Jogi Könyvkiadó, 1971.

8 MEZEY, Barna. Adalékok a büntetőbíráskodás 18. századi változásaihoz. In *Acta Universitatis Szegediensis: Acta Juridica et Politica*. 2018, vol. 81, pp. 681–682.

9 The judgments of these courts had to be just or fair rather than adherent to the principles of law. The courts consisted of lay judges who enforced the laws as they understood the content of the customary rules. Moreover, judges did not have a collection of previous court rulings at their disposal, so they attempted to meet the demands of parties as best they could, using their own knowledge as a basis. RADY, Martin. *Customary Law in Hungary: Courts, Texts, and the Tripartitum*. Oxford : Oxford University Press, 2015, pp. 243–244.

10 BÓNIS, György – DEGRÉ, Alajos – VARGA, Endre. *A magyar bírósági szervezet és perjog története*. Zalaegerszeg : Zala Megyei Bíróság, 1996, pp. 89–94.

World.¹¹ Tobacco could be enjoyed in three different ways: snuffing, smoking or by chewing the tobacco leaves. Although most European countries banned the most enjoyable method of smoking (a cigar or pipe simply for the purpose of a joyous activity), snuffing was allowed due to some recognized medical benefits of tobacco.¹² Cultivation of tobacco began in Spain in 1558 and from there it spread to the rest of Europe, although major trade in tobacco did not begin until the 17th century.¹³ While today's tobacco regulation attempts to manage the increase in smoking by raising awareness of the health implications by regulating the excise tax on tobacco, previous laws focused on tobacco from two other perspectives. Firstly, the question of a tobacco monopoly and secondly, smoking was believed to pose a threat to the public order as it was considered a trespass or a petty offence that fell under the jurisdiction of local governments.¹⁴

In the second half of the 16th century, smoking grew in popularity around Hungary and Transylvania, introduced by the Ottomans while Spanish soldiers stationed in the Hungarian kingdom brought tobacco to Hungary.¹⁵ The Hungarian word for tobacco, “dohány,” is derived from the Ottoman “duhan,” and in Hungarian documents on smoking written in Latin, the expression “fumigatio tabacae” is used, but sometimes “pipe” or “tobacco pipe” also appears.¹⁶ Tobacco cultivation in the region began in Transylvania and became

- 11 Smoking and weed piping preceded the arrival of tobacco in Europe. Ancient Romans practiced this barbaric custom, though it was not tobacco but another fragrant weed. Tobacco spread in Europe only after the discovery of the Americas. REMETHEY FÜLEPP, Dezső. *A nagy szenvedély. A dohányzás története*. Kalocsa : Szerzői Kiadás, 1937, pp. 11,13; See more on the history of smoking O'DOHERTY, Maureen. Price of a Soul: At What Cost Can the Tobacco Issue Be Resolved. In *Journal of Health Care Law & Policy*, 1998–1999, No. 2, pp. 5–14; TUSNÁDI ÉLTHESS, Gyula. *A rendőri és a jövedéki büntetőjog. Az ezeréves magyar kihágási jog története és mai állapota*. Budapest : Fővárosi Nyomda Rt, 1935, pp. 266–267.
- 12 Pipe tobacco appeared first and became widespread at the beginning of the 18th century, while cigar smoking appeared later in the period of the Napoleonic wars and spread from Spain, where tobacco leaves were wrapped in cigarette paper called “papelito.” BRAUDEL, Fernand. *Anyagi kultúra, gazdaság és kapitalizmus XV.-XVIII. század. A mindennapi élet struktúrái*. Budapest : Gondolat, 1985, p. 267.
- 13 BRAUDEL 1985, p. 267.
- 14 This article does not deal with the tobacco monopoly. The history of the tobacco monopoly in Hungary was studied in detail by Sára KOHÚT in her dissertation KOHÚT, Sára. *A dohánymonopólium előzménytörténete Magyarországon* (The Antecedents of the Tobacco Monopoly Regulation in Hungary). Debrecen : Debreceni Egyetem, 2015, <https://dea.lib.unideb.hu/dea/bitstream/handle/2437/225011/disszertacio.pdf?sequence=1&isAllowed=y> [last viewed on 27 February 2022] and by KÉPES, György. A magyar dohánypiaci szabályozás története az osztrák-magyar kiegyezés fényében. In *Forum. Acta Iuridica et Politica*, 2019, vol 9, no. 1, pp. 57–84.
- 15 KÉPES 2019, p. 58; RADVÁNSZKY, Béla: *Magyar családélet és háztartás a XVI. és XVII. században. Vol. I*. Budapest : Hornyánszky, 1896, pp. 392–393.
- 16 Some of the references to the denomination of smoking from the collection of local statutory regulations, the *Corpus Statutorum*, without claiming to be exhaustive: “Tristia testantur exempla et id, quod ob incautelam pipariorum saepe periculosissima etiam incendia exoriri...” Statutory regulations of the Yazyg and Cumanian Districts, 1765. In KOLOSVÁRI Sándor – ÓVÁRI Kelemen (eds.) *Corpus Statutorum. Statuta et articuli municipiorum Hungariae Cis-Tibiscanorum. Vol. II. Part II*. Budapest : MTA, 1890, pp. 52–53; “Fumigatio tabaccae interdicatur omni modo...” Statutory regulation of County Bihar, 1711, “Si quidem ex fumigatione tabaccae magna incendia orirentur...” Statutory regulation of County Békés, 1739. In KOLOSVÁRI Sándor – ÓVÁRI Kelemen (eds.) *Corpus Statutorum. Statuta et articuli municipiorum Hungariae Trans-Tibiscanorum. Vol. III*. Budapest : MTA, 1892, pp. 265, 344; “Et quia ex fumigatione tabaccae vulgo, pipázás...” Statutory regulation of County Veszprém, 1750. In KOLOSVÁRI Sándor – ÓVÁRI Kelemen (eds.) *Corpus Statutorum. Statuta et articuli municipiorum Hungariae Trans Danubiarum. Vol. V. Part I*. Budapest : MTA, 1902, p. 578; TAKÁTS,

popular after the fall of the Rákóczi uprising in 1711, though it did not develop on an industrial level until the turn of the 19th century due to prohibitions on smoking and sales.¹⁷

As far as the regulation of smoking is concerned, available documents show that the act was mostly prohibited and often restricted in both Hungary and Transylvania, and that those who broke these rules were obliged to pay fines. Fines were imposed not exactly for reasons of public health, but for public safety. Several documents in the prohibition acts explicitly mention serious fires that occurred as a result of smoking, so it seems that smoking was the leading cause of fires, especially considering that it often went hand in hand with human negligence and recklessness.¹⁸ Such prejudice against smoking is best reflected in the legal regulation of the county of Borsod in 1671:

Being descended from the heathen, it is a kind of heathen drink, the incessant drinking and smoking of that stinking tobacco, which is often the cause of fires, and therefore if anyone is caught henceforth in action of smoking or drinking that smoky tobacco, he shall be punished, if he is a nobleman, with 12 florins, and if he is a servant or a peasant, with 6 florins [...] without any partiality [...] the same shall apply to those who sell it.¹⁹

Half of the collected fines went to the county treasury, leaving the other half for the officer collecting them. In places where smoking was prohibited entirely even if it did not pose a direct threat to public safety, a fine was imposed based on the possibility of a fire starting. Smoking was therefore prohibited and sanctioned even if no fire occurred at all. For a deeper insight into the history of smoking, these restrictions should be examined within the context of other public safety regulations and administrative measures meant to prevent disaster caused by fires. This was the reason why smoking was expressly forbidden and not the taking of snuff.

In an environment built of wood, fire was a great danger and arson had been severely punished from the foundation of the Hungarian Kingdom in

Sándor. A dohány elterjedése s az első dohány-monopólium hazánkban. In *Gazdaságtörténeti Szemle*. 1898, p. 52.

17 KOHÚT 2015, p. 57; VAJKAI, Zsófia. Régi magyar dohányfajták és termesztésük. (Juhász Árpád emlékanyag a Magyar Mezőgazdasági Múzeum adattárában). In TAKÁCS, Imre (ed.) *A Magyar Mezőgazdasági Múzeum Közleményei 1975–1977*. Budapest, 1978, pp. 119–120.

18 Some references without claiming to be exhaustive from the *Corpus Statutorum*: “Ex quo ex olla fumigatoria quam plurima incendia et damna intervenire soleant...” Statutory regulation of County Szabolcs, 1728. In KOLOSVÁRI – ÓVÁRI 1892, p. 317; “Mivelhogy sokféle veszedelmes gyuladások és közjónak kárával, és sokaknak utolsó romlásával a haszontalan gonosz és gondtalan emberek által történni tapasztaltattak...” Statutory regulation of County Bihar/Bihor, 1781. In KOLOSVÁRI – ÓVÁRI 1892, p. 420; “Sok károk tapasztaltattanak sok helyeken a dohányzás miánn esett égések miatt...” The constitutions of Udvarhelyszék/Odorheiu Secuiesc, 1727. In KOLOSVÁRI, Sándor – ÓVÁRI, Kelemen (eds.) *Corpus Statutorum. Statuta et constitutiones municipiorum Transsylvaniae ab antiquissimis temporibus usque ad finem seculi XVIII. Vol. I*. Budapest : MTA, 1885, p. 133; “Cum incendia ex fumigatione tabaccae complura oriantur...” Statutory regulation of County Liptó/Liptov, 1712. In KOLOSVÁRI, Sándor – ÓVÁRI, Kelemen (eds.) *Corpus Statutorum. Statuta et articuli municipiorum Hungariae Cis-Danubianorum. Vol. IV. Part I*. Budapest : MTA, 1896, p. 608.

19 KOLOSVÁRI, Sándor – ÓVÁRI, Kelemen (eds.) *Corpus Statutorum. Statuta et articuli municipiorum Hungariae Cis-Tibiscanorum. Vol. II. Part I*. Budapest : MTA, 1890, pp. 261–262; The statute is also quoted by BÉLI, Gábor. *Magyar jogtörténet. A tradicionális jog*. Budapest; Pécs : Dialóg-Campus, 2000, p. 212.

1000 A.D. through the *Decrees of Stephen I.*²⁰ It is important to note that deliberate arson was the primary crime punished by the decrees.²¹ Arsonists, who were called public evildoers (*malefactores publici*) and committed premeditated arson, were counted among the most serious offenders, the so-called “scoundrels,” and were punished by death.²²

As far as the levels of regulation of smoking are concerned, there are differences between the policies in the Kingdom of Hungary and the Principality of Transylvania. While in Transylvania both arson and smoking were regulated by enactments of the General Assembly,²³ only arson was regulated at a higher level in Hungary and the policing of smoking was left to local governments (counties, cities and districts). Detailed and explanatory regulations can be found at the local level in both countries with the difference being that for the sake of uniformity, local statutory regulations in Transylvania refer to the laws of the General Assembly, which prohibit smoking throughout the territory of the principality.

Commonalities between the abovementioned legal regulations related to smoking are as follows: the objective of the restriction of smoking was to protect public safety and prevent fire damage; the punishment imposed for smoking was usually a fine, for both smoking and compensation for any damage it

20 Guarding the fire was one of the most important actions and duties. One could even be exempted from the duty to attend mass in the church if he guarded the fire, according to Article 8. of *Decree I of Stephen I.* Article 30 of *Decree II of Stephen I* obliged those who deliberately set fire to buildings with hostile intent to pay for the restoration of the damage they caused and moreover, they also had to pay compensation. LEDERER, Emma (ed.) *Szöveggyűjtemény Magyarország történetének tanulmányozásához. I. rész. 1000-től 1526-ig.* Budapest : Tankönyvkiadó, 1964, pp. 20, 23.

21 Among the laws, *Act 2. of 1462, Act 107. of 1492, Act 4. of 1495* and *Tripartitum Part. I. Title 14.* regulated deliberate arson committed in a group or publicly. After the Battle of Mohács in 1526, *Acts 11. ad 109. of 1723* and *Act 9. of 1840* regulated arson. The so-called public arson (i.e. premeditated and deliberate arson with a hostile intent) was considered a crime of infidelity, punishable by death and confiscation of property, while deliberate arson without hostile intent (in the second-degree) could be punished by capital punishment. In the 18th century, if arson were committed without intent and there were other mitigating circumstances, the judge could impose punishment at his discretion, taking the evidence into account. Article 83. of the aforementioned *Praxis Criminalis* punished “public” arsonists by burning them alive and private arsonists (*incendiarii privati*) who committed crimes deliberately and secretly, but alone, also with death. See BODO, Matthias. *Jurisprudentia Criminalis secundum Praxim & Constitutiones Hungaricas in partes duas divisa. Pars. II. Art. LXXXI. De Incendiariis. XIII. §.* Pozsony : Landerer, 1751, pp. 275–276; Article 83. of the *Praxis Criminalis* translated and quoted by BÉLI 2000, p. 211.

22 Many local statutory regulations included public arsonists among public evildoers, whose arrest and punishment were the duty of county officials and landlords on their lands. If they failed to apprehend these offenders, they too fell under the jurisdiction of the courts. In addition to arsonists, public offenders included thieves, muggers, adulterous people, murderers, traitors to the faith, rapists, incest breakers and blasphemers. See statutory regulations of County Torna/Turňa, 1617, 1611. In KOLOSVÁRI – ÓVÁRI 1890, Vol. II, Part I, pp. 70, 81–82; See also statutory regulations of County Ung/Užhorod, 1637. In KOLOSVÁRI – ÓVÁRI 1890, Vol. II, Part I, pp. 165–171; Nobles who set fire to villages could also be arrested despite their privileges. See *Tripartitum Part I. Title 9.* Tripartite rules were also enforced by local statutory regulation as well. Mathias Bodo distinguished between malefactors, denoting public arsonists, murderers, highwaymen and robbers public malefactors (*malefactor publicus*) and private arsonists, adulterers, bigamists and thieves private malefactors (*malefactor privatus*). BODO 1751, p. 16.

23 General assemblies held in Gyulafehérvár/Alba Iulia in 1670, in Segesvár/Sighisioara in 1683, again in Gyulafehérvár in 1686, and in Segesvár in 1689, regulated the imposition of fines on smugglers who brought tobacco into Transylvania for sale as well as the punishment of smoking. See SZILÁGYI, Sándor. *Erdélyi Országgyűlési Emlékek. Vol. XVIII. and XX.* Budapest : MTA, 1895, 1897; quoted by KOHÚT 2015, p. 57.

caused but if the offenders were not nobles, it could also be corporal punishment such as a clobbering or spanking with a paddle. Smoking was a punishable offense and county and city officials were required to prosecute offenders. Magistrate's suits were allowed in smoking cases as it was a so-called public-policy offense, the precursor of the misdemeanors or petty offenses that were later regulated.²⁴

The offense of smoking could only be committed intentionally by smoking tobacco (*fumigatio tabacae*), either in a cigar or a pipe, but some legal provisions also prohibited and punished the sale of tobacco.²⁵ Other laws did not prohibit or punish smoking in its entirety, but punished smoking in certain places (e.g., near combustible materials) or at certain times (e.g., in hot summers when the risk of wildfire increases).²⁶

Smoking was a crime that could be committed by anyone. The laws made no distinction between male or female offenders but it was mostly men who smoked while women typically only took snuff. In accordance with the expectations of a feudal society, punishment differed according to an offender's social status. Some statutes maintained separate rules for servants, household servants (*concivis*) and redeemed people, and for Gypsies.²⁷ For smoking in general, those who had reached the legal minimum age, i.e. 12 years old, could be punished, but if it led to a fire or in the case of the intentional setting of fire, this age limit could be reconsidered. Arson was subject to stricter rules, such that those who threatened others with arson or intentionally starting a fire could be executed with impunity and the legal minimum age could also be lowered.²⁸ To facilitate the detection of smokers, some counties

24 BÉLI 2000, p. 155.

25 The statute of the city of Debrecen from 1683 forbade the sale of pipes and tobacco and gave the owners a fifteen-day period to destroy them. If anyone was caught selling or smoking tobacco or pipes after this period, the tobacco would be confiscated and burned and the offender would also be punished in other ways. Apparently, the ordinance did not have the intended effect so in 1697, it was amended and those caught in possession of a pipe were punished with an iron collar. See KOLOSVÁRI – ÓVÁRI 1892, Vol. III, p. 688, 701.

26 The city of Szentes imposed higher penalties on those who were recidivist to smoking in 1763. See KOLOSVÁRI – ÓVÁRI 1892, Vol. III, pp. 777–778; In Udvarhelyszék in 1727, smoking was forbidden in streets, yards and sheds. See KOLOSVÁRI – ÓVÁRI 1890, Vol. I, pp. 133–134; According to the 1719 statutes of Kraszna/Crasna County smoking was forbidden in the summer months and during severe drought, especially in barns where grain was stored and each household was required to place a barrel or tub of water at the house gate in case of fire. See KOLOSVÁRI – ÓVÁRI 1890, Vol. I, pp. 368–369; In Komárom County in 1794, smoking was prohibited when someone was traveling on a wagon loaded with hay or during harvest time. See KOLOSVÁRI – ÓVÁRI 1902, Vol. V, Part I, p. 700.

27 Szabolcs County explicitly forbade smoking for peasants in its 1669 statutes, and in 1772, Gypsies were also fined for smoking. See KOLOSVÁRI – ÓVÁRI 1892, Vol. III, pp. 154–155, 290; *Concivis* according to the statutes of the city of Kassa/Košice from 1703, were those inhabitants who lived in the city for more than one year, owned a house and were married. See KOLOSVÁRI – ÓVÁRI 1890, Vol. II, Part II, p. 348; The redeemed (*redemptus*) were the inhabitants of the districts of Yazyg and Cuman who lived in the district at the time of the redemption in 1745 and contributed financially to the sum of 500 thousand florins for the redemption. See Statutes of the Yazyg and Cuman District, 1799. In KOLOSVÁRI – ÓVÁRI 1890, Vol. II, Part II, p. 60.

28 According to the statutes of Kraszna County from 1716, because of the increasing number of fires, minors also had to be arrested if they were caught starting fires in the forest and must be brought before the deputy lieutenant. If they could not be caught, those who failed to do so had to report to the county officials and if anyone failed to report, a fine of 40 florins was issued. See KOLOSVÁRI – ÓVÁRI 1885, Vol. I, p. 356; About the killing of the person threatening arson see *Tripartitum* Part III. Title 23. 1§.

even created a list of known smokers in advance and imposed special taxes on them. The reason for special taxes was that counties did not have sufficient staff to administer the collection of fines, since fines did not have a withholding authority on smokers.²⁹

The amount of such fines (*mulcta*) was graduated according to social status as mentioned above, sometimes the confiscation and burning of tobacco was imposed and for non-nobles, for example, even cobbing.³⁰ From the size of the fines, it is clear that the aim of the punishment was prevention rather than repression; to raise smokers' awareness of the need to be more careful with fire. Any damage caused by fire was borne by the county treasury if the offender was not caught, so fines and taxes levied for smoking went into county and city budgets.³¹

Since smoking fell within the scope of public order, the punishment of smokers was the responsibility of administrative officials who also maintained judicial powers, such as the deputy lieutenant in the county (*vicecomes*), the constable in the prefecture (*processus, iudex nobilium*), landlords on their estates and the town prefect (*városi elöljáró*), who punished offenders caught in the act.³²

Local statutory regulations on smoking fit in well with other public order and fire safety regulations. In addition to the smoking ban, there was also a general prohibition against lighting fires during certain parts of the year. In some cities and counties, further regulations were passed on the establishment of night watches and also possible valid reasons for ringing church bells. To prevent fires, some ordinances required county and town officials to regularly inspect chimneys and fireplaces and punish those who failed to keep them clean. The placement of water barrels and water buckets was also generally ordered during droughts and hot summers. In most towns, all local residents were required to participate in fighting fires and help with repairing any damage. In addition, some towns passed regulations to replace thatched roofs with shingles or other less combustible materials within a reasonable period of time.

29 See e.g. the statutes of Pozsony/Bratislava County from 1747. In KOLOSVÁRI – ÓVÁRI 1896, Vol. IV, Part I, p. 833.

30 In general, nobles had to pay higher fines than non-nobles. The amount of the fine could be between 1 and 12 florins, the number of bats could be 12, 24 or even 50, e.g. in the city of Szentes, if they were serial smoking offenders. KOLOSVÁRI – ÓVÁRI 1892, Vol. III, pp. 777–778.

31 See the Szabolcs County Statutes of 1701, which ordered that 1 florin of the general tax on smoking be paid to the county budget and used for public purposes. KOLOSVÁRI – ÓVÁRI 1892, Vol. III, p. 238.

32 The statutes had a separate and specific regulation for each location. For a complete picture, one should examine all statutes related to smoking. Examples include: in Szabolcs County the county officials, in the villages the local magistrate, in Bihar/Bihor and Trencsén/Trenčín counties the constable in the prefecture and in the case of nobles, the deputy lieutenant had the power. In Máramaros/Maramures County the lord of the manor had power over non-nobles, in the town of Debrecen the market judge and in the case of the *seklers*, the local judges. In Alsó-Fehér/Alba County, the judge and his jury had the power to punish smokers. See KOLOSVÁRI – ÓVÁRI, 1890–1902, Vol. I–V; Gyula Tusnádi Élthes pointed out in his book on misdemeanors that prefectural constables were generally responsible for punishing smokers. TUSNÁDI ÉLTHESS 1935, p. 502.

Regulations on drinking in Hungary before 1848

Many documents regarding the drinking habits in Hungary have survived, and if we stick to the definitions of Fernand Braudel, Hungary has always belonged to the countries that produced grapes and wine and not to the beer consumers.³³ Documents exist proving the cultivation of grapes in the Hungarian Kingdom at the time of Stephen I as well as paperwork referring to the trade of wine.³⁴ This proves that the land was suitable for wine production even in earlier historical periods. Wine was especially important from a financial point of view as the wine tithe, the bucket tax and the mountain duty were important revenue for both secular and ecclesiastical bodies. Moreover, a monopoly on the production of wine, the distillation of spirits and running taverns belonged among the most important revenues in a landlords' income.³⁵

Several regulations can be found among the local statutory rules regarding the cultivation of vineyards as well. Growing grapes was not only a privilege, but at the same time a duty that serfs had towards landlords. If a serf did not cultivate the vineyard he had received from his landlord, the land could be taken back and given to someone else.³⁶

33 BRAUDEL 1985, p. 236.

34 Those who were engaged in viticulture before the appearance of serfdom in the 13th century were called vinitors. Documents exist from the Árpád era that prove that the lands were inherited together with the vinitors who were responsible for the cultivation of the vineyards, which also shows that wine was an important and well-known beverage for Hungarians in the very early times of the state organization. See BÉLI, Gábor. Wine-groves and Vineyard Tenants in Hungary in the Middle Ages. In *Acta Universitatis Sapientiae. Legal Studies*, 2013, no. 2, pp. 23–38; Sweet wines from Sirmia/Srijem were renowned in the Middle Ages and were sold on a large scale in Poland, the Teutonic Order's territories, Bohemia and Moravia. See PÓSÁN, László. Bortermelés és borkereskedelem a középkori Magyarországon. In PÓSÁN, László – TÓZSA-RIGÓ Attila (eds.) *“Vina bibant hominas, animantia cetera fontes.” Tanulmányok a magyar bor történetéből.* Debrecen : MTA-DE, 2018, pp. 8–16; There are documents proving that there were vineyards in Somló Hill, today's famous Szekszárd wine region, as early as the 11th century. See KISS, Bernadett. A somlói szőlészet és borászat jelenlétének korai emlékei. In MEZEY, Barna (ed.) *Bor és jogtörténet. Jogtörténeti Értekezések 39.* Budapest : Gondolat, 2011, pp. 44–97.

35 MEZEY, Barna. Bor és törvényhozás a magyar jogtörténetében. (Különös tekintettel a borkereskedelem szabályozására). In MEZEY 2011, pp. 98–115; About taverns and the sale of wine there are interesting court orders of manors, which provide detailed information. See DUCHOŇOVÁ, Diana. Hofeide, Instruktionen und Hofordnungen. In BÉLI, Gábor et al. (eds.) *Institutions of Legal History with Special Regard to Legal Culture and History.* Bratislava; Pécs : Publikon, 2011, pp. 361–376; VISKOLCZ, Noémi. Az Esterházy hercegi család és a borok. In PÓSÁN, László – TÓZSA-RIGÓ, Attila (eds.) *“Vina bibant hominas, animantia cetera fontes.” Tanulmányok a magyar bor történetéből.* Debrecen : MTA-DE, 2018, pp. 64–75; Transylvania and the Kolozsvár region (today: Cluj-Napoca, Romania) were a famous wine region before the outbreak of the Filoxera in 1870. The statutes of the city contained detailed information about the sale of wine, even forbidding the import of wine into the city except for general assemblies (as on these occasions the consumption of wine increased greatly), the behavior of wine consumers, the opening hours of taverns and gambling in taverns. Gamblers were often punished with public shaming in the town square. See KOVÁCS KISS, Gyöngy, A játékos város. In KOVÁCS KISS, Gyöngy. *Rendtartás és kultúra.* Marosvásárhely : Mentor, 2001, pp. 13–24.

36 If a landlord found that his men or his serf did not cultivate the vineyard given to him for three years, he was entitled to take it back. If the cultivator died and left minor children, the landlord could take back the vineyard until the children were grown up but part of the income from the vineyard had to be used for the education and upbringing of the orphans. The productivity of the vineyard had to be estimated every year until the day of the Purification of Mary (2 February), and those who did not manage the vineyard well could be banned. See KOLOSVÁRI – ÓVÁRI 1896, Vol. IV, Part I, p. 121.

Of course, spirits and beer were also known among Hungarians but were consumed to a lesser extent than wine.³⁷ Since Hungarian wines, such as those from Tokaj Mountain, were famous even in Europe in the early modern period due to export, Hungarians, with the exception of German burghers, drank more wine than beer, and beer consumption would never surpass the drinking of quality wines in the country.³⁸

Alcohol was not only a commodity, but at the same time a product of consumption. There were many reasons for the consumption of alcohol, some of which are still common today like the nepenthe, but it was also used for medicinal purposes.³⁹ Last but not least, we should not forget that access to clean water was not always available in the Middle Ages and early modern times, especially in cities, and even spring water was regularly mixed with wine.⁴⁰

Although Hungarian wines are mentioned in numerous literatures, only a few deal with the quantity of consumption. As far as we can see from available sources and literature, the Hungarians—like the rest of the European peoples—drank a lot. Men as well as women.⁴¹ Even though it was common to

37 Beer was known to Hungarians from the Árpád era and spirits called “pálinka” (aqua ardens, aqua vitae) since the time of the Angevin dynasty, according to sources. See MARTON, Szabolcs. *A magyar középkori szeszitalok története (kumisz, sör, pálinka)*. PhD. dissertation. Szeged, 2007, http://doktori.bibl.u-szeged.hu/id/eprint/5339/1/2007_marton_szabolcs.pdf [last viewed on 28 June 2021]; BRAUDEL 1985, pp. 241–250.

38 Tokaj wines were also found on the tables of royal, tsarist, papal and noble houses. “Taste it,” writes Sebastian Mercier in 1788, “...especially the Tokay, if you have the opportunity, because in my opinion this is the first wine in the whole world and only the rulers of the country have the right to drink it.” Braudel 1985, p. 239; Regarding the export of wine in the early modern period see TÓZSA-RIGÓ, Attila. *A Magyar Királyság északi irányú borkereskedelme a 16. század második felében* In PÓSÁN, László – TÓZSA-RIGÓ, Attila (eds.) *“Vina bibant hominas, animantia cetera fontes.” Tanulmányok a magyar bor történetéből*. Debrecen : MTA-DE, 2018, pp. 50–63; See also BOZZAY, Réka. *Németalföld és a magyar borok a késő középkorban és kora újkorban*. In PÓSÁN – TÓZSA-RIGÓ 2018, pp. 37–49; We also find evidence of the purchase of quality wine in the accounting books of the Prince of Transylvania. Gábor Bethlen, for example, had his own chamber and a well-paid housekeeper to guard Tokay wines. See RADVÁNSZKY, Béla. *Udvartartás és számadáskönyvek. Bethlen Gábor fejedelem udvartartása*. Budapest : Athenaeum, 1888, pp. 26, 58, 230; In Buda, due to the climate and the good soil for cultivation of grapes, the burghers produced quality Buda wine that they sold even for export to England, the Netherlands, Lower-Austria and Vienna. The name Buda meant quality wine. According to the minutes of the town council, some people who produced wine outside of the city were selling it as quality Buda wine in the hope of greater income. See GÉRA Eleonóra. *Városi hétköznapiak a századfordulón. A budai bor dicsérete*. In GÉRA, Eleonóra Erzsébet – OROSS, András – SIMON, Katalin. *Buda város tanácsülési jegyzőkönyveinek regesztái 1699–1703. Budapest Történetének Forrásai 10*. Budapest : Budapest Főváros Levéltára, 2015, p. 101.

39 Wine was often used as an additive for cooking and mixing medicines. See MADÁCH, Gáspár – BALASSI, Péter. *Házi patika 1713*. Budapest : Attraktor, 2019; *Hasznos házi orvosságok. 18. század*. Budapest : Attraktor, 2019.

40 BRAUDEL 1985, pp. 232–235.

41 See APOR, Péter. *Metamorphosis Transylvaniae*. Budapest : Szépirodalmi, 1987, pp. 14–27; RADVÁNSZKY Béla 1899, pp. 484–485; Daily wine consumption could mean several liters in some cases. See BENDA, Borbála. *Étkezési szokások a magyar főúri udvarokban a kora újkorban*. Szombathely : Archivum Comitatus Castriferrei, 2014, pp. 124, 129–138; Some sources indicate that Ádám Batthyány, a famous Hungarian nobleman of the early modern period, was known for his drunkenness. See BENDA, Borbála. “Vígán voltunk...” Akikkel Batthyány I. Ádám együtt mulatott. In ÚJVÁRY, Zsuzsanna (ed.) *Batthyány I. Ádám és köre*. Piliscsaba : PPK, 2013, pp. 191–198; Also, in the diary of Péter Keglevich there are detailed descriptions about drinking. “September 27, 1654: I was in the castle of Simeg where György Lippay, the Archbishop of Esztergom, was also present with 4 other bishops and Ádám Batthyány with Ferenc Nádasdy. This was the day of the anointing of György Szécheny as bishop. On the 28th, we rested and there was an argument in the church. [...] There was everything in abundance. We drank 38 barrels of

drink large amounts of alcoholic beverages, habitual drunkenness was reprehensible⁴² and families sought to prevent their children from becoming heavy drinkers. Politeness in drinking was a requirement, especially among nobles. Therefore, parents warned their children not to consume a lot of alcohol and to stay away from card games and gambling, which were associated with drinking. In some cases, they were even threatened with disinheritance.⁴³ Certain requirements for courteous behavior could also be specified in local statutory regulations.⁴⁴

Habitual drunkenness, no matter how disgraceful, was not only subject to public contempt but was not declared a crime, either in the past or later. Local statutory regulations mainly regulated crimes that were typically committed while drunk. The *Praxis Criminalis* brought innovations to the judicial practice at the beginning of the 18th century with “excessive and strong drunkenness” being listed among mitigating circumstances.⁴⁵ Mattias Bodo added an explanation to this provision that the drunkenness in these cases should occur “unintentionally” (atypical drunkenness), but gluttonous and insatiable people cannot invoke having committed their crime drunk as a mitigating circumstance.⁴⁶ Drunkenness as a mitigating circumstance was cited

wine and ate almost 500 lambs, etc. July 29, 1658. We were at Count Péter Zrínyi's on sour water consumption. There was Count György Erdődy the younger with his son, Ferenc Chikulini and his son, and my son Laczkó. We were in a good mood and got very drunk.” See DEÁK, Farkas. Keglevich Péter naplója. In *Történelmi Tár*, 1867, pp. 247–248; Anna Wesselényi, the widow of István Csáky, wrote when she traveled from Almás Castle to Szendrő Castle in 1633, the food was brought on carts “with plum schnapps, honey and cherry schnapps, honey beer underneath [...] the wine was kept in small barrels or bottles and the spirits in bottles covered with reeds.” The carts were accompanied by armed men during the journey to protect the food from German, Hungarian, Transylvanian and Ottoman marauders. On safer routes, carts loaded with food were sent off to prepare meals for when the travelers arrived. Anna Wesselényi liked to eat and regularly drank wine on these occasions, but only quality wines. See DEÁK, Farkas. *Wesselényi Anna özv. Csáky Istvánné életrajza és levelezése*. Budapest : Franklin, 1875, pp. 41–42, 47–48; In the European context, see BRAUDEL 1985, p. 239, 248; MONTANARI, Massimo. Éhség és bőség. A táplálkozás európai kultúrtörténete. In LE GOFF, Jacques (ed.) *Európa születése*. Budapest : Atlantisz, 1996, pp. 145–153.

- 42 In the correspondence of Anna Wesselényi there is a section of text that shows that her butler, Szaniszló Fridmanszky, fell into disgrace because of his drunkenness. “...if he does not stop drinking wine while in my service, I do not even want him to serve me...the foolish behavior of drunkenness begins to take root in him [...] he is seduced by the devil, wine often causes this.” DEÁK 1875, p. 64, 179.
- 43 An interesting source from the family archives of the Szirmay family was found, which serves as an example of the threat of disinheritance in the case of consumption of alcohol. In his will from 1711, István Szirmay explicitly forbade all his heirs to drink alcohol, even if their main income was derived from viticulture and wine trade. If one of the heirs drank alcohol, his entire inheritance was lost and the next heir in line took his place. MNL (Magyar Nemzeti Levéltár) OL (Országos Levéltár), F.A. Szirmay, Fasc. 1, pp. 163–180.
- 44 There is a territorial order from 1624 Alsace that prescribed for the young officers of the army “that when they are invited to the table of a high prince, they must wear a clean uniform, they must not come to the event half drunk, they must not drink after every mouthful, they must clean their mustaches and mouths before drinking, they must not lick their fingers, spit in the plate or sneeze with their noses into the tablecloth and it is forbidden to ‘slurp’ like an animal...” BRAUDEL 1985, p. 211.
- 45 “Improvisa ebrietas, per quam ratione privatus est, nec alias inimicitiae, minae, aut aliae fundatae suspiciones praecesserunt: nec talis homo ebrietati deditus est, nec unquam ob eam punitus, aut monitus fuit, alleviat aliquantum poenam.” *Praxis Criminalis* Art. 44. 13.§. De Circumstantiis poenam alleviantibus. See SZENTIVÁNYI, Márton. *Corpus juris hungarici, seu Decretum generale, inclyti regni Hungariae, partiumque eidem annexarum*. Budae : Typis Regiae Universitatis, 1779.
- 46 “Ebrietatem plenam, gravem, immodicam et insimul improvisam, casuque, accidentaliter et inopinatae, aut inevitabili necessitate, praeter consuetudinem, contractam, inusitatem et non

as a condition limiting criminal culpability, such as young or old age, anger or excessive physical pain inflicted by the victim on the perpetrator accompanied by reasonable emotional pain.⁴⁷ If a judge determined unintentional drunkenness as a mitigating circumstance, he could waive any penalties provided for in the Code and impose an arbitrary, lighter penalty or even let the offender go unpunished.

In his work on the judicial practice of the towns Pest and Buda in the 18th centuries, György Bónis showed that the courts often imposed a lighter punishment on those who committed their crime drunk because, as he says “drunkenness deprived people who were not used to drink regularly from using their minds properly.”⁴⁸ Since drunkenness reduced the measure of criminal liability as it diminished accountability and severe punishments were usually imposed on those who committed premeditated crimes, drunkenness in practice resulted in a less severe punishment. Of course, drunkenness didn’t gain total impunity, in which, according to Bónis, the early appearance of the “*actio libera in causa*” theory can be detected.⁴⁹

Conclusion

Examples of codification in Europe brought a new era in Hungary as well. Members of the General Assembly of the Reform Era (1825–1848), and later the Parliament during dualism, intended to clean up fragmented territorial criminal law regulations and attempted to raise the level of regulation centrally. The *Criminal Law Bill of 1843* and the *Criminal Code of 1878*, supplemented by *Act No. 40 of 1879* on trespass (petty offense) introduced uniform regulations for all offenses: felonies, misdemeanors and petty offenses as well.

Smoking as a petty offense was removed from the regulated offenses in the first half of the 19th century as public safety was increased and the number of accidental fires decreased. Drinking was also not punishable, but in the 1843 supplement to the bill that included petty offenses covered by police discipline, the counterfeiting of wine, spirits and beer was regulated, and distilling or boiling of these products in copper kettles was expressly prohibited because of the toxicity of copper. The provisions of the 1843 bill are not repeated in *Act No. 40 of 1879* on trespass, but among offenses against public order and public indecency, the 74th § of the law orders the punishment of owners of taverns kept open beyond opening hours, and the 85th § of the law directs the punishment of those who have made other persons drunk. Anyone who

frequentem, nec studio ascitam, non solum Delinquentes, ab ordinaria poena excusare, verum et extraordinariam seu arbitrariam poenam quadantenus, si non in totum tollere.” *Art. XLV. De Circumstantiis Reum Excusantibus. Sectio IX. De Octava Circumstantia Ebrietatis. XVII. §. BODO 1751*, p. 101; KAJTÁR – BÉLI 1988, p. 46.

47 BÉLI 2000, p. 176.

48 BÓNIS György. *Buda és Pest bírósági gyakorlata a török kiűzése után 1686–1708. Budapest város-történeti monográfiái 23*. Budapest : Akadémiai Kiadó, 1962, p. 176.

49 BÓNIS 1962, p. 176. By “*actio libera in causa*,” the criminal dogmatics usually means that the crime was possibly committed in a condition of diminished accountability (i.e. drunkenness), but the intent to commit the crime was born before he reached that condition, in the status of full accountability.

intoxicates children under the age of 14 commits a qualified case of trespass, i.e. he is liable to pay the double amount of fine.

Inebriation as a mitigating circumstance limiting or even excluding criminal culpability reached a milestone in the parliamentary debates of the bill for the *Criminal Code of 1878*. A lively dispute flared up in the Upper House of the Hungarian Parliament over the evaluation of inebriation, which is listed as a circumstance precluding or limiting criminal culpability. In the 76th § of the bill, the author, Secretary of State Károly Csemegi, declared that persons who are in an unconscious state during the commission of a crime cannot be punished for their act since unconsciousness excludes intent, which, in addition to the act, is of immense importance in determining guilt for actions. Count János Cziráky, Master of Treasury, spoke out against such a regulation as in his opinion, this section of the Code would allow those who deliberately chose drunkenness to commit their crime under the influence in hope of escaping punishment. Csemegi clarified in his response to this objection that such a situation would not remain unpunished in the way that if someone starts drinking in order to commit a crime and does not forget why he drinks, he cannot be called unconscious and therefore not punishable. However, criminal liability and sanctioning should always be based on the state of mind and the existence of free will to commit a crime. The Members of the Parliament present accepted Csemegi's argument and left the text unedited.⁵⁰ This debate formed the basis for today's evaluation of atypical inebriation. It is also important to note that by the time our *Criminal Code* was accepted by Parliament, the general approach to regular drinking had changed and also, several associations had come into being emphasizing the importance of banning alcohol production and trade, though with only moderate success.⁵¹

50 LŐW, Tóbiás. *A magyar büntető törvénykönyv a büntettekről és vétségekről és teljes anyaggyűjteménye. Vol. I.* Budapest : Pesti Könyvnyomda Rt, 1880, pp. 507–509.

51 KÁRPÁTI Endre. *A magyarországi alkoholizmus elleni küzdelem múltjából.* Budapest : Medicina Könyvkiadó, 1979, pp. 82–116.