

History of Criminal Law in the Special Area of Hungary in the Homicidal cases in the 19th century¹

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My research deals with the jurisdiction during a small period of the mid-19th century in Jászkun District, which I present on the basis of the adjudication of murders. Two things justify my topic of choice: on the one hand, I come from the county later established from this district; on the other hand, the realisations and classifications of the criminal cases in that time, especially compared to the present, aroused my interest. In my paper, I aimed to shed light on the homicides in this little corner of the country through the introduction of the judicial system, mentioning cases that illustrate the practise of law. During my research, I learned that homicides appeared in various forms, and the justice system was not unified at all, rather only the fundamentals were put forth. There was an insistence on old laws, although their application was already adjusted to the conditions of the time period. The variety of penalties is also notable, namely that captivity, community service and fines played an equally important part too. I have concluded that, more or less in accordance with the expectations of the era, they aspired to work out a justice system built on consistency.

Key words: Hungary, special district, homicide, murder, punishment, jurisdiction, proceeding, legal system, General Court, sources of law, criminal law

I. SHORT HISTORY OF THE JÁSZKUNS² (JAZYGIANS-CUMANIANS)

In this paper, I will present the justice system of a privileged Hungarian district by demonstrating various homicide cases.

In the 19th century, Hungary was divided into bigger districts, which had different names and borders from the ones today. This presentation will deal with the special area called Jászkun District. It can be considered a special area in the history of law because the regulation of Jászkun District differed from that of the national practise. It was a completely separate district until 1848, and existed until 1853.³

It was King Béla IV in the 13th century who granted the locals their rights, which the kings after him preserved, with the exception of a shorter period, when Lipót I (Leopold I) sold their privileges “illegally”⁴ in 1702. However, they managed to get their privileges back in 1745. This was called *redemption*. The legal status of Jászkun District’s inhabitants, the Jászkuns (Jazygians and Cumanians), could not be defined exactly because they were neither nobles nor serfs. They had the same or similar rights as nobles or the inhabitants of free royal cities, but “they could only exercise their rights collectively as ‘Universitas’.”⁵

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² The meaning of the Jászkunok: they are an ethnic group, which consist of two peoples, the Jazygians and Cumanians, Jászkunok is their united name.

³ BĀNKINÉ, E. A Jászkun Kerület társadalma és igazgatása 1748-1848-ig p. 345.

⁴ KELE, J. A Jász-Kunság megváltása p. 18. and p. 24.

⁵ BĀNKINÉ, E. A Jászkun Kerület társadalma és igazgatása 1748-1848-ig p. 348.

Parliament gave Jászkun District its former legal status back in 1791, as well as their right to be represented in Parliament again.⁶

The district itself existed until 1876, after which it was split up into separate parts. As a result of this, Jász-Nagykun-Szolnok County – where I live, which was one of the main reasons I chose to research this area – was born.

II. SOURCES OF LAW AND ITS APPLICATION BY THE COURT

1. Sources of law

Based on their history, it can be concluded that their justice system was unique, which remained as such until the Hungarian Revolution of 1848-49. As a privileged district, the Jászkun's legal system was based on their own laws, although national acts also regulated certain standard issues. They took the patent of 1745, which contained the privileges of the Jászkuns equally for each resident in nine points, as the primary source of their judicial decisions. In addition to this, Maria Theresa issued a regulation in 1751 including the essential rights of the Jászkuns. The Letter of Privileges guaranteed, among others, that if they pay the imposed sum, then the given localities and the attached territories will be theirs.⁷

However, these did not touch upon punishments and different violations of law.

They did not use codes, but made their own laws and accepted them as common law. Later, in 1799, the assembly of 'Tri-district' (another name for Jászkun District) passed and enacted the Jászkun Statutum⁸, which consisted of 13 statutums.⁹

Of the Jászkun District, the following dealt with the judicial process and criminal cases.¹⁰ The first statutum regulated the shortening of litigation directed against the endless speeches of lawyers – essentially, it described the formalities of court cases. The second statutum regulated imposing punishment regarding the use of abusing language towards officials, disparagement and false accusations.

The third statutum basically regulated the verification of lawyers because at the time there was no such organisation to do this. The ninth was about witness verification, but it only contained generalities, not facts. To control the usurpation of power, beatings and violations of personal freedom, they passed the twelfth statute. Taking the oath was regulated in the thirteenth, without which the case was disregarded.

2. Criminal court proceedings

With regard to the legal system, it can be determined that judicial acts and public administration were not separated at the time – nor were they in other parts of the country. The supreme judge of Jászkun District was the palatine, who governed by orders and warrants. However, the de facto head of a district was the captain.

It was the council (known as the tribunal council) headed by the chief judge, which exercised direct judicial power in the settlements and had at least three members. Appointed senators helped the judge's work. The council acted as a court of first instance regarding minor offenses and crimes, and according to the 9th act of 1840, it acted as a court of second instance concerning cases that were appealed after presenting them to the police magistrate. Records furnish evidence that the council actively participated in the judicial processes. The records of investigation were then given to the captain of the particularis¹¹ district, who decided about the arraignment, but the arraignment itself

⁶ BÁNKINÉ, E. A Jászkun Kerület társadalma és igazgatása 1748-1848-ig pp. 347-348.

⁷ BELLON, T. – ÖRSI, J. A Jászkunság összefogása pp. 44-45.

⁸ Statutum is similar to statute, but this word has no equivalent in English.

⁹ http://vfek.vfmk.hu/00000113/04_27fej.htm (6. February 2012.)

¹⁰ I summed up all these adopted from work of József Kele. KELE, J. 1903. pp. 366-392.

¹¹ Itself the particularis word means partial, only prevailed in part. Here it was the attribute appointed captains at the head of each districts that they can distinguish him from the capital captain, who are at the top of the whole area – above who only the palatine stand – respectively they used this

was the responsibility of the municipal attorney. Territorial jurisdiction was administered over nobles as well until they lived in Jász kun District, and “neither the landed estates of the nobility, nor a separate legislation of nobility” had jurisdiction. At the same time, it is important to note the “different” treatment in criminal cases, namely that they could not be incarcerated until they were not summoned and condemned. Their interpleader was also the task of the captain particularis.¹²

The captain particularis’ court of law was another forum of justice, which served as both first and second instance until 1850. Its president was the captain of the particularis district, while members included judges and jurors from the given district. From 1799, it was necessary for four members to be present to pronounce a sentence. The captain particularis was in charge of provisional imprisonment and of ordering the arraignment. Pursuant to the 10th Act of 1834, the captain’s bench was replaced by the chief captain’s bench, where the discussed homicide cases were on trial. The chief captain’s bench of Jász kun District acted as a court of first instance concerning criminal cases, whereas in civil cases it varied. However, the same council proceeded in both of these cases. Its president was the chief captain, the deputy captain was appointed to substitute him. The procurator presented the cases. From 1836, councils had to send two people to be present till the end of the juridical period, and if need be, supply information. In the 18th century, the criminal court, also known as *criminalis sedria*, was held separately in all three districts in each juridical term – they resided in Kunszentmárton, Félegyháza, and Jászberény. Later, in the 19th century, Hungarian names were used to distinguish them (for example, punitive general court, capital general court, or prisoners’ general court, among others).¹³ The reason for this relocation in every juridical term was that “criminals served their provisional imprisonment and their detention determined by the sentence, in the dungeon of the particularis district.”¹⁴

Since 1764, trials are held in Hungarian.

III. DOGMATICS DISCUSSION

In this age, homicide was one of the gravest criminal offenses, which entailed capital punishment for a long time. Every person who killed another, should it happen intentionally or as a result of negligence, was considered a murderer.

The legal object – which did not appear under this name at the time – was probably considered the protection of human life as public interest and safety of public order.

The subject of the offence was the victim.

However, the word ‘homicide’ was not always used as the indictment in the examined documents; rather, it is used specifically for the given case, on the basis of behaviour and the object of commission/passive subject. The term of ‘death causer’ appears instead of murderer.¹⁵ In this period, infanticide was fairly common: many were convicted of killing a child/baby, or those awaiting trial, referred to as ‘suspect(ed) abortionist’. The social background of these names was probably the period’s moral code system, more specifically the condemning of the lecherous and the unfaithful by public opinion. Also, so-called ‘historical murderers’ started appearing (not only with regard to infanticides), who were responsible for the death of one or more persons because of their carelessness, meaning today’s manslaughter by negligence. Fatal road accidents, as well as a part of homicides committed with weapons, may be deemed as such. Deaths occurring due to brawls were either classified as intentional or negligent, but alcohol consumption often contributed to the turn of events, since as a result, people became more hot-headed and less careful; they did not think, they acted. “If the fight had a large number of participants, it was difficult to work out who gave

attribute too because of they called districts all three parts and itself the Jász kun Districts too. So however they could understand one out of three districts from the whole districts.

¹² BÁNKINÉ, E. A Jász kun autonómia pp. 120-123.

¹³ BÁNKINÉ, E. A Jász kun autonómia pp. 125-128.

¹⁴ BÁNKINÉ, E. (editor) *Jogszabályok – jogszokások, Jász kun ság kutatása 2005.* p. 297.

¹⁵ In the following I note conclusions down on the basis of law writings of Jász – Nagy kun – Szolnok County Archives.

the final blow, executed the fatal kick, etc.”¹⁶ Poisonings were committed intentionally, and were generally directed at husbands or wives. In the examined period, I only found one example of a murder connected to witchcraft; the charge, according to the documents was death caused as a consequence of superstitious beguile.

IV. THE PROCEDURE OF CRIMINAL CASES

The proceedings were based on the principle of the inquisitorius system. Litigants were called plaintiff and defendant, similar to civil cases. The archives show that the head of prosecution was the Advocate-General officer, while the defence was presented by a court-appointed solicitor. The process of criminal cases – including homicides – can be divided into four sections.¹⁷

1. Preparatory Section

This stage included the commencement of legal proceedings, examination, and the hearing of witnesses. District captains sent suspects to punitive court, along with the background information of the case. However, the district captains did not have jurisdiction with regard to “cases brought before the Consistory”, “criminal offence committed against inhabitants living outside of the district” and “territorial disputes involving peripheral lands”.¹⁸

Neither suspects’ nor witnesses’ initial questioning took place at the court, the second mainly due to finding witnesses bearing incriminating evidence. The given town’s doctor, along with the medical officer, conducted the post-mortem examination of the deceased, and they also cooperated in the crime scene investigation.¹⁹

The above mentioned procedures finished within a few days and the results along with the records were sent to the punitive court.

2. Court procedures

This was the most important part of the proceeding. Almost every murder suspect was taken into custody, wherever the punitive court resided. This part could be conducted orally (providing a rough summary) as well as in written form, ‘ceremoniously’. Proceedings of serious criminal offences were usually conducted in written form. The course of such proceedings, its formalities followed contemporary civil cases. Firstly, the appearance and the presentation of the indictment took place – where personal and other information was presented – then the prosecutor’s statement of claim and fact that the defendant appeared before the court was put on record along with the entries of the defendant’s solicitor. The solicitor tried to delay actions by objecting to formal issues, strengthening their position, however, public defenders did not typically do this. They usually represented poor people. Afterwards, the argument – taking place in the suit-chamber – of the prosecutor and solicitor arrived to the most important part, where they took turns presenting their notes.²⁰

In most cases, the prosecutor requested the beheading of the defendant based on the Tripartitum of Werbőczy and the 11th Act of 1723. The only exceptions were those cases where the sent documents shed light on the fact that whatever happened was an accident. The structure of the prosecution was the following: a short summary of the happenings, response to submitted documents, and the prosecutor trying to support the charges brought against the defendant. Ampliation was rare.

¹⁶ LOVAS, L. Betyárok, tolvajok és a bűnözés egyéb formái a Jászkun Kerületben 1797-1802.p. 53.

¹⁷ I use work of Bónis – Degré – Varga to naming and dividing of sections. pp.175-189.

¹⁸ BÁNKINÉ, E. (editor) Jogszabályok – jogszokások, Jászkunság kutatása 2005. p. 293.

¹⁹ BÓNIS, Gy. – DEGRÉ, A. – VARGA, E. A magyar bírósági szervezet és perjog története pp.176-177.

²⁰ BÓNIS, Gy. – DEGRÉ, A. – VARGA, E. A magyar bírósági szervezet és perjog története p. 178. and p. 180.

The solicitor carefully built up the defence by responding to the prosecutor's every count of indictment. Such was the case of János Oláh²¹, whom the solicitor defended by stating that he ran over a child with his carriage because he was careless due to his drunkenness, but he himself "did not seek the opportunity to get drunk"; moreover, the fatal accident happened while turning the corner and that is why he failed to see the child who was playing in the middle of the road.

The prosecutor and the solicitor responded to each other's arguments, and finally enclosed those documents they considered important.

In the examined period, defendants usually were members of lower social classes, nobles were rare among them. Most frequently perpetrators were shepherds, herdsmen, miller's apprentices and day-labourers – the majority was between 20-40 years of age.

They confessed to their crimes – except one or two – during confession, but the archives do not reveal whether they did it voluntarily or as a result of torture, since from the end of the 18th century the defendant was not tortured at court; however, torturing remained a part of the case's preparation.²² In some cases the defendant's ignorance, carelessness or other outside circumstances caused the accident.

During confession, the accused – apart from telling what happened – were asked about their religion, marital status, occupation, personal property, criminal record and whether they were previously confined.

We can draw the conclusion that usually witnesses' and defendants' religion was the same, but it may be due to the fact that they lived in the same part of town or relatively close to each other. Some were estate holders, others did not have estates; with regard to their age, I found examples of a 10-year-old as well as a 64-year-old witness; however, a solicitor wanted to disregard a 64-year-old residents' confession because s/he was older than the "legally required age for testifying".²³ They could answer "in accordance with their beliefs" (because they confessed under oath) to the pre-defined questions after providing information of their age, religion and marital status. Generally the same questions were asked from everyone, and at the end, the witnesses were asked to name any other witness. There were more witnesses supporting the prosecution.

As mentioned before, doctor's reports of the deceased were prepared by a general practitioner and a medical officer. It was 1769 by the time a district doctor was first involved, who, after conducting an examination, gave orders to the local barber about various healing methods, supervised the activities of midwives, and ensured there were appropriate technical books and tools.²⁴ In their reports to the authorities, doctors gave an accurate description of the body surface after which they dissected the deceased and made detailed notes. An opinion was attached to the doctor's report, in which doctors explained the possible cause of death.

These explanations were of high importance when delivering the sentence because both prosecutor and solicitor based their petitions and reactions upon these, and also referred to such information during the proceedings. When there was nothing else to reveal, the court pronounced the sentence. Prior to this, however, the notary presented the given case before the court because its constitution changed often. The accused had to appear personally when the sentence was pronounced.

3. Appeal

It was possible to appeal the sentence of the punitive court. This meant the beginning of the third part of the legal proceedings, named legal remedy or appeal. This involved the possibility of re-opening a case, with the same methods practised as in civil proceedings (that is, *novum simplex* and *novum cum gratia*). One could appeal from the punitive court of Jász kun District directly to the Palatine Tribunal, or, from 1848 on, to the Seven-member Court, which was the highest level. The

²¹ JNSZCA: tried a case on 8th June 1844. – fasc. 34th, vol. 2nd

²² BÓNIS, Gy. – DEGRÉ, A. – VARGA, E. A magyar bírósági szervezet és perjog története p. 177.

²³ JNSZCA: in the case of Sámuel Vantsa on 16th September 1844. – Fasc.34., vol. 2.

²⁴ BÁNKINÉ, E. A Jász kun Kerület igazgatása 1745-1876.p. 65.

appeal was submitted by either the defence or the prosecution, to challenge the delivered sentence administered by the chief captain's bench. This forum only made confirmatory or amendatory decisions based on the submitted documents. These were proclaimed by the *procuratoria* if they did not concern capital punishment. If they did, however, the documents had to be sent to the Hungarian Royal Chancellery as a petition for pardon (which, in theory, meant coming before the sovereign). The Chancellery either granted or dismissed the petition, which was signed by the King himself.

The convict could also request a pardon in writing; in fact, some took the opportunity. After the decisions were made, the documents were sent back to the punitive court.²⁵

4. Enforcement

The verdict was announced with the convict present, which introduced the last stage of the case, namely enforcement. Sentences were varied, even if we only examine murder cases. At the same time, it serves as guidance to the legal practises of the time, which is why I treat it here.

Generally, the punishment for murder was imposed depending on the gravity/culpability of the crime; the minimal punishment was one month in prison (at least, in this five-year period it was so), the maximum was capital punishment. However, the latter was merely executed once in the examined five years, since usually convicts were granted a royal pardon. This is opposed to the legal practise half a century earlier, when "the established practise was administering the death penalty for intentional crimes, such as arson, murder, incest, murder and robbery"; this was something the general courts prescribed, and the Palatine Forum approved.²⁶ The punitive court administered its only death penalty in 1846 against Ferencz Hangya Terenyi²⁷, who had killed his mother.

Imprisonment started either from the preliminary detention, or the day of the announcement of the verdict, which, because of the length of the lawsuits, could increase the period of incarceration significantly. That is why murder cases that were considered milder, involving defendants whose crimes had resulted in death without any fault on their part, were not sentenced to additional imprisonment – their time in preliminary arrest was incorporated into their sentence. Prisons were very expensive, and they could mainly be found in towns.²⁸ Maybe it is due in part to this as well that they did not sentence anyone to large intervals in prison.

Besides the kind of punishment, the judges also determined the circumstances of the enforcement activities. Depending on the gravity of the crime, sentences had to be served either with community service, by way of fasting, or in chains. Community service was already regulated in the Josephina²⁹ in 1787. The fast was determined either once a week – which was also known as the usual fast – or two days a week. This was to repent for their actions before God as well. The objectives for getting clapped in irons were: it kept the convicts from escaping, and, furthermore, it served as an instrument of public humiliation while they were being transported. In the Code of King József II, even the cases in which the convict had to be chained and made immobile were specified.³⁰

Besides this, convicts had to pay the blood money of the deceased, the fee of the witnesses as well as their own prison costs, all of which functioned as secondary punishment. These depended on the court's orders, based on the given case. The receipts of these payments were enclosed with the record. There was a health 'certificate' issued with every case with regard to the physical condition of the captive, pinpointing whether he/she could endure corporal punishment.

²⁵ BÓNIS, Gy. – DEGRÉ, A. – VARGA, E. A magyar bírósági szervezet és perjog története pp. 181-184.

²⁶ LOVAS, L. Betyárok, tolvajok és a bűnözés egyéb formái a Jászkun Kerületben 1797-1802.p. 75.

²⁷ JNSZCA: tried a case on 12th October 1846. – Fasc. 35., vol. 1.

²⁸ MEZEY, B. Magyar jogtörténet pp. 306-307.

²⁹ BATÓ, Sz. Büntetőjogi szankciórendszer a reformkorban p. 18.

³⁰ BATÓ, Sz. Büntetőjogi szankciórendszer a reformkorban pp. 20-21.

V. RELATION OF MURDERS AND OTHER CRIMES

While studying the era I have come across various criminal offences in numerous variations even including murder. Most frequently it was larceny or receipt of stolen goods. Moreover, accusations oftentimes involved swearing along with usurpation of power, brawls, or bloodshed. The latter two were usually listed side by side as accusations against defendants. Their meaning was more or less equal to bodily harm – both intentional and negligent – but neither brawls nor bloodshed could be put under one category because they have exceptions that swerve from regular practice. Bloodshed included scratching with the nails as well as cases when only medical help or the neighbours interference could save one's life.³¹ Moreover, it also included cases like hitting someone over the head with a stick or if someone's recovery took longer than usual.³²

From the above mentioned, we can draw the conclusion that no specific guideline was set regarding which cases belonged here since we can find some involving insignificant injuries, while others were more serious. However, I did not find any data in the written pleadings whether intention of the perpetrator was examined or not; only a few medical opinions had indications about such intentions.³³

It is possible to find similar classifications to the above mentioned in the written pleadings, only with different names. For example the defendant³⁴ in one case was charged with mutilation which is not different from bloodshed and brawls if we were to group them.

Another person was punished because, as a result of a quarrel, s/he dislocated someone's arm.³⁵ We can find examples of cruelties, cruel bloodshed, fighters, murderous vandals and people convicted as a result of violent attacks of suspicious circumstances.

All in all, some of the above classifications are close to attempted murder – like the ones previously mentioned, where help from the doctor or the neighbours prevented the death of the victim.

Punishments of these acts were diverse.

Generally, bloodshed meant more serious punishment than brawling, however, there are cases when the two types were punished similarly. Regarding the written pleadings examined, the strictest punishment for bloodshed was a one-year confinement in chains, community service and fasting, whereas the lightest punishment was two weeks of imprisonment. In each case, perpetrators were bound to pay for medical expenses and compensate for the victim's suffering as well as for the witnesses' fees, if any.³⁶ Generally, brawls entailed two weeks of imprisonment and compensation for possible expenses; two-three months of confinement was only imposed if bloodshed was determined.³⁷

VI. CONCLUSIONS

The rules of law employed by the Jászkuns did not apply to everyone, only to those who participated in the redemption; they possessed certain advantages, but these were not detrimental to the irredemed, since it did not concern their personal freedom. Redemption affected the whole

³¹ JNSZCA: tried a case of János Szabó on 1st April 1844. – Fasc. 34., vol. 1.

³² JNSZCA: tried a case of István Lenkey noble on 14th September 1844. and tried a case of Ferencz Lábady, András Janó, Mihály Simon, Balint Oros and Ferencz Toll. Nagy – Fasc. 34., vol.1.

³³ JNSZCA: tried a case on 3rd February 1847., where they declared that wounds point to 'murdering intention' – Fasc. 35., vol. 5.

³⁴ JNSZCA: tried a case of István László in 1844. – Fasc. 34., vol. 1.

³⁵ JNSZCA: tried a case of János Szemerédi in 1844. – Fasc. 34., vol. 2.

³⁶ JNSZCA: case of Sándor Elek, Jr. from 1844., who was sentenced to 1 year in prison, and case of Gáspár Csobán and Jakab Csobán from 1845, who is sentenced to two week in jail per head because of bawl and cruel carnage. – Fasc. 34, vol. 1. and fasc. 34., vol. 3.

³⁷ JNSZCA: József Kovács and István Jámbor were sentenced to quarterly in captivity one by one, with usual fast, public working and in chains because they not only fought, but he pierced the other's hand with a fork to stayed deform for ever . – fasc. 34., vol. 3.

area, including the areas that could not contribute to the payment.³⁸ The 'general feature' was uniform with respect to legal regulations, but the implementation was different in each settlement³⁹, owing to the fact that the development of the some areas' operational details was part of their municipal rights.

On the basis of my research, it can be concluded that homicide cases were presented using various methods, and that there was no completely uniform justice system – only the bases were provided. There was an insistence on old laws, although their application was already adjusted to the conditions of the time period; for example, there were less death sentences administered and carried out. The variety of penalties is also notable, namely that confinement, community service and fines played an equally important part in the delivery of sentences.

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³⁸ KELE, J. A Jász-Kunság megváltása p. 401.

³⁹ KELE, J. A Jász-Kunság megváltása p. 412.