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Judicial Organization and the Sources of Decision-Making in Sixteenth-Century Transylvania*

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Abstract. The paper describes the organization of the independent Transylvanian central court of law, the so-called Royal/Voivodal/Princely Table *(Tabula)* and its court of appeal, the court of personal presence *(personalis presentia)*, in the light of the modest secondary literature, dietary decisions, and archival sources. Manuscript and published sources of law referred to in the course of litigation in the Transylvanian Royal/Voivodal/Princely Table *(Tabula, Curia)* in the second half of the sixteenth century are also presented. Based on the analysed archival sources—mainly the various *allegationes* lawyers made—it may be concluded that different sources provided the grounds that were frequently given for the court decisions. The analysis of available sources shows that, besides the *Tripartitum*, which was mostly referred to, during the litigations lawyers generally used the laws of the Hungarian Kingdom, and that the *Decreta* of the Transylvanian diets and the Table judged some cases according to their own custom.

Keywords: Principality of Transylvania, Princely Table, Source of Law, litigations, judicial practice

The establishment of the Royal Table

After the 1541–1556 period, which may be considered a time of orientation, the independent state of Transylvania was formed after 1556, during the reign of Queen Isabella (1541–1559) and his son, the king elect, John II Szapolyai. The decisions made in Kolozsvár (Cluj-Napoca/Klausenburg) in the late autumn of 1556 reflected the preparations for independent statehood. The estates ordered the election of judges, protonotaries, assessors, and a attorney general *(director causarum)* on the condition that they would not claim a share of the income of the court of law, but would be paid by the queen and her son based on an individual agreement.[1] Despite

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1 Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. II, 58.

the early statutes, the central juridical system did not come into existence at once. It was a long process, and the main difficulty was the creation of a judicial system to satisfy the needs of all the legally different *nationes* (the Hungarian nobility from the Partium area, the Transylvanian nobles, the Székelys and, least of all, the Saxons) that constituted the becoming state. Initial hesitations and administrative uncertainties are reflected in the archival sources, and are indicated by the lack of charters. There are no surviving documents from the first two court sessions, that should have been held according to the decisions of the 1556 Diet, even if theoretically they were supposed to be exceptionally long. One year later, in a charter she issued in the market town of Torda (Turda/Thorenburg) on 2 July 1557, Queen Isabella mentioned a court session to which the diet, which was also held in Torda beginning on 1 June, had postponed every lawsuit of all the three Transylvanian nations.[2] The document, in reference to the decrees of the 1556 Diet of Kolozsvár, approved almost verbatim the previous judgment of the voivodes of Ferdinand, Stephen Dobó, and Ferenc Kendi (1553–1556).[3] It is clear from a later source that the court session began on 24 June ("pro festo Nativitatis beati Joannis baptistae"), and here, unlike later, following the example of the medieval voivodal court of law, the cases of the three nations of Transylvania were heard together. The decree of the diet held in June 1557 probably referred to the same court session, when the lawsuits related to the acts of might committed since the incursion of Péter Petrovics[4] were postponed to the *octava* of the feast of the Holy Trinity.[5] Then the *octava* of St Michael's Day was also noted,

2 The case in question was heard on 25 June: "[…] instante scilicet termino brevium et continuorum judiciorum, ad quem videlicet terminum universae causae fidelium nostrorum regnicolarum trium nationum partium regni nostri Transilvanensi, juxta publicam constitutionem eorundem hic Thordae ad primum diem Junii ex edicto maiestatis nostrae congregatorum, videlicet factum honoris, novorumque actuum potentiariorum, transmissionumque tangentem et concernentem et aliae in articulis in ipso conventu editis denotatae adiudicari debentes, per maiestatem nostram generaliter fuerant prorogatae […]" the members of the court were nobles, sworn assessors, and the protonotary (here they refer to only one, and the document was endorsed only by László Mekcsei). MNL OL GyKOLt, Cista comit. (F4), Comitatus Albensis, Cista 2, fasc. 3., no. 5. The three feudal 'nations' *(natio)* of Transylvania were the largely Hungarian nobility, the Saxon patricians, and the free military Székelys.

3 According to the text of the document: "[…] cum autem juxta publicam constitutionem fidelium nostrorum ordinum et statuum regni pro festo beatae Catherinae virginis et martiris proxime preterito in civitate Koloswar ex edicto maiestatis nostrae congregatorum factam et per nos confirmatam, universae causae tempore imperii prefati regis Romanorum in hoc regno... suis processibus in suis vigoribus relictae sint." Cp. Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. II, 64.

4 Péter Petrovics was a pro-Ottoman magnate, ban of Lugos (Lugoj) and Karánsebes (Caransebeș), and a fervent supporter of King John I Szapolyai (1526–1540) and his son.

5 "Maiores causae differantur in octavum diem festi sancti Michaelis discuciendae, alie vero causae videlicet factum honoris decimarumque uniuersae concernentes, noui actus potenciarij ab

to which the more important lawsuits were postponed, but there is no surviving evidence about that court session, and we have only one charter issued during the session of March 1557, which a verdict refers to.[6] The decree of the diet of June 1557 relating to the judicial system was limited to a stipulation according to which eight assessors should partake in the work of the court of law. This stipulation probably goes back to medieval origins. In a mandate issued in 1561, nine assessors were listed. Thus, when each seat of the assessors was filled, the Princely Table consisted of twelve legists, including the two protonotaries and the attorney general *(director causarum/fiscalis)*.[7] It is worth noting that the Transylvanian attorney general took part in the work of the Table, because there is no information indicating the involvement of the *director causarum* of the Partium area in the work of the high court. The hardly definable jurisdiction accessible to him was probably limited to the counties in Partium.

Thus, it appears that the activity of the Princely Table was not permanent or continuous, but was connected to different sessions, so-called *termini* for all the nations of the estates (Transylvanian nobles, nobles from the Partium, and Székelys) as well as to the Transylvanian diets. After the reorganization of the high court, the aim was to have two court sessions a year for each nation, but the dates frequently varied, and some sessions were cancelled. The Princely Table also had jurisdiction in the cases appealed from the court of the Saxons, the *Universitas*,[8] the seat of which was in Szeben (Sibiu/Hermannstadt), but as there was no separate court session for them, their cases were usually discussed during the diets.[9] There was no need for a separate Saxon court session, as the cases of Saxons were rarely appealed to the princely high court, and they could only be summoned at their own court.[10]

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ingressu domini Petrowyth comitis spectabilis et magnifici patrati vel patrandj, transmissiones item comitatuum Saxonum et Siculicalium sedium ac literae transmissionis quae in curiam regis Romanorum per appellacionem deducendae erant, causae eciam dotum, rerum parafernalium, jurium impignoraticiorum et diuisionum inter fratres carnales patrueles, matrueles fientium sine intermissione discuciantur; discussionis autem dies sit die octauo post festum sancte trinitatis." Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. II, 80.

6 "[…] litteras nostras adiudicatorias sententionales Albe Julie decimo sexto die diei sabbati proximi post dominicam Oculi in anno 1557, in termino celebrationis judiciorum profesti beati Gregorii papae […]" See: ANR Cluj Arch. of Dés (Dej) (Fond 24), no. 172, 280; ANR Cluj fond fam. Haller, 2. Series, no. 69.

7 Bogdándi, "Az erdélyi és a partiumi jogügyigazgatók," 14.

8 The *Universitas Saxonum* was an administrative and legal entity of the Transylvanian Saxons, headed by the comes *Saxonum*, who resided in Szeben (Sibiu).

9 Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. II, 530. On the separate courts of law of the Saxons, see: Bogdándi, "A szászok és a fejedelmi tábla," 21–33.

10 Dósa, *Erdélyhoni jogtudomány*, 104–5.

On the question of the location of the courts (both in the case of the lawsuits of the Hungarian nobles of Partium and the Transylvanians), the diet in March 1557 decided that they were to be held where the royal majesties were actually residing, but for the periods to follow separate sessions were to be held for the Transylvanian nobility, the Székelys, and the nobles of Partium.[11] In the Middle Ages, if the king was presiding at the high court, the court had its meetings in one of the council chambers of his palace. In other cases, however, it met in the house of the Archbishop of Esztergom in Buda, probably in the same place where the 'official room and archive' of the smaller chancery was kept.[12] It seems likely that, based on the medieval model, when the ruler was in Gyulafehérvár (Alba Iulia/Weissenburg) and took part in the work of the princely high court, the location of the sessions was one of the rooms of the princely palace, while on other occasions the *domus iudiciaria*, i.e., the lodge of the protonotary (and in the meantime certainly of the smaller chancery) served as the site of the trials. This was true, of course, only when the court session was held in Gyulafehérvár. Because of the features of the new state, in order to meet the needs of the nations that formed the state, the princely court of law was itinerant. Thus, we cannot speak of a permanent seat for the Princely Table. In Kolozsvár, Vásárhely (Târgu Mureș/Neumarkt), and Torda the *domus iudicaria* was usually a rented lodge that suited the needs of the court.[13]

At the above-mentioned 1557 diet, a decree was issued which, according to Zsolt Trócsányi, "disposes a separate high court for the Partium region… (let Bálint Földváry be the protonotary, let the separate Hungarian high court be established)."[14] However, in my assessment, considering legal evidence, this decision did not undo the unity of the princely high court. In the text of the decree, there is no reference to a high court of Partium. The decree mentions only an expert *protonotarius* designated to judge on the cases brought by Hungarian nobles from the Partium region, similarly to his fellow working in Transylvania. This was also the case when the number of assessors was considered ("assessoribus pluribus iuris peritis sedem iudiciariam ornare dignentur"), with members who were probably more familiar with

11 Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. II, 89.

12 Hajnik, *Bírósági szervezet*, 232. See also: Kubinyi, "A királyi udvar," 16–7.

13 There is concrete data on this from the court session of St Luke's Day in 1590. Dániel Pápai and Mihály Kolozsvári, who were notaries at the court, reported that they disembarked on 3 November "[…] hic in praedicto civitate Coloswar, apud domum circumspecti Joannis Hozzu, *domum videlicet judiciariam* celsitudinis vestrae." There, they summoned János Gyerőfi to appear at the *curia* on the sixth day. See: ANR Cluj Arch. Kornis (Fond 378), no. 231.

14 Trócsányi, *Törvényalkotás*, 238. At the diet of June 1557, the possibility of sending one special judge to Várad (Oradea) for the nobility of Partium (Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. II, 81) came up, but probably because of the perpetual state of war this could not be accomplished.

the customs of the Hungarian nobility from the Partium. Accordingly, in 1559, the Table adjudicated during the St Luke's Day court session of the Hungarian nobility from Partium held in Gyulafehérvár as a unified body, and as had become customary in Hungarian charter-issuing practice by the mid-fifteenth century, the protonotaries indicated in a letter of judgment who the person to revise and issue the document ("Lecta et extradata per me magistrum Valentinum de Fewldwar serenissimae regiae majestatis prothonotarium") was, and in addition, the document was also indorsed by László Mekcsei ("Coram me Ladislao de Mekche eiusdem serenissime regie majestatis prothonotario").[15] As the jurisdiction of the two protonotaries had not yet been clearly defined, there was no person exclusively assigned to cases of the Hungarian nobles of Partium, the Székelys, and the Transylvanian nobles. This is probably the reason why, during the court session held for the Hungarian nobility from Partium after St Luke's Day, the order of their signatures on a letter of judgment issued in a case concerning a major act of might has been reversed.[16] The joint jurisdiction of the two protonotaries was also expressed in a decree issued in June 1558, according to which justice was to be served in the presence of both persons and both persons shall agree on incomes and the usage of the judicial seal.[17] Probably in order to avoid the controversies between the protonotaries, it was decided that an expert of the Hungarian law was to be chosen to act as president of the high court, to be present at the hearings, to handle the court's income and to pay the assessors from it, and to turn over the rest to the treasury.[18] However, this position, referred to as *super intendens,* remained vacant, as there are no references to his activities in later decrees or in charters; a person with the similar task of presiding over the high court, called the *praesidens,* was only invested in 1589. It is more important that, on the basis of a medieval model,[19] a court of appeal to the high court was founded at the same time. This made it clear that the cases judged by the protonotaries could be brought to the personal presence *(personalis presentia)* of presided with their councillors.

15 ANR Cluj Arch. Bethlen of Iktár, (Fond 329), chronologically organized documents. Cp. MNL OL Arch. Wesselényi (P 702), 1. item, chronologically organized documents.

16 16 May 1560: "Proclamata, publicata presentata lecta et extradata per me Ladislaum de Mekche serenissime electe regie majestatis Hungariae protonotarium. Coram me magistro Valentino de Fewldwar serenissimae regie majestatis prothonotario." MNL OL GyKOLt, Cista comit. (F4), Comitatus Bihar, Cista Bihar, fasc. 1., no. 21.

17 Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. II, 99. According to Trócsányi, this is when Mekcsei was designated as protonotary of Transylvania, but he had been appointed to this office earlier, in 1554. See: Trócsányi, *Törvényalkotás*, 238. Cp. Jakó, ed., *A kolozsmonostori konvent*, no. 5316.

18 Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. II, 97.

19 Hajnik, *Bírósági szervezet*, 57–8; Hajnik, *A király bírósági személyes jelenléte*, 24–5.

The sources of law on the Princely Table in the sixteenth century

Although a significant part of the documents preserved in the archives can be considered to be the 'products' of the different courts of justice, historians have given little attention to the organization and functioning of these courts. According to György Bónis, a deeper understanding of the practice of Transylvanian law and judicial decision-making can only be achieved by meticulously analysing thousands of original charters regarding individual cases.[20] We could not undertake this task within the scope of this study. Instead the present focus is on a single but highly important detail of the judicial practice in the era of the Principality. The analysis introduces the kind of sources used in the sixteenth-century decision-making of the Princely Table or Curia when making judgments, also showing how the use of these sources is reflected in the letters of judgment issued and in lawyers' pleadings *(allegationes*, *exceptiones*, *responsiones)*.

The *Tripartitum*

The previous literature, which only tangentially discussed Transylvanian legislation and procedural law, correctly stated that István Werbőczy's *Tripartitum* provided the ground most frequently given for the courts' decisions. According to Andor Csizmadia, only after a longer period of time did the *Tripartitum* become the main source of decision-making in the Kingdom of Hungary, but in the Szapolyai-ruled Transylvania, it was 'used from the beginning', and references to the *Decretum* always appear to take note of the work of Werbőczy.[21] This statement was slightly nuanced by György Bónis in 1942, affirming that the earliest mention of the *Tripartitum* dates from 1535 in Transylvania and is made in a case discussed by a Székely court. At the same time, Bónis admitted that as the references to the *Tripartitum* had not yet been collected, it was hard to draw any conclusions regarding Werbőczy's influence.[22] This means that we do not yet have a clear picture of the use and spread of the *Tripartitum* in judicial courts. Some early Werbőczy references made before the Battle of Mohács in 1526,[23] however, suggest that further meticulous archival research could modify the claim that the *Tripartitum* had an impact on the development of procedural law in Habsburg Hungary only from the end of the sixteenth century.[24] It is outside

20 Bónis and Valentiny, eds, *Jacobinus János erdélyi kancellár*, 5.

21 Csizmadia, "Az erdélyi jog fejlődése," 149–50; Sunkó, "A Tripartitum továbbélése," 83; Oborni, *Erdélyi országgyűlések*, 352.

22 Bónis, *Magyar jog–székely jog*, 24–5.

23 Martyn, *Customary Law in Hungary*, 19.

24 Csizmadia, "Az erdélyi jog fejlődése," 148–49.

the scope of this study but should nevertheless be noted that it was precisely in the Habsburg period, at the Diet of May 1554, that the Transylvanian orders first invoked the *Tripartitum* in defense of the statute-making rights of the counties and cities.[25]

In the Transylvanian letters of judgments issued after 1556, the decree or decree of the country *(Decretum)* is often referred to when a judgment is given, and these references are generally to the text of the *Tripartitum*. More specific and precise references were made during the so-called 'evidentiary phase' of the trials, when the parties' lawyers submitted their *allegationes*, usually in writing, and their texts were transcribed at the other party's request. Less frequently, the original pleadings of the lawyers or a draft or duplicate of the texts have been preserved in family or institutional archives. One of the earliest examples of an accurate reference to the articles of the *Tripartitum* comes from the 1568 trial between the Hungarian and Saxon citizens of Kolozsvár, the conclusion of which extended the principles of the 1458 union to the election of a parish priest and the use of the parish church.[26] Although the letter of judgment only referred to the pleadings made at the trial and their abundance in the usual short form, the German translation of the *allegationes* has been preserved in the account of a Saxon citizen of Kolozsvár, edited by József Kemény.[27] This shows that, while the Saxons mostly referred to old customs and privileges, the response of the Hungarian *procurator* relied on the articles of the *Tripartitum* for the definition of the legal prescription, as well as on Calepinus' *Lexicon* and Cicero for the definition of the notion of *emolumentum*. On the basis of this example, reference to classical authors or using them as a source of law in the Princely *Curia* cannot yet be considered standard practice. Nevertheless, it may be concluded that the lawyers involved in this important case were knowledgeable in the laws of the kingdom and equipped with classical erudition.

Returning to the *Tripartitum*, the articles contained therein were referred to with remarkable precision in the lawyers' *allegationes*. Thus, in the spring of 1575, Balázs Tötöri's proposition, submitted in writing to the Princely Table, states [in a modernized transcription]: "I say in addition to the *latius*, that these lands in Tötör (Tioltiur) and Esztény (Stoiana), which are in Doboka County, Mikeháza (Mica), and Szilágytő (Salatiu), located in the Inner Szolnok County, which lands were owned by my deceased kinsman, Miklós Tötöri, your deceased husband, which lands should

25 "Contra illum articulum, quem iidem Domini Wayvodae proposuerunt, in eodem *Tripartito* descriptum est, ut quilibet Comitatus vel villa leges sibi condere potest, quamvis aliis in hac parte praescribere non potest." Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. I, 520.

26 Kiss, "Kolozsvár város önkormányzati fejlődése," 171. The *sententia* was edited by Elek Jakab, see: Jakab, *Oklevéltár Kolozsvár története második és harmadik kötetéhez*, vol. II, 80–8.

27 Kemény, *Deutsche Fundgruben*, 88–149.

be handed over to me as I am the heir and as I expect it from the Court of your Highness, juxta *contenta decreti et consuetudinem huius Regni*, as it is written *prima parte titulo 98* […]."[28] Less often the articles of the *Tripartitum* are quoted verbatim. In 1599, the lawyer hired by the wife of Kristóf Keresztúri Ilona Körösi states in his *allegatio*: "[…] that *juxta contenta Decreti partis secundae titulo 82 in missione et commissione debet semper attendi modus et ordo patratae rei atque casus contingens et non contingens vel non deliberates […] per hoc* we are not obliged to prove nor to take an oath on it."[29]

Accurate reference to the *Tripartitum* was facilitated by fairly detailed indexes, edited according to a variety of criteria, such as those we know from the work of the court assessor János Zoltay.[30] The author of this manuscript must have intended it as a practical guide for those involved in the judgments of the Table, even in the cases for which the *Tripartitum* did not provide guidance. This may explain why, in addition to Werbőczy's articles, he also referred to the medieval decrees of Hungarian kings and to certain laws edited by the Habsburg kings as applicable to the administration of justice in Transylvania.

The decrees of medieval Hungary

The use of medieval royal decrees as a source of law is also attested by the *decreta* issued by the Transylvanian Diets. For example, the *congregatio* of Gyulafehérvár, held in February 1557, entrusted the setting of the price of charters to the *director* Márton Csoronk and the *litteratus* Benedek Gáldi, who "[…] perlustratis decretis divorum quondam Mathie et Ladislai regum Hungarie notent et observent precia singularum literarum."[31] The same commission was repeated at the Diet of Torda in April 1561, but this time for the charters issued by the minor chancellery.[32] The article of the Diet of Kolozsvár, held in the spring of 1578 regarding the cases to be discussed in Court, said: "no other shall be granted a reprieve by his majesty, but he to whom the law gives the grace according to the decree of King Matthias".[33] Finally, Article 15 of the Diet November 1591 decreed the punishment of those who concealed the wicked "according to the content of King Sigismund's decretum."[34]

28 MNL OL KmKonvLt, Cista comitatuum (F 17), Com. Doboka, T. no. 10.

29 ANR Cluj, Arch. Bethlen of Keresd (Fond 328), no. 328.

30 Oborni, "Zoltay János Supplementum," 152–59.

31 Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. II, 73–4.

32 Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. II, 191–92.

33 Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. III, 130.

34 Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. III, 390.

While the decrees of the Diet do not cite medieval laws by articles, Zoltay's manuscript refers to precise article numbers,[35] which leads us to believe that, depending on the date of its creation, he used either a manuscript collection of laws or the first edition of the decrees (1584), compiled by Zakariás Mossóczy.[36] The latter supposition is perhaps more likely, as the numbering of the articles by Zoltay matches the article numbers of the volume published in print, and copies of this volume reached Transylvania quickly after the edition. The volume in the Teleki Library in Marosvásárhely, for example, was already in use in 1586 in Gyulafehérvár, and by the end of the century it had passed through the hands of Zoltay's assessor-colleague János Gerendi, and the renowned lawyer and protonotary, Lukács Trausner.[37]

The next example of the citation of medieval decrees is more closely related to the use of manuscript law collections in Transylvania. According to Gábor Haller's handwritten note, on 18 August 1585 he petitioned Prince Stephen Báthory, King of Poland, for justice in his lawsuit with Ferenc Kendi over the Jövedics (Idiciu/Beleschdorf) estate and summarized the background of his case. His father received this estate from Queen Izabella, after the high treason conviction of Antal Kendi. His son, Ferenc Kendi started the litigation during the voivodate of Stephen Báthory, asserting that his father "was completely innocent and *per hoc* the queen had him killed and donated his property *per tirranidem* […], *ergo tanquam spoliatus* he asked the Table to be restituted in integrum." The Princely Curia—with reference to the text of the *Decretum* that no one should be convicted *sine citation*—decided in favor of Ferenc Kendi, and that was the reason why Haller appealed the case to the personal presence *(personalis presentia)*. But soon, as a young and helpless person, he was persuaded to release the property, withdraw the appeal, and so the estate was seized from him.

Then "not long after, I realized that I had done wrong, […] I had then retracted the appeal, and *virtute novi judicii* I asked for a new judgment. After which we had many disputes […]. I presented my argumentation with new and stronger evidence, showing that the ruler when *extremis malis extrema exhibet remedia* does not act ungodly, for *aliud fuisset* if someone had been *communis nobilis*, but being such *potentes magnates*, if the ruler had acted by course of law, he would have been killed […] *male et extremo pene periculo* the life of the prince might have been lost with it.

35 For example, on page 129: "Judices sunt duplices, ecclesiastici et seculares, Sig. 6. art: 1. Ecclesiastici de causis prophanis non judicant, Vlad. 1. art. 45, eiusdem 3. art. 61, item 4. art. 33. Secularium quidam scilicet [?] ordinarii, qui ex propria authoritate judicant, Par. 2. Tit. 77., And. art. 8 et 9., Sig. 6. art. 1., Vlad. 1. art. 10 et 42, eiusdem 4. art. 8." MNL OL KmKonvLt, Articuli diaetales (F 29), no. 3.

36 On the collection and editions of the medieval laws, see: Mikó, *A középkori Magyar Királyság törvényei*.

37 Spielmann-Sebestyén et al., eds, *Catalogus librorum*, vol. I, 195–96.

Ergo, the ruler, having both remedies, the law and the weapon in his hand, could live with it […] I have proved this by many examples, both old and new, that the rulers acted *in similibus casibus similiter.*"[38] By strange coincidence, or perhaps rather because of the special importance of the case, the above-mentioned proof, or rather the *allegationes* written by Haller's lawyer have also been preserved in another family archive. We know from these notes that Haller's old and new examples were based on the *Tripartitum*, or the laws of Kings Matthias and Vladislaus, quoted article by article, on the basis of which he believed in the justification of the murder of Antal Kendi and his accomplices.[39] The citation of the decrees by article is emphasized because the originals of the *decreta* did not contain article numbers; they were added by the compilers of the later manuscript collections of laws. It is therefore probably not mistaken to consider Haller's *allegationes* as evidence of the Transylvanian presence of these decree collections.

The *Quadripartitum*

As a source of law, there is no trace of the use of the *Quadripartitum* in the sixteenth century charters issued during the litigations before the Princely Table, although it also originated in the Habsburg Hungary and remained in manuscript for two and a half centuries. Nevertheless, it is known that two such volumes, once in the possession of the renowned lawyer Lukács Pistaky,[40] were copied in Transylvania and later

38 ANR Cluj Arch. Haller (Fond 353), II. serial, no. 23.

39 "Ubi proponunt quod Antonius Kendy pater ipsorum actorum sine legitimo processu juris nec captivari, nec interfici, nec etiam nota infidelitatis condemnare [?] per hocque bona sua amittere minime potuerit. Erre azt mondom quod in tali causa criminali longior mora non modo vitae regis et reginae sed etiam toti regno periculosa futura erat, nam idem Antonius Kendi cum suis complicibus non tantum in proventus […], verum etiam in capita eorum gladio et veneno insidiatus est, propter quod facinus idem Antonius Kendi cum prefatis suis complicibus, *juxta decreta Mathiae regis anni 1478 articulo 9. et item anni 1486 artic. 54.* a rege et regina cum consiliariorum et regni procerum et nobilium consilio punitus et nota infidelitatis legitimae condemnatus est, prout de articulis regni Transilvaniae anni 1558 jus fundamentum per expresse habet, quod quidem jus juxta decretum Tripartitum secunde partis titulo 2 observari debet. Si non placuerit extunc cum soleni [!] protestatione est appellandum juxta continentia decreti Tripartiti 3 partis titulo 3. Item quod princeps Decreta regni sine consensu regnicolarum violare et propria autoritate ea minime immunitare potest, prout cautum est in decreto Tripartito parte 2 titulo 3 ergo tale indultum seu illegitimum mandatum tanquam juribus regni et libertatibus nobilium aperte derogans juxta *decretum Mathiae regis anni 1471 art. 12 et 31 nec non et juxta decretum Ladislai regis anni 1492 artic. 9.* observari minime debebit." ANR Cluj Arch. Bálintitt (Fond 318), no. 24.

40 Pakó, "A kora újkori Erdély bíráskodása," 34–48.

used in the courts of law.[41] There is indeed evidence of the use of the *Quadripartitum* and of references to its articles in the courts of the Transylvanian counties in the first half of the seventeenth century, although once it was argued before the county of Torda that it had not been written by an accepted author and that it was not used in litigation either in Transylvania or in Hungary.[42]

The decrees of the Habsburg kings of Hungary

As noted above in connection with János Zoltay's manuscript, the author also referred to the decrees issued by the Hungarian Diets before 1569 as articles used in Transylvanian court practice.[43] Indeed, in the letters of judgment references to the statutes of the Kingdom of Hungary have been found. One of these was issued in the spring of 1578, on the octave term of *Reminiscere* (the fifth Sunday before Easter) held for the Transylvanian nobility. From the blurred notes *(signaturae)* entered on the dorse of the charter it can be deduced that the court judged the case of Pál Gerendi against János Baládfi and the defendant was ordered to produce his documents, the deeds by the following judicial term. According to the same notes, the trial continued with the submission of paperwork between the parties, then a *prohibita* was made, and in early November 1578, representing the defendant, Lukács Pistaky, submitted documentary evidence. And the judgment of the Princely Court concluded: "Deliberatum quod […] etiam tercie non […] vigore articulorum [?] *Noenzoliensium* bona per adhesionem [?] […] invalidate sunt […] ideo restituantur."[44] The reference to the articles of the Diet of Besztercebánya (Banská Bystrica) can be explained by the fact that some of its decrees, mainly those concerning the forcible (illegal) seizure of property and the manner of its *reoccupatio*, were accepted by the Transylvanian orders at the request of the Hungarian orders.[45]

In addition to the above fragment, the following example can probably be linked to this provision. In 1579, in a lawsuit between Chancellor Farkas Kovacsóczy and Katalin Budai, the lawyer representing the Chancellor, János Bácsi of Kisfalud (Micești), claimed that in 1531 the late Gergely Budai Nagy of Sárd (Șardu) had obtained from the late King John Szapolyai the estates of Ferenc Budai in Kolozs County. This portion of the estate had passed into the hands of the defendant woman

41 Mikó, *A középkori Magyar Királyság törvényei*, 38–41.

42 Oborni, *Erdélyi országgyűlések*, 352.

43 Oborni, *Erdélyi országgyűlések*, 358.

44 MNL OL GyKOLt, Cista comitatuum (F 4), Com. Albensis, Cista 3, fasc. 5, no. 14.

45 "Articulos Novizolienses eatenus placuit observare, quatenus in illis dignitas nostra, Filiique nostri Illustrissimi, et regni utilitas, ac bonum publicum elucere videbitur. Maxime vero articulum illum, in quo de violenta occupatione bonorum, ac modo et ordine remissionis illorum, agitur." Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. II, 61.

and was still in her possession, to the great detriment of the plaintiff and in violation of her right of inheritance. Since the Chancellor is the legal heir to these properties through his mother and such donations are invalidated by the articles issued in Besztercebánya and Pozsony ("universae huiusmodi donationes et collationes bonorum vigore articulorum Novizoliensium et etiam Posoniensium cassatae invalidatae et abolitae existant"), he requests their return.[46]

It is also most likely that the appearance of the formula in 1559 referring to the death of King Louis II can be linked to the disposition of the Diet of Besztercebánya and Pozsony in Hungary or, more precisely, to its adoption in Transylvania. In the charters issued in the autumn of that year, during St Luke's octave it is said, it seems that for the first time, that the trials had been postponed since the death of King Louis II ("ad quem videlicet terminum universae causae fidelium nostrorum regnicolarum Hungarorum ab obitu serenissimi principis piae memoriae quondam Ludovici regis ex publica constitutione adiudicari solitae generaliter fuerant prorogatae").[47] As a sign that this was not a Transylvanian peculiarity, King Ferdinand's letter of summons in the same year[48] and countless letters of judgment issued in the sixteenth century in Transylvania use almost exactly the same phrase. It is possible that this formula also emphasized the continuity of law, but—as they are legal texts—we should perhaps rather think that a specific measure, a royal decree (the *publica constitutio* mentioned in the documents) regulated the proceedings in some way. In some cases, the judgments were linked to the death of King Louis, just as in certain cases Transylvanian assemblies linked the judgments to the death of John Szapolyai or the arrival of Péter Petrovics, presumably because many court sessions were postponed. This phenomenon seems to be explained in János Kitonich's handbook on procedural law. He argues that the formula can be traced back to Article 22 of the 1542 decree of Ferdinand I of Besztercebánya and its subsequent confirmations, which stated that the period of confusion after the death of Louis II, during which the usual court sessions were not held, could not be counted in the period of prescription.[49]

46 ANR Cluj Arch. of the town Cluj (Fond 1), A2, fasc. I, no. 51.

47 MNL OL GyKOLt, Cista comitatuum (F 4), Com. Craznensis, Cista Krasznensis, fasc. 1, no. 2.

48 "[…] instante videlicet termino celebrationis judiciorum octavi diei festi beati Lucae evangelistae proxime preteriti ad quem videlicet terminum universae causae regnicolarum nostrorum ab obitu serenissimi principis quondam domini Ludovici regis pie memorie, sororii et predecessori nostri charissimi, juxta nostram et eorundem publicam constitutionem adiudicari solitae per majestatem nostram generaliter fuerant prorogatae." MNL OL DL 22894; "[…] in presenti termino celebrationis judiciorum octavi diei festi beati Lucae evangelistae proxime preteriti, ad quem videlicet terminum universae causae regnicolarum ab obitu serenissimi principis condam domini Ludovici regis piae memoriae […] ex *novis* constitutionibus publicis adiudicari solite per prefatum dominum imperatorem ac regem nostrum generaliter fuerant prorogatae." ANR Cluj Arch. Gyulay-Kuun, I. ser., no. 207.

49 Kithonich, *Directio methodica*, 10–2.

The articles of the Transylvanian Diets

According to the eminent legal historian Alajos Degré, "during the period of the independent principality, the Transylvanian criminal justice was quite independent of written legislation; not only did it not use a systematic code, but the texts of statutes and laws were not very well known."[50] Although the majority of the documentary material studied does not concern criminal trials—in any case, in this period criminal law was not treated as a separate branch of law—it provides a very different picture compared to the situation outlined by Degré. The judges and lawyers had an excellent knowledge of the texts of decrees, especially of the *Tripartitum*, the articles were precisely referred to, and the pleadings were based on the written law. Although it is true that in princely Transylvania, Diets were relatively frequent, the decrees issued at these assemblies were also put into practice. At the Diet of Medgyes (Mediaș/Mediasch), held on 28 January 1576, the orders took note that Stephen Báthory, who had left for Poland, had *in sua absentia* left Christopher Báthory and all the charters, donations and other letters that remained unaccomplished were to be sealed by the new ruler and put in force.[51] Christopher Báthory's letter of summon issued in 1577 during the *octava* held for the Székelys in Segesvár (Sighișoara/Schässburg) contains a precise reference to this decree. According to this, on 24 January the (fiscal) director Gergely Szentegyedi presented in Court the letter of judgment issued by Stephen Báthory on 6 August 1575, at the Diet held in Kolozsvár, in which the enemies of the realm, namely those who had left the country together with Gáspár Bekes, were condemned. The *director causarum*, in accordance with the articles ordered then ("vigore articulorum exinde editorum... universae judiciariae deliberationes literaeque superinde tempore regiminis fratris nostri confectae et inexecutae juxta publicam dominorum regnicolarum constitutionem debite executioni effectuique mancipare possunt atque debent"), requested the execution of the sentence which had not been carried out. The letter of judgment, which was indorsed by the protonotary Miklós Wesselényi, therefore ordered the voivode's envoys *(homo regius)* to execute the sentence with one of the deputy lords *(alispán)* or *iudices nobilium (szolgabírák)* of the county in which the rebels' estates were located. Thereupon, the envoys went out to the Bethlen (Beclean) castle and its appurtenances, to the estates of György Pathócsi, where they read out the letter of judgment *(publice et manifeste perlegimus)* in the presence of the neighbors and executed the sentence.[52]

50 Degré, "Az erdélyi büntetőjog," 156.

51 Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. II, 575.

52 MNL OL KmKonvLt, Cista comitatuum (F 17), Com. Szolnok Int., B. no. 25.

The dietal decrees were invoked not only in the case of judgments that remained unimplemented but also regarding the date when the octave courts were to be held, and this was usually referred to by the formula '*juxta publicam regnicolarum constitutionem*.' Less frequently, however, the place and date of the diet referred to were also indicated.[53] Sometimes even the court judgment was based on a decree of the Diet: on 18 May 1572, for example, Kelemen Ártándi was ordered to take a solemn oath together with three other noblemen because he had violated the decree of the last Diet of Kolozsvár by attacking the soldiers of the powerful Turkish emperor and the market-town of Simánd in Békés County.[54] In their pleadings, lawyers also often referred to the articles of the Diets, as in the case of the suit for the Valko estate in 1572 the *procurator* of László Károlyi did, who, referring to the decrees of the Diet of Kolozsvár of 19 November, asked the plaintiff to produce a privilege-letter and the Table to correct the text of the letter of judgment as it had been corrupted by the scribes.[55]

Conclusions

For the Principality of Transylvania, which came into existence after 1556, the constitutional setup of the medieval Kingdom of Hungary was the model. With regards

53 "[…] cum nos hic Albae Juliae, feria secunda proxima post festum Epiphaniarum domini proxime preteriti una cum nonnullis dominis consiliariis et magistris nostris prothonotariis juxta publicam regnicolarum constitutionem in comitiis eorum partialibus pari modo hic Albe Juliae ad vigesimam diem septembris novissime transactam [Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. III, 163–64.] celebratis editam […] tribunali consedissemus." ANR Cluj Arch. Matskási (Fond 338), 8. box, no. 794.

54 MNL OL GyKOLt, Cista comit. (F4), Comitatus Bihar, Cista Bihar, fasc. 3, no. 34.

55 "[…] hanc rationem prohibitionis assignaverat, quod domini regnicolae in comitiis eorum generalibus in civitate Coloswar ad festum beatae Helizabet viduae [Szilágyi, ed., *Erdélyi Országgyűlési Emlékek*, vol. II, 506.] in anno proxime preterito transacta ex edicto nostro celebratis, paribus eorum votis, ita conclusissent ut magistri protonotarii universos errores per se se vel scribas eorum in conficiendis literis commissos, tempore levationes earum, in sede judiciaria, ne causantibus damnum exinde sequatur, emendare et corrigere possint atque valeant. Igitur quia prout ex signatura quam idem procurator in sede judiciaria dicti domini regis, tempore perlectionis dictarum litterarum privilegialium raptim descriptam haberet, appareret, nomina dominarum Appolloniae et Annae in literis praefectionalibus praefati condam domini Ludovici regis non fuissent denotata, sed duntaxat isto ordine et stylo fuissent emanate, quod videlicet filias ipsius Joannis Genyeo jam natas et in futurum de femore eiusdem nascendas etc. Literae vero sententionales pro parte actoris conscriptae nomina earundem dominarum in literis prefectionalibus expressata fuisse exprimerent, quod vicio notarii et scriptoris (?) contigisset, ob eam itaque causam ipsa privilegia per actorem in specie produci et in ea parte emendationem earundem literarum adiudicatoriarum sententiam expeteret […]." ANR Cluj Col. doc. peceți atârnate (Fond 560), no. 29.

to the formation of the central court of law, usually referred to as the Princely Table, the medieval models were tailored to local circumstances. This explains the characteristics of the judicial system: the originally separate protonotaries for Transylvania and for the Partium region, which were originally separate (but not with separable jurisdiction); the separate *director* for Transylvania and *Partium* (the scope of whose activity cannot be precisely defined); the separate court sessions for each nation (later, with the frequent contraction of the sessions held for the nobility of Partium and Transylvania); the holding of these events in different locations; and the voluntary and partial absence of the Saxons from this system. The medieval models were also followed by ordering the court of personal presence as the court of appeal to the high court, where the chair was supplemented by councillors and which occasionally was attended by the ruler himself.

Medieval patterns with the continuation of earlier practice can also be seen in the sources of law used in judicial decision-making. This is most evident in the fact that Werbőczy's *Tripartitum* remained the most important reference in the judicial procedure of the Table, and there is evidence of its use in Transylvania from very early times. The precise references to medieval laws show that manuscript collections of *decreta* were in use not only in the Kingdom of Hungary but also in Transylvania. In the first half of the period under study, in the Szapolyai period, there are even references to decrees issued in the Habsburg Hungary, and certain articles of the decrees issued there were also considered valid in Transylvania. In addition, precise references to the articles of the Transylvanian Diets also show that the participants in the Court Judgment were thoroughly familiar with the laws and that the judicial procedure was utterly determined by the written law.

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