

WOMEN AND THE DEATH PENALTY IN 18TH CENTURY CLUJ

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Abstract: *The purpose of our presentation is to address the issue of female criminality in early modern Cluj, and to analyze women's position before the law. Our investigation is based on the Court Protocols from the town Cluj, where we have identified more than 250 cases of women accused of fornication, adultery, witchcraft, infanticide, theft and drunkenness, poisoning, swearing and slander. So there is a significant amount of female convictions during the century, from which most ended with light sentences, such as banishment, corporal punishments, stigmatizations with hot iron, mutilations and only occasionally death. We would like to analyze in details the three major crime-types associated with capital punishments: infanticide, witchcraft and illicit sexual behavior. We will present the legal background, the jurisdiction and the habitual practices of the Court.*

Keywords: *infanticide, witchcraft, sodomy, death penalty, social history of crime*

On sources and context

The source for our survey was the legal records of the secular Court of the free royal town of Cluj¹. The Court was established at the end of the 16th century and until 1660 enjoyed the privilege to 'manage its affairs according to its own regulations', including the right to apply capital punishment². Amid historical events (the conquest of Oradea by the Ottomans in 1660), Cluj lost its privileges as a free royal town and regained them in 1709, in fact in 1712, the beginning of our period of interest. Many Court Protocols from this turbulent era have been lost, including numerous decisions and deliberations from before 1712. Unlike in earlier centuries, trial documents from this period contain only deliberations, not the testimony of witnesses or the accused.

Historical analyses of the records of secular courts help us to understand not only judicial practices but also the social milieu and gender roles prevalent in towns. Court records are among the most valuable sources for women's history, especially in the century studied. In the courtroom, women from modest birth became visible, not only as defendants and

¹ Romanian National Archives Cluj County Branch, Cluj-Napoca (hereafter cited as: Nat. Arch. Cluj), *Court Protocols* (hereafter cited as: *CP*).

² László Pakó, 'The Inquisitors in the Judicial Practice of Cluj at the End of the 16th Century' in *Transylvanian Review*, Supplement no.2 (2012), p. 181.

criminals but also as accusers. We see women from a male perspective as men ran the legal system, and male scribes wrote all the narratives on female crime. However, from these records, we can discern common perceptions of what was accepted, tolerated and rejected and how a decent female was expected to behave in a male-dominated society.

The so-called female crimes

As historical studies on female crime suggest, the behaviours for which women were most frequently summoned to court were witchcraft, infanticide and scolding³. Our analysis of 264 cases suggests that most women were accused of fornication (45%), adultery (34%), witchcraft (5%), infanticide (5%), theft and drunkenness (4%), poisoning (2%), swearing (2%) and slander (3%). However large these numbers might seem, we know of *only nine* cases which ended with the death penalty: Three women received capital punishment for infanticide, three for witchcraft, two for unusual sexual behaviour, **and one for swearing**. We must emphasise that initially, many more death sentences were handed down, but upon appeal, prisoners commonly had death sentences (especially in the second half of the century) changed into verdicts of life imprisonment or exile.

From the 18th century, we have found 11 cases (1723–1798) connected to infanticide⁴. Most stemmed from investigations initiated against women suspected of infanticide (five cases). As well, in three cases, defendants confessed to infanticide and received the death sentence: Erzsébet Szathmári (1723), Ilona Kosztin (1728) and Mária Stefán (1750)⁵. We found two abandonment cases which resulted in the death of the child and one infanticide caused by negligence. The 11 cases featured only women as the accused. Infanticide was considered as specifically female crime⁶, and as we will see, executions in cases of infanticide in early-modern Transylvania were imposed exclusively on women. Another common element was women's marital status. In the 11 cases, seven women were unmarried, and three had children from adulterous relationships. Therefore, we can conclude that illegitimacy had a strong relationship to infanticide. Additionally, we would like to emphasise that all women accused of infanticide, regardless of whether they received the death penalty, were also

³ Jenny Kermode and Garthine Walker, Introduction in Idem, *Women, Crime and the Courts in Early Modern England*, Routledge, 2005, p. 5.

⁴ Andrea Fehér, 'Investigating Infanticide in 18th-Century Cluj' in *Studia Universitatis "Babeş-Bolyai"*, *Historia*, 59, nr. 2 (2014) December. pp. 52-65. To avoid terminological confusions and misunderstandings, we define the term infanticide as the murder of a child (usually but not always a new-born) by his or her parents.

⁵ Nat. Arch. Cluj CP. II/29: 22; CP. II/32: 23-24; CP. II/44: 113-114.

⁶ Anne-Marie Kilday, *A History of Infanticide in Britain c. 1600 to the Present*, Palgrave – Macmillan, 2013, p. 24.

convicted of adultery, fornication or debauchery, which indicates that infanticide and illegitimacy could also be related to deviancy⁷.

Numerically, capital cases of infanticide are followed by capital punishments in witchcraft trials. These two female crimes — infanticide and witchcraft—appear to have been closely related as they generated identical fears at the collective level⁸ and often had a common actor, namely, the midwife. In the studied materials from 11 witchcraft cases (1711–1765), the majority involve women who practiced the art of midwifery at some point in their life or knew how to prepare various medicines and delivered a sort of a non-professional medical care. We draw attention to the known witchcraft trials from Cluj⁹, as well as almost all prosecutions of magic in Transylvania and Hungary¹⁰ have a very strong pragmatic connotation. They mostly concerned women who flirted with medicine, preparing herbal remedies or acting as midwives, and, thus, disturbed public order. In half of our cases, the women were only suspected of paranormal powers; only some cases contain specific allegations regarding unclean or occult practices, such as invisibility, astral projection or the power to cause or cure diseases (especially by spitting). The original reason for the allegations was a pragmatic one; magical items were used simply to ensure the *success* of the trial¹¹.

We consider that this situation to be why Erzsébet Székely, a member of a recognised witch family, escaped the death sentence, despite several accusations that she knew magic. She was married and had a child, and the judges stated that their decision was motivated by compassion, even though she had escaped from other prisons, and her mother and sister ended up in flames. The reason why Székely avoided capital punishment should be sought at the level of social actions. The three cases in which capital punishment was applied have a strong moralising component. Erzsébet Ötves (1728-1729), Kata Kádár (1733-1734) and Judit

⁷ Patricia Crawford, *Parents of Poor Children in England, 1580-1800*, Oxford, 2010, p. 37; Shulamith Shahar, *A negyedik rend. Nők a középkorban*, Budapest, 2004, p. 158.

⁸ C. Hoffer - N.E.H. Hull, *Murdering mothers: Infanticide in England and New England 1558-1803*, New York, 1981, p. 56.

⁹ *Kolozsvári boszorkányperek, 1564-1743*, ed. Andás Kiss, László Pakó, Péter Tóth G., Budapest, Balassi, 2014.

¹⁰ There is a database of medieval Hungarian witchcraft cases, which shows that between 1213-1848 4624 (3962 women) people were accused of witchcraft and from these *only* 848 were sentenced to death. The darkest times were between 1701-1750, half of the cases (2297 allegations) were held then, interval which also coincides with two major plague epidemic. Ildikó Sz. Kristóf, 'Boszorkányüldözés a kora újkori Magyarországon' in *Boszorkányok, varázslók és démonok Közép-Kelet-Európában* ed. Gábor Klaniczay, Éva Pócs, Budapest, 2014, pp. 23-28, 38-39.

¹¹ The detailed biography of the most famous lawyer from Cluj proves that this advocate dragged women in Court not driven by some Christian piety, but simply to seek social and material satisfaction. László Pakó, 'A korrupt boszorkányüldöző. Igyártó György prókatori tevékenységéről' in *Erdélyi Múzeum* LXXIII/2011, 3-4. pp. 93-103.

Péntek (1741-1743)¹² had to die as they had ‘unclean mouth[es]’ and were ‘lewd sluts’ who ‘displayed publicly their private parts’; moreover, despite their quite advanced age, they ‘forced men to sin with them’. Clearly, what ultimately mattered were not the women’s magical skills but their conduct.

As mentioned, most crimes associated with women had a sexual dimension. Fornication and adultery were the most frequent female crimes. The number of such cases, especially involving debauchery and fornication, can be easily explained by the presence of the German garrison on the outskirts of Cluj. Not incidentally, the most commonly used descriptions in the Protocols for cases of sexual immorality are that defendants ‘steal, drink and party with strangers’ or ‘drink, spend time in suspicious places and whoring with German soldiers’. The majority of these cases were discovered and denounced by the vigilant bourgeoisie. Intimate gestures, looks and touches fell under the supervision of others, and reckless intentions were rapidly transformed into accusations. The image of the woman who refused to comply with the rules for social coexistence was an overly negative one, rooted in the belief that women tend to repeatedly fall into sin. Our analysis shows that a significant percentage of women re-appeared in court over several years, although every time, they were flogged and expelled from the town. These women are described as ‘restless, seeking to satisfy their carnal pleasures’, and apparently, ‘no punishment can stop them’ as they are ‘whores by nature’. It was a common practice to frighten defendants with death and then to give them a less severe punishment, as most women appealed their sentences. Consequently, from more than 100 sex-related cases, only two ended in death. These two cases were extreme and very different in nature than others. Sára Katona (1704)¹³ was burned in the marketplace as she was an incestuous whore who committed adultery, while András/Erzsébet Ungvári(1712)¹⁴ found her end in flames as she dressed in men’s clothes, lived in marriage with other women and was sentenced for sodomy. Clearly, these women were sentenced to death as the judges wanted to make them examples to the citizens of Cluj.

Methods of execution and their legal background

Methods for the capital punishment of women were always among the most spectacular. From the Middle Ages until the 18th century, a very large range of execution methods were used: from drowning and burning in cases of witchcraft, to hanging and decapitating in cases of theft, adultery, and infanticide, through probably the most sadistic

¹² Erzsébet Ötves Nat. Arch. Cluj C.P. II/33: 6-8 (1728-1729), Kata Kádár Nat. Arch. Cluj C.P. II/36:3-4 (1733-1734), Judit Péntek Nat. Arch. Cluj C.P. II/41: 119-120 (1741-1743).

¹³ Nat. Arch. Cluj, The Town Archive of Cluj, Fasc. II/425.

¹⁴ Nat. Arch. Cluj C.P. II/26: 64, 68-69.

method—live burial. Initially, the main goal of criminal jurisdiction was to impose an appropriate sentence on those who sinned, and most execution methods, such as decapitation and hanging, were quick. However, over time, the juridical elite conclude that it was better to frighten and shock. Quick deaths were changed to frightening public executions and public torture, with the same goal: to publicise pain in order to induce fear¹⁵.

In the eight aforementioned cases, the Protocols recount three types of executions: live burial, burning and beheading. Live burial was the traditional executive method for proven *infanticide* cases. Of the three studied cases of proven infanticide, the mode of execution for Kosztin is not mentioned, while both Stefán and Szatmári were initially sentenced to be buried alive in a pit of thorns (*so was the custom before*) but had their sentences eased to decapitation. Live burial seems to have been a common practice in Transylvania, as execution methods similar to those mentioned in the Protocols were imposed in Arieş, Sepsî, Mureş Seats and Alba Iulia¹⁶. None of the sentences cited a specific law, though one law did call for live burial in a pit of thorns. We contend that, in cases of infanticide, the judges from Cluj, as well as in all the examples discussed, applied the first body of German criminal law *Constitutio Criminalis Carolina*, which stipulated that women who gave birth in secret, did not ask for the help of midwives and then claimed that the child died during delivery should be convicted of infanticide and executed by burial in thorns (art. CXXXI)¹⁷.

We find a description of this method in the diary of the German traveller Simplicissimus, who witnessed an execution in Košice: ‘I saw an infanticide, a wicked woman, buried alive, with her heart pierced with hot iron: there was a deep grave where this unfortunate sinner was lied, with her hands and feet fixed to the ground, her face was covered with thorn, they [the executioner and his assistant] held next to her heart a wooden stick until they buried her completely. Her head wasn’t covered with ground, so she could hear the priest’s consolation. When her time arrived, to deprive her of life, the executioner took the hot iron and placed it right next to the wooden stick, a boy hit the bar with a hammer, and two

¹⁵ Attila Pandula, *Kivégzés, tortúra és megszégyenítés a régi Magyarországon*, Eger, 1989, p. 9.

¹⁶ László Pakó, ‘Scurte vieți omenești. Pruncucideri din Cluj la sfârșitul secolului al XVI-lea’ in *Anuarul Școlii Doctorale „Istorie. Civilizație. Cultură”*, Cluj-Napoca, 2005, p. 205.

¹⁷ Péter Tóth G., ‘A lázadók teste és az árulók büntetése. A pápai vallon zsoldosok kivégzése és a megtorlás hódértechnológiájának kultúrtörténeti emlékei’ in *Pápai Múzeumi Értesítő*. 7, ed. László Péter, Pépa, 1997, pp. 32-33; Zita Deáky and Lilla Krász, *Minden dolgok kezdete. A szülés kultúrtörténete Magyarországon (XVI-XX. század)*, Budapest, 2005, p. 106. A great help in our survey was given by the article of David L. Ransel, who made a very short and useful review of the history of the CCC. David L. Ransel, ‘Illegitimacy and Infanticide in Early Modern Russia’ in *Early Modern Europe. Issues and Interpretations*, ed. James B. Collins and Karen L. Taylor, Blackwell, 2005, p. 271.

others covered her face with ground. We could hear her cry, and we noticed with horror that the ground rose slightly above her body'¹⁸.

Judges from Cluj regularly changed sentences of live burial to beheading in order to reduce pain and cause less harm. The legal literature from Transylvania, particularly Hungary, suggests that, starting in the late 17th century, cases of infanticide were judged according to the *Praxis Criminalis*, which provided for beheading in domestic violence-related crimes: the murder of husband, wife or child (art. LXVI, LXVIII)¹⁹. This source could explain the final method of execution and suggests that both laws calling for live burial and beheading in cases of infanticide were known and used, even if they were not explicitly mentioned. Beheading was among the simplest, cheapest and most effective execution methods and required little preparation. Decapitation was also quick, and if the executioner's blade (which usually weighed 1.7–2.3 kg.) was sharp, this form of death was believed to be relatively painless²⁰.

Unlike infanticide, cases of witchcraft and deviant sexual conduct were resolved by fire. The first sentence was always burning alive, but as we will see, the judges frequently changed their sentences to decapitation, which was followed by burning of the dead body. Burning was essential in these crimes because of its symbolic meaning: It represented the victory of light over darkness, of the divine over the diabolic. Fire also represented the heat and pain which sinners received in Hell.

If live burial was the typical execution method for infanticide, then fire was for witchcraft, but there was a long journey from trial to pile. Investigations of witchcraft, as well of infanticide, were extremely long. All the women executed for witchcraft had been incarcerated for several months: Ötves (September 1728–January 1729), Kádár (September 1733–February 1734) and Péntek (October 1741–May 1743). Many of the accused were not citizens of Cluj, so it was necessary to make investigations. Our research has shown that, especially in complicated cases, the Court of Cluj communicated with other secular Courts in Transylvania in order to collect more evidence and learn about the criminal records of prisoners. These efforts sometimes delayed deliberations as these types of crime were very difficult to prove. This prolonged process often served the interests of the condemned. For instance, from among 22 cases of infanticide and witchcraft, only six women were executed, while the rest managed to escape capital punishment. Moreover, from the 88 witchcraft cases

¹⁸ *Magyar Simplicissimus*, ed. József Turóczi-Trostler, Budapest, 1956, pp. 162-163.

¹⁹ György Bónis, *Buda és Pest bíróági gyakorlata a törökök kiűzése után 1686-1708*, Budapest, 1962, pp. 140-142; István Kállay, *Városi bírászkodás Magyarországon 1686-1848*, Budapest, 1996, pp. 207-209.

²⁰ Pandula, *Kivégzés, tortúra*, p. 13.

from Cluj (1564–1743), only 20 ended with capital punishment, 18 by burning and two by drowning.

The first Transylvanian decrees on witchcraft date from the Lutheran Synod (1577), which provided death for all people who ‘walk with magic’ (both white and black). Somehow contradictory, these laws do not denote an actual belief in paranormal powers but rather skepticism, since Protestant preachers did not accept the existence of occult forces, and had an anti-diabolical and anti-demonological perception. They denied completely the possibility of a pact or an act of sodomy consumed with the devil. They regarded these descriptions as illusions of minds possessed by melancholy. However, Protestant leaders opposed magic, particularly magical practices related to healing and especially during epidemics, and condemned all midwives and healers who used occult practices²¹. It is extremely suggestive that, during the 18th century, half of the witch hunts in Cluj took place during plague outbreaks from 1738 to 1745. These were times of general panic, as was 1741, when four women were led before the judicial forum. Of these, only one was condemned to death; the rest were expelled²².

Returning to the legal background, penal practice in Hungarian witch trials usually leaned on the *Praxis Criminalis* (art. LX.), which identified three types of magical activity and called for different execution methods on each. The most severe penalty of live burning was imposed for cases of proven witchcraft when the (physical) relation between the witch and the devil was obvious and when the women’s *knowledge* caused deaths of humans or animals. Decapitation was used mostly in cases of magical healing which did not cause great harm. Finally, simple expulsion verdicts were rendered against those who had prophetic talents or pretended to ‘walk with magic’²³. However, as in infanticide cases, the Protocols from Cluj did not mention any specific law concerning witchcraft, and it is very hard to identify these scales as the judges regularly changed their verdicts. We could not find any written records of the actual executions, but from Kádár’s trial, we learn exactly how much money and effort a witch trial cost²⁴. A significant amount of money was spent on the investigation, mostly for the two interrogations. As well, the execution required the services of a carpenter and an executioner, who were well paid. The most striking expense, though, is the money given for

²¹ Kristóf, ‘Boszorkányüldözés a kora újkori Magyarországon’ in *Boszorkányok, varázslók és démonok*. pp. 29, 31.

²² Kata Pál (1741) Nat. Arch. Cluj C.P. II/41: 41, 50, Zsófia Katona (1741) Nat. Arch. Cluj C.P. II/41: 45, 67, Suska Bíró (1741) Nat. Arch. Cluj C.P. II/41: 60-61.

²³ Péter Tóth G., ‘A mágia dekriminalizációja és a babonaellenes küzdelem Magyarországon és Erdélyben, 1740-1848’ in *Boszorkányok, varázslók és démonok*. p. 72.

²⁴ *Kolozsvári boszorkánypercek, 1564-1743*, p. 352.

courage. Presumably, even if the executioner had great experience with death, he still was unfamiliar with the sight of a burning body. Kádár's sentence was public torture and then burning, but the Town's Accounts mentioned extra money spent on beheading. Therefore, it is possible that Kádár's pain was eased, and she was killed before she was put on the pile.

Those convicted of sexual deviancy were also initially sentenced to burning. By far, the most exciting case involving this crime is that of András/Erzsébet Ungvári²⁵. According to the Court Protocols, she was condemned to be tortured and then executed publicly after she was found guilty of sodomy. We found a description of her case and execution in the diary of the physician György Bereczk (Briccius) Vizaknai: 'Anno 1712. A miserable case happened. A girl from Ujhorod [Uzshorod, Ukraine] dressed as a man came into Transylvania from Hungary, where she was living a long time in the courts, finally got married, and her wife had two children. Later this wife of hers died. She still married another one, with whom she lived some time. The woman [wife] claimed her business, and she [Ungvári] got caught. Her male instrument, made by herself from a piece of leather, was hung in the courtroom, so as to be seen by all, after that, hanged on her neck, and they were burned together²⁶.'

In Transylvania we have legal data dating to 1685, when the authorities annually renewed the laws against sodomites. Initially, the legislation ordered inquisitors to seek out for 'those who live in sodomy', which 'irritated His Majesty and horrifies Christian people', but did not determine the exact punishment²⁷. The inquisitors were required to identify sodomites in 'the counties, seats, and provinces, even in our Court, in Colleges and in the Army'. According to a source from 1685, the cases which involved sodomy ended in physical punishment²⁸. However, on April 13th, 1697, a more elaborate version of this law was drawn up in order to regulate sodomite cases in Transylvania. This new law forbid the accused from buying freedom with money or other goods and condemned the convicted to death by fire²⁹. This legal practice is quite clear in Hungary, where the judges made their deliberations according to Carpzov or Praxis Criminalis (art. LXXIII)³⁰. In cases of sodomy committed with animals (bestiality) or other men, everyone and everything related to this sin had to

²⁵ Andrea Fehér, 'Crossing Gender Boundaries. The Trial of Andrew Ungvári (1712)' in *Studia Universitatis "Babeş-Bolyai", Historia*, 57 (2012) December. 4-5. pp. 1-20.

²⁶ György Bereczk Vizaknai, *Diary*, 146v. 'Lucian Blaga' Central University Library in Cluj-Napoca, Department of Special Collections, Mss. 693.

²⁷ *Monumenta Comitalia Regni Trasyllvaniae. Erdélyi Országgyűlési Emlékek (1540-1699)* ed. Sándor Szilágyi, 21 volumes, Budapest, 1875-1898, (hereinafter: *MCRT*), vol. 18 (1683-1686), p. 35, 550; vol. 19 (1686-1688), p. 116; vol. 20 (1688-1691), p. 260.

²⁸ Gyula Magyary Kossa, *Magyar Orvosi Emlékek*, 5 volumes, Budapest, 1940, vol. 3, p. 424.

²⁹ *MCRT*, vol. 21 (1692-1699), p. 293.

³⁰ István Kállay, *Úriszéki bíraskodás a XVIII-XIX. században*, Budapest, 1985, pp. 233-235.

vanish in flames³¹. Thus, Ungvári's male clothes and her male instrument were burned with her. Curiously, though, the jury cited the Bible, not secular law, in its sentence.

Despite the strictness of the legislation, the narrative sources, autobiographies and diaries studied suggest that the death penalty could be avoided in cases of sodomy³². We can only wonder why Ungvári had no one to plead her cause. It is certain that no one wanted to be associated with her because of fear of death or public humiliation. It is also quite clear that, even if someone paid for her, the Court would have not changed its sentence because just as in Katona's 1704 adultery case, the Court wanted to make her an example for the citizens of Cluj and for anyone who dared to violate the town's social and moral rules. In Katona's trial, we are not sure of the execution method as the scribe only noted that she was sentenced to be executed publicly as an example to all sinners. That sentence is even more striking as established laws regulated marital behaviour. However, we would like to emphasise that, even though the *Approbatæ Constitutiones* (1653: Pars. III. Tit. 47 Art. 21) was in force, we rarely find adultery cases based on it. Although we have a significant number of cases involving female adultery, the Protocols (especially in the first half of the century) mentioned the A.C. only in cases of male adultery. We do not want to conclude that female adultery was so common that no legal justification was needed, but certainly, female crime in general tended to be resolved without legal explanation.

The legal change

As we have seen, the last execution for witchcraft dates from 1743 but the last witch trial from 1765, and the last execution for infanticide from 1750 but the last case from 1798. How can we explain this? Although there has been no research on the 18th-century Transylvanian legal system, particularly homicide cases, we cannot ignore a small but significant survey by Lajos Hajdu. Analysing the modernisation of Hungarian jurisdiction, Hajdu wrote two books on the Hungarian legal system in the last three decades of the 18th century and an article reporting criminality in Transylvania during the late 18th century³³. According to his research, none of the women accused in the second half of the century received capital punishment, only physical.

What reasoning, though, allowed these women to escape death? The winds of change were already stirring in legislation the first half of the 18th century. We wish to stress that, in

³¹ Lajos Hajdu, *Büntett és büntetés Magyarországon a XVIII. század utolsó harmadában*, Budapest, 1985, pp. 117, 320-321.

³² Fehér, 'Crossing Gender Boundaries', p. 13.

³³ Lajos Hajdu, 'Bűnözés és büntetőbíráskodás Erdélyben (valamint Partiumban) a jozefinista büntetőjogi reformok előtti években' in *Levéltári Közlemények* 1989/2, p. 261.

cases of infanticide, we can detect an interest in feelings even in Cluj, especially in the description of the despair of the convicted. Moreover, in the last case (that of Stefán–1750), the sentence was eased because of the judge’s highly sensitive attitude towards the accused. Therefore, we can conclude that, as in western literature, emotion invaded the court rooms. However, consideration of emotion did not necessarily lead to acquittal; only at the end of the 18th century did women start to be perceived as victims, not criminals. In 1769, Empress Maria Theresa aimed to prevent infanticide by banning the death penalty in cases committed by mothers. Her decree ordered magistrates, counties, seats and royal towns to monitor all pregnant women, especially those who were unmarried, until the time of birth³⁴. Her son Joseph II added a note to these regulations in 1781, forbidding humiliating pregnant women in public as ‘the reason of this tragedy is to be found precisely in shame and fear of humiliation’.

These two monarchs also enabled the slow disappearance of witchcraft trials. Maria Theresa seems to have ended all witchcraft hysteria, as well as cases of infanticide. Influenced by physician Gerard van Swieten, the empress began in 1750 to issue decrees against torture and witchcraft and demanded the submission of all witchcraft cases to the Court in Vienna in order to avoid the ‘excesses of zeal from the rural Courts’, moves which aroused widespread discontent among local populations. The new decrees identified four types of magical crimes, one of had an economic nature and one a medical nature (it was presumed that melancholy had more to do with astral worlds than magic). Cases in which the witch had an unchristian attitude and cursed and mocked the divine were still ‘flammable’. There were, of course, also some cases of *real magic*, but all cases were sent before the empress³⁵. Joseph II continued the rationalisation of the legal system, spurred by the Italian Cesare Beccaria, the most influential voice in criminology in this century. Many believe that the marquis’s book *An Essay on Crimes and Punishments*, which was translated into English and French, had major impacts on the highest social levels and a direct effect on the modernisation of the Hapsburg legal system. According to researchers, among the above mentioned work a great influence on Joseph II’s perceptions on torture, crime and punishment had the great Austrian doctor Joseph von Sonnenfels³⁶.

We, then, can conclude that, at the end of the 18th century, the image of women shifted from active criminals (as during the 17th century) to passive victims of crime due to the strong collaboration between the monarchs and medical elite. Infanticide and witchcraft were moved

³⁴ Hajdu, *Büntett és büntetés Magyarországon*, pp. 18-19.

³⁵ Tóth G., ‘A mágia dekriminalizációja’, pp. 69-70, 72.

³⁶ Deáky and Krász, *Minden dolgok kezdete*, pp. 107-109.

from the criminal to the medical level as judicial officials became willing to accept that fear and pain caused unexpected behaviour and strong emotions, leading to temporary insanity³⁷.

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