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**THE HUNGARIAN LEGISLATION CONCERNING INFANTICIDE
A Historical Overview and the Criminological Background***

Those who read newspapers or watch television, almost every week can hear about children found dead in a trash can or in the forest, abandoned or killed by their mother. The public opinion consider these women to be either incredibly evil or mad. This stereotype seems to be existing also in the field of jurisdiction. The infanticide – when a mother kills her child during or right after the birth – existed through all ages. Sometimes it was tolerated, but usually severely punished.

In the followings, I would like to offer a brief overview of the history of the criminalization of this act, then shortly introduce the main results of some researches concerning the topic.

***1. Approaches to the Problem from the Middle Ages till
the First Hungarian Criminal Code***

In Europe, after the spread of the Christianity, according to the canon law, the infanticide was regarded as a „murder of a relative”, which was punished by serious, often cruel sanctions. This approach also characterized the Hungarian legislation.

The *Tripartitum* – a code of customary law, collected by István Werbőczy, a Hungarian jurist and statesman in the 16th century, whose certain provisions were applied up to the 19th century – classified the infanticide as infamy, and according to it the perpetrator must have been sentenced to capital punishment .

The law made by our kings during the Middle Ages insisted the application of death penalty.

The extant documents of the manor court jurisdiction show that the offenders usually condemned to be beheaded or to be tortured, but sometimes to be buried alive.

In the 18th century contrary to the prior approach a different opinion came to the front: the married and the unmarried mother can not be judged with the same rigorosity. The cause of its spread was the consideration of the incomparably disadvantageous social and financial situation of the latter¹.

This approach appeared in the Hungarian criminal code *proposal of 1792*. The killing of a newborn child was defined as *infanticidium*, an act committed right after the birth, which effected the death of the infant, and its regulation was different from the homicide against a child. The proposal with the intent on prevention stated that the punishment or the humiliation of the unmarried mother is illicit during and after the pregnancy, and the community have to promote a compensation from the father. The act should have been punished with regard to the norms concerning the homicide, with the consideration of the circumstances².

The *proposal of 1843* contained provisions relevant to the mother who killed her illegitimate infant during the birth or within three days after the birth. If she planned the act before the birth, she should have been punished by imprisonment of up to 10 years, if not, of up to 5

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years and if the child was a “monster”, of up to 1 year. If the child survived, the act was qualified as an attempt, and the half of the mentioned punishment was applicable.

If the child was not illegitimate or the act was committed more than three days after the birth, the woman was accountable on the grounds of the provisions related to intentional homicide or murder.

The proposal also intended to penalize the woman who intentionally created such conditions that prevented her from getting help during the birth.

The punishment was differentiated by the result of the act or the origin of the child³.

None of these above-mentioned proposals came into force, although the proposal of 1843 had considerable effect on judicial practice.

2. Regulations of the “Code Csemegi” and the “Socialist Criminal Code”

The first Hungarian Criminal Code, the “Code Csemegi”, the Act V of 1878 regulated the infanticide in the Chapter 18: “Felonies and Misdemeanours Against the Life of a Person”.

Section 284: “*The mother who intentionally kills her child who born out of wedlock during birth or directly after birth: is punishable with imprisonment of up to five years.*”

The act was qualified as a privileged form of homicide. The reason of such a legislation was the particular mental state of the unmarried mother derived from shame and fear, which started before the birth and lasted during its time, besides this the special physical conditions caused by the birth.

In accordance with the decision of the Curia – the Hungarian Supreme Court of the era – the phrase “out of wedlock” must have been used in its specific meaning: if the woman was married, it was irrelevant if the husband has been the father or not.

The law required the live birth, but not the viability.

The Code Csemegi did not exactly determine the applicability of this paragraph. The perpetration “directly after birth” could be assessed if the above-mentioned particular mental state and physical conditions of the woman existed⁴.

The Special Division of this act was in force until the adoption of the Act V of 1961, the “Socialist Criminal Code”. This act did not contain specific provisions concerning the infanticide. By the Commentary of the act the “development of the socialist social structure”, the participation of women in the productive labour, social and political life and the permission of abortion, in addition to the changing of the legal status of the illegitimate child eliminated the reasons for the killing of a child.

Therefore the infanticide must have been judged by the rules of the intentional homicide, and the diminished mental capacity of the woman accompanying the birth was judged by the provisions of the General Division of the Criminal Code concerning the lunacy, imbecility and cognitive disorder⁵.

3. The Act IV of 1978 and its Amendments

The Act IV of 1978, the Criminal Code which is in force up to now, in its original form followed the approach of the “Socialist Criminal Code”, therefore did not contain propositions concerning the infanticide. These acts should have been punished according to the provisions of homicide.

In 1999 two important amendments changed this situation. On the one hand, a new aggravating circumstance was integrated: the commission of the crime against a person under the age of fourteen (Section 166 (2)), which is punishable by an imprisonment from ten to fifteen years, or life imprisonment, and on the other hand, a new individual legal fact as a privileged form of homicide, called “Culpable Murder of a Newborn Infant” (Section 166/a):

„*A woman who kills her newborn child during birth or directly after birth commits a felony offense and shall be punishable by imprisonment between two and eight years.*”

The reason of the integration of this new aggravating circumstance was the obligation for the increased criminal protection for minors, which was insisted by the Convention on the

Right of the Child. But at the same time the legislator – in consideration of the physical and mental status of the parturient woman and the existing judicial practice – deemed reasonable the creation of the privileged legal fact. Some jurists criticized this provision because the presumption of existence of the extraordinary physical and mental status also protected those women who actually did not get into that state, and besides that, the lack of the aggravating circumstances⁶.

In 2003 a hardly satisfactory amendment came into existence. Though the original proposal contained the repealing of both sections, finally only the „Murder of a Newborn Infant” was abrogated.

This solution eventuated that an act which was formerly classified as a privileged fact punishable by an imprisonment of two to eight years from that time onward became an aggravated case, with a sanction of imprisonment of ten to fifteen years or life imprisonment.

In the light of this situation, is appropriate to examine the criminological background of this crime.

4. The Criminological Background

The aim of this part of the paper is briefly summarizing the results of some recent researches concerning infanticide.

As M6ria Herczog, the sociologist wrote, the level of the knowledge related to the culture of relationships, communication, self-understanding and body awareness is very low in Hungarian society, as well as its application. It is demonstrated by *inter alia* the permanently low birth rate and the high rate of abortion. Less than fifty percent of the women in child bearing age use contraceptives, and more than half of the children is born from unplanned pregnancy⁷.

This may induce the higher rate of the commission of infanticide in Hungary comparing with the Western European countries. Different resources mention 20-25 cases a year, which amounts to almost 10 percent of all perpetrated homicides.

4.1. The Results of Judit Cseres

The most extensive research of the topic was conducted by psychologist *Judit Cseres*, who analysed 286 cases occurring between 1982 and 1999, which terminated with final judgement⁸.

Some of her important results:

The crime is generally committed by women who had been raised by their own family, not by an institution or adoptive parents.

88% of the perpetrators passed the elementary school, none of them finished her higher education.

The perpetrators either had an average standard of living or they were indigent (Either women at average standard of living or indigent ones became perpetrators); the accommodation was generally arranged (only 2 homeless perpetrators of the 286)

She defined three groups of perpetrators:

Maiden: unmarried women under the age of 26; generally live with the family; the father of the child is the boyfriend, the parents do not know about him, or forbid the relationship.

Married: marriage, stable cohabitation; the father of the child is usually the husband who expresses his unwillingness about having more children but continues the love-life with the woman, and deems the contraception the responsibility of the woman

Disarranged family status: widow, divorced or single woman who establishes occasional or expectedly persistent sexual relationships; the father is the partner who takes no responsibility in the relationship

The perpetrators of all the three groups grown up in a family dominated by the traditional conception of gender roles.

60 % of the perpetrators know about the pregnancy from the first month; about 25 % only from the quickening of the embryo.

During the child-bearing they conceal their condition. They usually cover the changing of their figure with clothing, and explain it with some illness or unsuccessful slimming diet. The members of the family usually – at least by their own admission – do not know about the pregnancy; the neighbours and colleagues suspects or know about it, but they think „it’s none of their business”

They go to see a doctor at most once, far from their residence, to make sure their condition. The birth takes place without any help, in a non-residential area, in the yard, in the latrine, or in the bathroom (there were more perpetrators who gave birth to their child at home when the rest of the family watched the TV in the next room).

Since they conceal the pregnancy and the birth starts abruptly, they do not have instruments neither for the birth, nor the murder.

The cause of death was the passive behaviour of the mother in 42% of the cases: lack of care: 25 % (getting cold or bleeding to death through the umbilical cord). In 10 percent of the cases the location of the birth and of the hiding was the latrine.

In 28 % of the cases the cause of death was choking

25 % of the mothers put an end to the child’s life with active behaviour: strangling with the hand (18 %) or with the umbilical cord (6 %), or throwing the baby to the floor or to some hard object (1 %).

The report of the case may come from a doctor, who treats the complications of an unaided birth (53 %), from a relative (12 %), or from a stranger (32 %) (a „trash-picker” who finds the body, or neighbours, colleagues etc.)

4.2. The Results of the Research of the National Institute of Criminology

In 2004 in the *National Institute of Criminology (OKRI)* a research took place that examined the victims of murder in Hungary in the decade between 1990 and 1998. Mariann Kr6nitz wrote an article about a specific part of the research, the female offenders.⁹ She devoted a subsection to the perpetrators of infanticide. She divided them into two groups.

The first was the group of the young, generally teenager girls who lived relatively separated, (e. g. in a farm), or in a city, but without close friends, and their relationship with the parents was characterized by estrangement and inadequate communication. The act of these girls was usually accompanied by impaired consciousness. The cause of the death was generally the lack of care.

The other was the group of mothers with a large family. These women usually refer to such unnatural facts during the proceedings as they did not recognize their pregnancy, did not feel the birth-pangs and did not remember the birth itself, but the manner of the perpetration seemed to falsify them. They usually prepare for the act with some instruments and sometimes commit it with explicit cruelty.

It is worthy to recognize the differences between the results of these researches concerning almost the same datas. Cseres did not observe such distinctions between the motivations and the manner of perpetration between the different groups of perpetrators.

4.3. About the Judicial Practice

By the results of the researches, the judges take account of the impaired consciousness resulting from the birth, but also the premeditated character of the crime or the special cruelty of perpetration. Thus the imposed sanction was usually a suspended or a short term imprisonment (from 3 to 5 years).

Accordingly the above-mentioned propositions in force, the lowest measure of the punishment may be at least 10 years of imprisonment, and only in exceptional cases shall be imposed less.

If the limited mental incapacity of the woman during the perpetration can be established, the punishment may be mitigated without limitation, which means that the smallest measure of any type of punishment may be inflicted.

In absence of this, the judge also has a possibility to mitigate the punishment, if at his discretion the lowest measure of it is too rigorous with respect to the objective of the punishment, the danger to society represented by the nature of the criminal act and by the perpetrator, the degree of culpability, and other aggravating and mitigating circumstances¹⁰. But in this case he shall inflict an imprisonment of at least five years.

However it is questionable that in case of the perpetrators of this crime does it make sense to impose an executable imprisonment. The effectiveness of this type of punishment is ordinarily doubtful, but in these cases the perpetrators generally never commit other crimes, so they do not mean grave danger to society. On the other hand they need thoughtful psychological help, which they probably won't get in a penal institution.

5. Consequencies

As we can see, the legislator took measures to prevent and recompense this behaviour through all ages. Although the state of the unmarried mother and the illegitimate child radically changed, this crime still exists. We have to mention again the point of view of Mária Herczog, who originates the problem from the low level of the knowledge related to the culture of relationships, communication, self-understanding and body awareness.

Besides this, Judit Cseres urges the force of the secret. The surroundings of these women take the pregnancy undisable, so she can not talk about her condition with anyone. The only chance for these women is the breach of secrecy to be able to get help¹¹.

In Hungary, there are a few NGOs dealing with this question (e.g. the Cardle Foundation or the Alpha Association), mainly by the adoption of the child, and there are some hospitals, where mothers can leave their unwanted children in an incubator placed in front of the building. But these measures are not accessible to everyone, and may not consider the best solution.

The aim has to be the avoidance of the unwanted pregnancy, therefore the most important task is informing and training people from early childhood.

¹ Rasky, G.: A női bűnözés [*Female Delinquency*], Közgazdasági és Jogi Könyvkiadó, Bp., 1978. 95-101. pp.

² Cited by Kovács, Gy: Az anyák által az újszülöttek sérelmére elkövetett ölési cselekmények büntetőjogi szabályozása; [*Criminal Legislation Concerning Killing a Newborn Child by Mother*] http://web.bm.hu/render/bun_meg.nsf/4e49b6e651be2d67c1256bdf003562eb/a874a03e13f802f4c1256ba3003dfbea?Op=OpenDocument (05.08. 2006.)

³ Fayer, L.: Az 1843-iki büntetőjogi javaslatok anyaggyűjteménye, [*Collection of the Criminal Code Proposals of 1843*] Tom. I. Magyar Tudományos Akadémia, Bp. 1896. Part II. 39-40. pp.

⁴ Angyal, P.: Az emberi élet elleni bűncselekmények és a párviadal. A magyar büntetőjog kézikönyve 2. [*Crimes Against Human Life and the Fray. Handbook of Hungarian Criminal Law Part 2.*] Athaeneum, Budapest 1928. 52-53. pp.

⁵ A büntető törvénykönyv kommentárja, Közgazdasági és Jogi Könyvkiadó, [*Commentary on Criminal Code*] Bp., 1968. 1187-1188. pp

⁶ Pycza, R.: Az újszülött megölése: alap-, minxített vagy privilegizált eset? [*Infanticide: basic, privileged or aggravated fact?*] In: Magyar Jog, 2005/3. 157. p.

⁷ Herczog, M.: Csecsemőgyilkosságok megelőzésének és kezelésének lehetőségei [*Prevention and Dealing with Infanticide*] in: Kriminológiai és kriminalisztikai tanulmányok XXXVI, OKRI, Bp. 1999. 104-106. pp.

⁸ Cseres, J.: Eltékozolt újszülöttek – Az újszülöttölést elkövető nők helyzetének kriminológiai elemzése [*Squandered Newborns – Criminological Analysis of the State of Women Committing Infanticide*] BM Kiadó, Bp. 2000.

⁹ 109 cases of infanticide were examined Kránitz Mariann: Az emberölést elkövető nők tipológiája [*Typology of Women Committing Homicide*], ügyészek Lapja 2005/2. 15-21. pp.

¹⁰ Sections 83 and 87 of the Criminal Code

¹¹ Cseres, J.: A titok. Adalékok az újszülöttgyilkosságok elzsményeihez. [*The secret. Data for the antecedents of infanticide*] Társadalmi szemle 1996/6. 48-60. pp.

Резюме

В статті розглядаються ситуації, які спонукали уповноважених з прав людини при Угорському парламенті створити групу, метою якої є популяризація і розвиток культури прав особистості. Визначаються правові норми професійної діяльності омбудсмена, а також інституту з захисту конституції і прав людини в цілому. Більш детально розглядається результат роботи даної структури, її роль, функції, необхідність захисту культури конституційних прав і їхнього розвитку.

Ключові слова: Угорщина, Омбудсменський інститут, культура прав особистості, політичне право, реактивна роль, активна роль, неслухняність громадян, конституційно - правова шкода, легітимність

Резюме

В статье рассмотрены ситуации, которые побудили уполномоченных в вопросах личных прав человека при Венгерском парламенте, создать группу, цель которой, содействие и развитие культуры прав личности. Здесь вы увидите определения правовых стандартов профессиональной деятельности омбудсмена и института по защите Конституции и прав человека в целом. Более детально рассматриваются вопросы касательно результатов работы данной структуры, ее роли в государстве, функций, потребностей в защите культуры конституционных прав и их развития.

Ключевые слова: Венгрия, Омбудсменский институт, культура прав личности, политическое право, реактивная роль, активная роль, непослушность граждан, конституционно-правовой вред, легитимность.

Summary

In the article reviewed situation, that are prompted the commissioners of personal rights in the Hungarian parliament to create a group for promote and develop the culture of personal rights. Here you see a define of the legal standards of professional activities of the Ombudsman, of the Institute for the Protection of the Constitution and human rights. The more attention paid in questions of the results of this structure, role in the State, functions, needs in the protect the culture of constitutional rights and their development.

Key words: Hungary, Ombudsman's Institution, culture of personal rights, political law, reactive role, proactive role, disobedience of citizens, the constitutional legal injury, legitimacy.

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