

The Early Period of Lawmaking in Medieval Hungary

TAMÁS NÓTÁRI

Károli Gáspár University of the Reformed Church

Viola u. 2–4, 1024 Budapest

Ifjuság útja 6, 7622 Pécs, Hungary

Institute of Jurisprudence of the Centre of Social Studies of the Hungarian Academy of Sciences

Országház u. 30, 1014 Budapest

tamasnotari@yahoo.de

Basic Features of the Texts left to us and Legislation

The original copy of the laws of King Stephen I has not been left to us, what is more, we do not know their original form either; their text was passed on in law digests compiled by later editors and in their reproduced copies. The laws, to be more precise, the law digests have been preserved in ten manuscripts, which basically contain two versions of the text. The first version of text is contained in the Codex of Admont created in the 12th century; the other version preserved in nine manuscripts can be divided into two subgroups; the differences between them are not significant though. The second version comprises the 15th century. Thuróczi Codex, the 16th century. Ilosvai Codex and the 16th century. Kollár Codex. No material differences between the two versions of the text can be demonstrated; yet, two laws can be found in the Codex of Admont only and six laws in the later ones only.¹

Undoubtedly, in the codices containing the laws of King Stephen I, just due to the fact that they were created later (perhaps, except for the Codex of Admont only), the division of the texts of laws preserved in them scarcely corresponds to the original arrangement. It is clearly shown by the

¹I. TRINGLI, *Szent István törvényei*, in: *História*, Vol. 23, No. 7, 2001, pp. 16–21.

Tamás Nótári

The Early Period of Lawmaking in Medieval Hungary

fact that the 16th century. B redaction containing the laws – which embraces the B1 (the codices of Buda, the Thuróczi Codex, the codices of Debrecen and Beszterce) and the B2 (the Kollár, Ilosvai, Gergoriánczi, Nádasdy and Festetics codices) group – published Warnings to Prince Emery as the first code of laws.² The Codex of Admont divides the laws into two books, they contain thirty-five and fifteen chapters, i.e., legislative acts respectively, and the other version – without dividing the text into parts – publishes fifty-five continuously numbered laws, in other words, it is due to the division of the Codex of Admont that we usually speak about two codes of King Stephen I. In our paper we follow this division.³

The provisions of the codes of King Stephen I are miscellaneous; yet, the first one reveals a thoroughly deliberated system. The first code begins with a preamble on lawmaking; Articles 1–5 discuss the affairs of the Church and the position of ecclesiastical persons. Articles 6–7 deal with the new order of estates, Articles 8–13 and 19 with exercise of Christian religion, Articles 14–16, 32 and 35 with arbitrary measures, Article 17 with oath-breaking, Articles 18 and 20–25 with relations between lords and persons subjected to them, Articles 26–31 with regulations related to widows, orphans, women, and Articles 33–34 with witches and enchanters. Contrary to this, the second code is strikingly unsystematic – as it were it supplements the provisions of the first code, so it can be named a kind of novella additions.

We have very little information on the making and prefigurations of the laws: earlier literature presumed that the German and primarily Carolingian pattern had great significance in setting up bodies of state authority, and although King Stephen I adjusted the system of episcopal and national councils as well as the organisation of the army to domestic conditions, he followed western examples in the structure of lawmaking.⁴ New literature has shaded this

² M. JÁNOSI, *Törvényalkotás Magyarországon a korai Árpád-korban*, Szeged 1996, p. 67; G. KISS, *Állam és egyház a 11–12. századi törvényalkotásban*, in: M. FONT – I. KAJTÁR (eds.), *A magyar államiség ezer éve*, Pécs 2000, pp. 67–99.

³ TRINGLI, p. 16.

⁴ L. ZÁVODSZKY, *A Szent István, Szent László és Kálmán korabeli törvények és zsinati*

view to the extent that legislation on the merits (especially early lawmaking) followed the German example; yet, neither the system of lawmaking, nor the system of administration of justice was based on developed institutional structure as in the age of the Carolings. Yet, it can be added that, in addition to the king, the royal council (called *senatus*, *concilium*, *consilium* or *synodus* in the sources), which consisted of both secular and ecclesiastical persons, must have had a highly important role.⁵ During lawmaking the function of ecclesiastical persons might have been twofold: on the one hand, they attended the meetings of the royal council, where they could submit their previously formed opinion to the ruler; on the other hand, they played a part in making particular texts of the law, editing adopted resolutions. This participation is implied by the diverse terminology reflected in the name of the royal council: *regale concilium*,⁶ *primatum conventus*,⁷ *senatus*,⁸ *regalis senatus*,⁹ *commune concilium*.¹⁰

Neither the laws, nor the sources refer to the time of making such laws, and it cannot be decided either whether the two laws – tradition dates the first one to the early period and the second one to the end of the reign of King Stephen I¹¹ – were made on two occasions of lawmaking or not.¹² It seems to be more probable that specific laws that belong together were made on the same law day, however, we can calculate with several law days; so, the laws were united in the present order and two collections only later.¹³ Also, it is improbable that the novellas of the second code were created as the result

határozatok forrásai, Budapest 1904, p. 8; KISS, p. 69.

⁵ Cf. ZÁVODSZKY, p. 10; KISS, p. 70.

⁶ *Decretum Sancti Stephani regis I*, Vol. 1, p. 20.

⁷ *Ibidem*, p. 25.

⁸ *Ibidem*, pp. 14. 34.

⁹ *Ibidem*, p. 15.

¹⁰ *Ibidem*, p. 35.

¹¹ I. MADZSAR, *Szent István törvényei és a Lex Baiuvariorum*, in: *Történeti Szemle*, Vol. 21, 1921, pp. 48–75. Cf. *Legenda maior Sancti regis Stephan 9*.

¹² JÁNOSI, p. 80.

¹³ *Ibidem*, p. 85; TRINGLI, p. 16.

Tamás Nótári

The Early Period of Lawmaking in Medieval Hungary

of systematic supplementary work. The decreta of King Stephen I, which regulate the most important fields of the ecclesiastical and secular sphere, as a matter of fact, do not embrace the entirety of life conditions to be regulated legally; so, they cannot be considered codification; similarly, it was not their objective to turn the complete customary law into statutory law.¹⁴ As it is quite usual with medieval laws, his laws much rather supplemented, modified and confirmed practice based on customary law.¹⁵ We have a good chance of presuming that the resolutions or proposals of the royal council adopted at its specific meetings were later made uniform in a code of laws.¹⁶ Furthermore, it can be presumed with respect to the circumstances of making the laws that we can speak about as many occasions of lawmaking as many times reference is made to legislative body, that is, council, or the king's will in the decreta.¹⁷

The Issue of Continuity and Innovation

Concerning the laws of King Stephen I it arises as a fundamental question whether he created something new in every respect by his laws and work in organising the state, and if he had destructed ancient traditions and institutions or, filling them with new content, he continued the results of predecessors. In the mirror of János Zlinszky's well-founded opinion it can be stated that our first king carried on the following elements of tribal heritage affecting the organisation of the state. According to it, the prince's dignity was linked to the family of the given tribe, more specifically it was inherited by combined application of the principle of senioratus and idoneitas; eligibility was decided by the leaders of the tribes (praesentatio); the candidate was elected by free armed men (acclamatio); one of the chiefs – paying regard to the dual leadership of the “kende” and the “gyula” –

¹⁴ G. HAMZA, *Szent István törvényei és Európa*, in: G. HAMZA (ed.), *Nem akarunk csonka Európát*, Budapest 2002, pp. 105–120.

¹⁵ TRINGLI, p. 17

¹⁶ JÁNOSI, p. 85.

¹⁷ *Ibidem*, p. 90.

had sacral legitimisation.¹⁸ This system shows giving up power by armed men's natio (transaltio imperii), lack of early feudal personal subordination, dominance of half-nomad, tribal/clan character. Their system of norms reveals tolerance of great extent: they tolerated Christianity and polygamy of certain groups at the same time.¹⁹

For two generations, Hungarians were not exposed to external threats: they were hoped to be allies and were feared as possible enemies of the states of the western and Byzantine cultural sphere alike. Rise in the military power of the neighbours and military defeats that ended the roaming of Hungarians clearly indicated the possibility of threatening attack. Among Hungarians, having somewhat adjusted to the general conditions of their neighbours, Christianity of both the western and the Byzantine rite increasingly spread, which was supported by both the Transylvanian "gyulas", and Prince Géza.²⁰ After Stephen came to power, which he achieved against Koppány, who laid claim to this dignity as the older member of the family, through the support of Hungarians taking his side and the knights who settled in the country through Gizella, he started to transform the principality to kingdom, the alliance of tribes to regnum. The state of foreign affairs created an excellent occasion for this artificially accelerated transformation: the formation of the country of Otto III into an empire, the struggles of Byzantium successfully distracted the attention of great powers from Hungary. In this work Stephen was provided with considerable help by the Church, which, in addition to Christian teaching, brought along legal customs and codes of law (consuetudines et documenta).²¹

For Hungarians of the 10th century, integration into Europe meant assumption of Christian religion, and in this respect they were under pressure between two great powers since missionary activity served as one of the means

¹⁸ J. ZLINSZKY, *A magyar jogalkotás kezdetei. Szent István államalapító és törvényhozó*, in: J. BOLLÓK – G. KRISTÓ (eds.), *Szent István király intelmei és törvényei*, Budapest 2000, pp. 5–12.

¹⁹ Ibidem, p. 7.

²⁰ Ibidem, p. 8.

²¹ *Decretum Sancti Stephani regis I*, Vol. 1, pp. 6, 2.

Tamás Nótári

The Early Period of Lawmaking in Medieval Hungary

of imperialistic policy both for the German-Roman Empire and the Byzantine Empire. In this respect the political situation seemed to favour Byzantium first, all the more as this empire was highly experienced in strengthening its political influence over peoples baptised by its priests, which is shown by the example of Bulgarians. The first institutionally important step on this road was that in 952 the “gyula” of Transylvania returned from Byzantium with a bishop ordained for Turkia, i.e., Hungary, Hierotheos, who later pursued his missionary activity on the Transtisza region.²² Contrary to that, directions of orientation of the western part of the country pointed towards Rome and the German-Roman Empire. Pope John XII (955–963) appointed Zacheus a missionary bishop to Hungary, who left for his place of office in 962/63 indeed but had never arrived. Ten years later Otto I sent Prunward, a monk from Sankt Gallen to Hungary, who attained by thoughtful diplomacy that in 973 Hungarian envoys appeared in Quedlinburg to enter into further negotiations, and it can be attributed to the results of this process that later in the entourage of Stephen’s Bavarian wife, Gizella several Bavarian clergymen arrived to Hungary.²³

The work of the foundation of the Hungarian State was led by the king himself, his aim was to give law to its people as each people is governed according to its own laws (*unaquaeque gens propriis regitur legibus*).²⁴ Contrary to the generally accepted view, János Zlinszky consistently argues that King Stephen I made only the most necessary changes in established customary law elements²⁵ since that was the only way to ensure that his laws were accepted extensively and constituted point of reference in the decades after his death – even in the laws of Andrew I coming to the throne as Vazul’s successor, who did not feel attracted to St Stephen.²⁶ In view of the fact that

²² JÁNOSI, p. 49

²³ G. GYÖRFFY, *A magyar egyházszerzés kezdeteiről újabb forráskritikai vizsgálatok alapján*, in: MTA II. Osztályának Közleményei, Vol. 18, 1969, pp. 199–225; J. TÖRÖK, *Szerzetes- és lovagrendek Magyarországon*, Budapest 1990, p. 27; JÁNOSI, p. 50.

²⁴ *Decretum Sancti Stephani regis I*, Vol. 2. Praefatio.

²⁵ Cf. JÁNOSI, p. 53.

²⁶ J. ZLINSZKY, *A magyar jogrendszer kezdetei*, in: *Jogtudományi Közlöny*, Vol. 51, No. 8, 1996, pp. 269–274. See also J. SERÉDI, *Szent István törvényei a római joggal és az egykorú*

he continued to grant freedom to armed soldiers,²⁷ the only thing he had to fight with was the opposition of the chieftains who aimed for independence against the prince.²⁸ Beside submitting chieftains, ecclesiastical leaders were involved in the royal council,²⁹ and although the rex as imperator in regno suo made laws with a plenipotentiary legislator's power (plenipotencia) he took the council's opinion into account.

Eastern and Western Impacts and Sources

Although it is beyond the scope of this analysis, it is by all means worth saying a few words about the possibility of Byzantine impact. The lawmaking of King Stephen I cannot be necessarily considered a conscious opposition to the Byzantine tradition and orientation in view of the fact that the two Christian rites had not been officially separated yet; accordingly, Géza's wife, Sarolt was educated according to the Byzantine rite and that monasteries with Byzantine rite (e.g., Oroszlámos, Veszprémvölgy, Szávaszentdemeter) were located from Lake Balaton to Veszprém, that is, on a territory that clearly belonged to the House of Árpád, so this view rests on projecting later conflicts retroactively on the situation.³⁰ The elements of the election of the prince (praesentatio, acclamatio, sacred confirmation) clearly show Byzantine impact.³¹ Another Byzantine element can be the Hungarian king's right of control over the leaders of the Church,³² which was accepted also by the western Church in the case of the Hungarian king, however, coronation would not have created this power.³³ In the early centuries feudal subordination cannot be demonstrated between either the peers and the king, or the nobles and their soldiers, the

kánonjoggal összehasonlítva, in: *Vigilia*, Vol. 53, 1998, pp. 583–588.

²⁷ *Decretum Sancti Stephani regis I*, Vol. 1, p. 22.

²⁸ ZLINSZKY, *A magyar jogrendszer*, p. 272.

²⁹ *Decretum Sancti Stephani regis I*, Vol. 1, pp. 2, 14, 15, 25, 31, 35.

³⁰ JÁNOSI, p. 51; ZLINSZKY, *A magyar jogrendszer*, p. 273.

³¹ ZLINSZKY, *A magyar jogrendszer*, p. 270.

³² *Decretum Sancti Stephani regis I*, Vol. 2, p. 3.

³³ ZLINSZKY, *A magyar jogrendszer*, p. 273.

Tamás Nótári

The Early Period of Lawmaking in Medieval Hungary

position of peers depended on the office held by them (Amtsbaronat), and it did not become hereditary in their family. King Stephen I strove for a kind of consensus omnium, which is implied by the act of setting up the royal council. On the other hand, it was a deviation from the western pattern that, contrary to England or France, the king reserved the right of appointing the most important representatives of the state hierarchy.³⁴ Thus, the order of barons did not evolve, only the order of national offices, which again seems to refer to Byzantine impact – at least to the extent that in order for this system, rooted in the status of free men of the tribal order, to survive, a Christian counter model opposed to the western one, specifically the Byzantine pattern was required.³⁵

Byzantine impact can be discovered between sanctioning an affair with the maidservant of others³⁶ and *senatus consultum Claudianum*, just as in the opportunity to liberate servants³⁷ by a last will and testament.³⁸ Similarly, Byzantine impact is implied by prohibition of adulterous persons marrying again and authorisation of new marriages entered into innocently.³⁹ Byzantine impact is shown by several forms of punishment set out in Hungarian laws such as cutting off nose, tongue, hands and haircut, which were included in the *Ruskaya Pravda* of Kiev also upon Byzantine influence, and *pensa auri* as the name of a monetary unit equal to a young ox served to denote Byzantine gold.⁴⁰

Yet, intertwining of the ecclesiastical and secular power in the regime of King Stephen I cannot be fully identified with the Byzantine state Church structure (caesaropapismus), although it undoubtedly follows the Byzantine pattern in its form. Thus, King Stephen I was an absolute ruler: as a quasi sacerdos he made law that applied both to ecclesiastical and secular affairs, however, he cannot be considered *basileus autokratór* (at least not in Byzantine

³⁴ HAMZA, p. 108.

³⁵ ZLINSZKY, *A magyar jogrendszer*, p. 274.

³⁶ *Decretum Sancti Stephani regis I*, Vol. 2, p. 26.

³⁷ *Ibidem*, p. 17.

³⁸ ZLINSZKY, *A magyar jogrendszer*, p. 274.

³⁹ *Decretum Sancti Stephani regis I*, Vol. 2, p. 28.

⁴⁰ JÁNOSI, p. 52.

sense stricto sensu). Although it was formulated in the times after his death only, he implemented the principle of “rex imperator in regno suo”. Regarding King Stephen I the Latin equivalent of neither the basileus autokratór, nor the ho ekthou arkhón title can be found, which would have referred to following the Byzantine power ideology. Accordingly, it was not his aim to govern in his country according to “Roman customs” (kata ten diaitian tón Rhomaión).

Likewise, he did not follow slavishly the traditions of Charlemagne’s empire either. Even in the praefatio of the first decretum one can find references to lex Baiuvariorum; at several points its sources are the Frankish council resolutions and the, often forged, decretalises of the Carolingian age and the Frankish capitulares, which were made as the result of concilium mixtums, that is, councils held with the participation of ecclesiastical and secular persons.⁴¹ From among council resolutions it is necessary to highlight the decreta of the 813 Council of Arles and the 847 Council of Mainz. As example the following elements should be underlined. Part I of the first decretum,⁴² “De statu rerum ecclesiasticarum” corresponds with the decretum “De statu rerum ecclesiasticarum” of the 847 Council of Mainz; yet, deviation can be demonstrated with regard to the order of the tithe. The part entitled “De potestate episcoporum super res ecclesiasticas et eorumque convenientia cum laicis” of decretum I corresponds both in its title and content with the first decretum of the Council of Mainz.⁴³ Beyond the above, the laws of King Stephen I most probably rely on lex Baiuvariorum, lex Salica and, from among leges Romanae Barbarorum, on lex Romana Visigothorum and lex Romana Burgundionum and lex Ribuaria.⁴⁴ (However, it should be added that it is more difficult to prove word-for-word correspondence, i.e., direct impact.⁴⁵) According to Gábor Hamza’s opinion, Chapter 16 of decretum I (De evagatione gladii) is an almost word-for-word borrowing of the chapters

⁴¹ HAMZA, p. 109; JÁNOSI, p. 60.

⁴² *Decretum Sancti Stephani regis I*, Vol. 1, p. 2.

⁴³ See TRINGLI, p. 18.

⁴⁴ HAMZA, p. 110.

⁴⁵ JÁNOSI, p. 63.

with similar content of *lex Romana Burgundionum* and *Edictum Rothari*, Chapter 20 of *decretum I*⁴⁶ was drafted under the influence of *lex Romana Visigothorum* and – perhaps – *Iustinianus's Codex*⁴⁷.

King Stephen I strove for implementing the *praeceptum* formulated in the Warnings also in legal terms, which stated that no Greek would want to govern the Latins according to Greek customs, and no Latin would want to govern the Greeks according to Latin customs:⁴⁸ “*Quis Grecus regeret Latinos Grecis moribus, aut quis Latinus regeret Grecos Latfinis moribus? Nullus.*”⁴⁹ The significance of the laws of King Stephen I can be grasped, among others, in the fact that as a lawmaker and law interpreter⁵⁰ he created the bases of the uniform Hungarian legal system, and drawing on developed legal systems and ideas of the given age he placed the State of the Hungarian nation on safe legal, constitutional bases.⁵¹ So, his laws did not want to introduce alien law in the country; they are independent works.⁵² Quoting János Zlinszky's words: “... *the eastern (i.e., Rome) gave motive to the beginnings of our statehood, just as the western provided the crown for completing the work. It can be symbolic that in the Sacred Crown left to us the constitution of both great neighbours can be found united again. [...] This can be stated about the beginnings of our legal system too.*”⁵³

Main Subjects of Regulation of the Laws of King Stephen I

What follows is a few brief summary remarks on the main subjects of regulation of the laws of King Stephen I. The most essential task of the king's ecclesiastical policy was to develop the parish organisation, whose duty was conversion and

⁴⁶ HAMZA, p. 111.

⁴⁷ *Codex Iustinianus 4*, Vol. 20, p. 7.

⁴⁸ HAMZA, p. 107.

⁴⁹ *Libellus de institutione morum 8*.

⁵⁰ Cf. *Codex Iustinianus 1*, Vol. 14, pp. 12, 7, 45, 13. *Tam conditor quam interpres legum.*

⁵¹ HAMZA, p. 114.

⁵² TRINGLI, p. 18.

⁵³ ZLINSZKY, *A magyar jogrendszer*, p. 274.

spiritual care of those who had already been converted. Accordingly, King Stephen I ordered that each ten villages were obliged to build a church.⁵⁴ Presumably, he imposed the common task of building a church on ten villages because their financial strength was able to co-finance this enterprise jointly.⁵⁵ Development of proper church organisation required financial basis as well as estates and benefices allotted to the Church; accordingly, the laws of King Stephen I determined the extent of the minimum property that seemed to be indispensable for the operation of the village Church, i.e., the smallest unit.⁵⁶ The law similarly provided for protection of Church property as it might have aroused antipathy among secular owners: that is how church property was covered by royal protection and the regulation was made that those who defrauded the church of its property had to be excommunicated.⁵⁷ In addition to rules applying to secular church, it proved to be indispensable to adopt stipulations to protect monasteries. Bishops competent on the given territory controlled monasteries, and according to St Stephen's provisions bishops' power extended to making decisions regarding issues related to church property and supervision of monasteries and their property.⁵⁸ (There are good chances that bishops' right of control was based on the fourth canon of the Council of Chalcedon).⁵⁹

The laws of King Stephen I provided for bishop's authority comprehensively. The relevant provision stated that bishops had the right to care for church property (*praevidere*), control and govern church property (*regere et gubernare*) and dispose over church property (*dispensare*). Furthermore, it was their responsibility to preserve the Christian faith, protect widows and orphans, and in this respect secular people were obliged to obey them.⁶⁰

⁵⁴ *Decretum Sancti Stephani regis I*, Vol. 2, p. 1.

⁵⁵ KISS, p. 72; SERÉDI, p. 587; JÁNOSI, pp. 54, 58.

⁵⁶ *Decretum Sancti Stephani regis I*, Vol. 2, p. 1.

⁵⁷ *Ibidem*, Vol 1, p. 1.

⁵⁸ *Ibidem*, p. 2.

⁵⁹ KISS, p. 77.

⁶⁰ SERÉDI, p. 586.

Furthermore, it was their prominent sphere of authority emphatically set out by the law that bailiffs and judges were obliged to further the efficiency of dispensation of justice by bishops.⁶¹ The background of this provision should be looked for in the fact that according to law judgement of acts committed against Christianity fell within the bishop's power, and if somebody failed to obey the so imposed punishment on seven occasions, he should be transferred to secular dispensation of justice.⁶² There are two places where the laws of King Stephen I deal with *privilegium fori* considered the primary privilege of ecclesiastical persons:⁶³ on the one hand, they determine the requirements that witnesses of ecclesiastical persons were to meet; on the other hand, they state that secular persons shall not stand as witness against ecclesiastical persons, and that cases of ecclesiastical persons shall be judged within the Church.⁶⁴ With respect to these provisions, research has now uniformly taken the position that, through the revision of the resolutions of *Constitutum Sylvestri* constituting a part of the Symmachean forgeries, they are after all from the Pseudo-Isidorus collection.⁶⁵ A certain part of ecclesiastical laws provides for holding ecclesiastical holidays and periods of fasting. The laws of King Stephen I emphasise, at several points, the importance of holding Sunday, prohibit performance of work on Sunday, and sanction it by taking away or redeeming the work instruments.⁶⁶ Upon those who, albeit they went to church, disturbed the ceremony by their conduct, the laws imposed corporeal punishment, humiliating punishment.⁶⁷ These provisions – although borrowing from sources cannot be proved – according to Juszinián Serédi drew on the canons of the 506 Council of Agatho and the 511 Council of

⁶¹ *Decretum Sancti Stephani regis I*, Vol. 1, p. 2.

⁶² *Ibidem*, p. 134.

⁶³ SERÉDI, p. 586; JÁNOSI, p. 58.

⁶⁴ *Decretum Sancti Stephani regis I*, Vol. 1, pp. 3, 4.

⁶⁵ JÁNOSI, p. 60; MADZSAR, p. 228.

⁶⁶ *Decretum Sancti Stephani regis I*, Vol. 1, pp. 8, 9.

⁶⁷ *Ibidem*, p. 19.

Orleans.⁶⁸ With respect to fasting, the Laws of King Stephen I contained rather strict provisions, in each case they applied ecclesiastical sanction, one week fast, irrespective of what holiday the fast violated was related to.⁶⁹ In addition to ecclesiastical festivals and regulations on fasting, the laws regulated other manifestations of religious life.⁷⁰ For example, they punished if somebody failed to call a priest and confess his sins before their death and if it was the relatives of the deceased who failed to do the above, then punishment was imposed on them.⁷¹

In case of crime of homicide, highly uniform principles were enforced in early Hungarian legislation. The first of these principles was that in case of homicide, if it was committed by a free man, enforcement of blood feud by the victim's relatives had to be excluded: the law replaced blood feud with *compositio*, i.e., redemption by pecuniary consideration. According to the second principle, *compositio* was only one of the parts of punishment, which was set according to the social standing of the perpetrator, on the other side fast to be imposed by the Church appeared as punishment.⁷² The laws of King Stephen I measured *compositio* to the social standing of the perpetrator but stipulations by all means included fasting as punishment – be it a free perpetrator or one with slave's statu. With respect to sanction the law did not draw distinction with respect to the subjective side of the act, i.e., between voluntary manslaughter and accidental homicide.⁷³ Attention should be paid also to the following provision: if a slave killed another person's slave, his lord was obliged to pay the injured lord half of the slave's price, and if he was not able to do that, the perpetrator slave was sold after forty days had elapsed, and the two lords shared the purchase price.⁷⁴ It is worth adding that in case

⁶⁸ SERÉDI, p. 587.

⁶⁹ *Decretum Sancti Stephani regis I*, Vol. 1, pp. 10, 11.

⁷⁰ SERÉDI, p. 587.

⁷¹ *Decretum Sancti Stephani regis I*, Vol. 1, p. 12.

⁷² KISS, p. 86; JÁNOSI, p. 54.

⁷³ *Decretum Sancti Stephani regis I*, Vol. 1, p. 14.

⁷⁴ *Ibidem*, p. 3.

of drawing one's sword classified as one of the cases of homicide (*evaginatio gladii*) the law did not order ecclesiastical sanction: therefore, we have good chance of presuming that in case of this state of facts the lawmaker wanted to sanction the state of facts of taking the law into one's own hand rather than that of manslaughter.⁷⁵

The sanctions of plotting against the king and the country included ecclesiastical punishment.⁷⁶ In this respect it should be pointed out that St Stephen's relevant provision terminated the right of asylum with respect to the perpetrator of plotting.⁷⁷ Similarly, ecclesiastical sanction was imposed on false oath: the punishment was maiming of the body redeemable by a young ox, on the one hand, and fasting, on the other.⁷⁸ Upon witches the laws of King Stephen I imposed fasting on the first occasion and obliged priests to educate them – in case of habitual offenders the punishment was fasting and stigmatisation, and only in the event that these had been unsuccessful was the person handed over to secular court.⁷⁹ It should be mentioned that in case of sorcerers/sorceresses and bewitchers the king allowed the opportunity of taking the law into one's own hand: the perpetrator was given into the hands of the relatives of the party having suffered injury, and oracles had to be caused by the bishop by beating to change their discretion.⁸⁰ The right of asylum provided asylum primarily against the institution of blood feud, and, on the other hand, later on against the criminal prosecution bodies of the state too.⁸¹ As limitation of the right of asylum, as we have referred to it, the laws of King Stephen I introduced that conspirators against the king and the country were not allowed to use this opportunity.⁸²

⁷⁵ *Ibidem*, pp. 16, 2, 12.

⁷⁶ SERÉDI, p. 587.

⁷⁷ *Decretum Sancti Stephani regis I*, Vol. 2, p. 17.

⁷⁸ *Ibidem*, Vol. 1, p. 17.

⁷⁹ *Ibidem*, p. 33. JÁNOSI, p. 55.

⁸⁰ *Decretum Sancti Stephani regis I*, Vol. 1, p. 34. Cf. JÁNOSI, p. 54.

⁸¹ SERÉDI, p. 587.

⁸² *Decretum Sancti Stephani regis I*, Vol. 2, p. 17.

The foundations of payment of tithe were laid down by Stephen I; yet, its regulation was of a general character only because it did not stipulate who and in what from should collect it. The stipulation approaches the issue from its negative side: it prescribes that those who refuse to pay the tithe shall lose nine-tenth of their produce, and that those who steal the part separated for the bishop shall be punished as a thief.⁸³

As we can see punitive rules are given prominent part in the laws, which is a general phenomenon in the given age. At the same time, it is a peculiar feature of the laws of King Stephen I that its system of sanctions, measured by the standards of the age, is lenient in general; so, it reflects the requirement of pius, iustus and pacificus rex. For example, the law imposes death penalty on habitual thief servus on the third occasion only,⁸⁴ while according to *lex Romana Burgundionum* the thief slave's punishment is death on the first occasion of committing the act already. The Polish laws of the period punished violators of fast by breaking out their teeth,⁸⁵ in accordance with the *decretum* of King Stephen I, however, punishment in this case was merely one-week confinement and hunger.⁸⁶

Abstract

The beginnings of the Hungarian legal system – more precisely written law, *ius scriptum* – can be traced back to the lawmaking activity of our first king, St Stephen, founder of the state. It is a fact beyond doubt that his laws are independent legislative work rather than the results of borrowing some alien legal system. However, special attention should be paid to the issue what European sources were used in making the *decreta* of King Stephen I, i.e., the laws of what areas were considered by the founder of the state and his environment well versed in law an example that was worth taking into account,

⁸³ *Ibidem*, p. 18.

⁸⁴ *Ibidem*, p. 6.

⁸⁵ HAMZA, p. 114. See also SERÉDI, p. 588.

⁸⁶ *Decretum Sancti Stephani regis I*, Vol. 1, pp. 10, 11.

Tamás Nótári

The Early Period of Lawmaking in Medieval Hungary

relying on. Analysis of these issues can be conducive to better understanding to what extent our law at the age of the foundation of the state was embedded in European legislation.

This chapter searches for answers and raises further questions to what extent and at what points *Lex Baiuvariorum* influenced/might have influenced the lawmaking, the first and second decretum of King Stephen I, the founder of our state. After outlining the tradition and the texts left to us and the main characteristics of the legislation of King Stephen I we deal with the issues of continuity and discontinuity in foundation of the Hungarian State and lawmaking, and the most important fields of regulation in the decreta. Finally, focusing on alien impacts, we analyse the issue of possible eastern and western impacts with respects to the laws that constitute the starting point of the Hungarian legal system.

Keywords

Medieval Hungarian Legal System; King Stephan I; *Decreta Sancti Stephani regis I*