Legal Unification and Harmonisation of Criminal Law in Transylvania as Part of Romania Between 1918 and 1937

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ABSTRACT
The main objective of this research is to present the process of legal unification in Romania between 1918 and 1937, with a special focus on Transylvania. As a consequence of the union of Transylvania with Romania, the newly established State experienced the singular situation of having several penal codes in force at the same time. Apart from discussing the special laws passed in the period under study (such as the Law on the Repression of New Crimes Against Public Order and Peace), the paper will briefly address the process of the adoption of the Penal Code of Carol II and its general provisions. In addition, the impact of the legal unification process on Transylvania will be explained, highlighting the changes in the regulation of certain offences.
KEYWORDS
legal unification and harmonisation, Csemegi Code, Penal Code of Carol II, Transylvania, neonaticide, embezzlement, bigamy.

Unificarea si armonizarea dreptului penal în Transilvania ca parte a României între 1918 și 1937

REZUMAT
Obiectivul principal al acestei cercetări este de a prezenta procesul de unificare legislativă a României între 1918 și 1937, cu un accent special pe Transilvania. Ca o consecință a unirii Transilvaniei cu România, statul nou înființat a cunoscut situația inedită de a avea mai multe coduri penale în vigoare în același timp. Pe lângă analiza legilor speciale adoptate în perioada studiată (cum ar fi Legea privind reprimarea noilor infracțiuni contra ordinii și liniștii publice), lucrarea va aborda pe scurt procesul de adoptare a Codului penal Carol al II-lea și prevederile sale generale. În plus, va fi explicat impactul procesului de unificare juridică asupra Transilvaniei, evidențiind schimbările în reglementarea anumitor infracțiuni.
CUVINTE CHEIE
unificare și armonizare legislativă, Codul Csemegi, Codul Penal Carol al II-lea, Transilvania, pruncucidere, delapidare, bigamie.

I. INTRODUCTION

The end of the First World War saw the disintegration of the Austro-Hungarian Empire, which was legally recorded at the Paris Peace Conference in 1919–1920. However, the union of Transylvania with Romania had already been declared on 1 December 1918 during the Great National Assembly held at Gyulafehérvár (Alba Iulia).

There were many reasons for the annexation of Transylvania to Romania, it is enough if we only look at the ethnic proportions. According to the 1910 census, the distribution of nationalities based on their native language in Transylvania was as follows: Romanians accounted for 53.8% of the total population, Hungarians for 31.6%, Germans for 10.7% and other nationalities for 3.9%.[1]

After the union had been declared by the Great National Assembly, the new Romania was in the distinctive situation of having several legal systems in force at the same time. Therefore, one of the major challenges of the inter-war period was the unification and harmonisation of the law, which in certain branches of law lasted until after World War II.[2]

Criminal law was no exception to this particular situation, as after 1918, in a unified Romania, three different criminal codes were in force at the same time: in the territory of the Old Kingdom of Romania (which was composed of Wallachia and Moldavia) the 1864 Cuza Penal Code; in Transylvania the Hungarian Penal Codes of 1878 (known as the Csemegi Code, named after its codifier, *Károly Csemegi*) and of 1879, while in Bukovina the Austrian Penal Code of 1852 was applicable.[3] Moreover, in Bessarabia the Russian Penal Code was in force until 1919, when it was replaced by the Cuza Penal Code.[4]

The discrepancy between the criminal legislations of the time can be illustrated by the statement of a lawyer of the era, according to whom it is not possible to talk about legal unification *"as long as theft in Predeal is considered to be a misdemeanour, whereas in Brassó is a crime."*[5]

In order to avoid duplication of legislation, Romania used two methods to unify the legal system: the extension of existing legislation to the entire territory of the country and the adoption of new legislation as a result of codification processes.[6]

In this study, specifically focusing on Transylvania, the process of unification in the field of criminal law will be described until the entry into force of the Penal Code of

1 Zsolt Fegyveresi (2018): Erdély a két világháború között, in Emőd Veress (ed.): *Erdély jogtörténete*, Forum Iuris., Kolozsvár, p. 359.
2 Emil Cernea, Emil Molcuț (2006): *Istoria statului și dreptului românesc*, Editura Universul Juridic, București, p. 315.
3 Hunor Kádár (2018): Erdély büntetőjogi és büntető-eljárásjogi integrálása (1918–1937), in Emőd Veress (ed.): *Erdély jogtörténete*, Forum Iuris., Kolozsvár, p. 419.
4 Cernea, Molcuț (2006): p. 338.
5 Dimitriu, V. M.: Din greutățile aplicării legilor în Ardeal, *Ardealul Juridic*, 1924/5. *apud.* Magdolna Márta Vallasek: Az 1918. évi egyesülést követő jogegységesítési folyamat kérdése Romániában, *Magyar Kisebbség*, 2004/1-2, p. 585. Translation by the author. Unless otherwise specified, all translations are by th author.
6 Cernea, Molcuț (2006): p. 315.

Carol II in 1937. This legal unification process did not take place overnight, but the replacement of the Csemegi Code with the Penal Code of Carol II marked a sharp change. It is therefore interesting to illustrate, by means of a few examples, how the regulation of certain criminal offences was amended during this process.

II. UNIFICATION AND HARMONISATION OF CRIMINAL LAW IN TRANSYLVANIA BETWEEN 1918 AND 1937

As mentioned above, at the time of the union, the Hungarian Penal Codes of 1878 and 1879 were in force in Transylvania. These two codes (Act 5 of 1878 on Crimes and Misdemeanours and Act 40 of 1879 on Petty Offences) were the result of long and precise codification work.

The Penal Code of 1878 is the most significant work of its codifier, *Károly Csemegi*, and is therefore often referred to by posterity as the Csemegi Code. Although the draft Act had been finalised by 1873, it was not adopted until 1878 due to subsequent revisions of the text and the dissolution of Parliament.[7] The two codes typified criminal offences according to their gravity; therefore, the resulting threefold division (crimes, misdemeanours and petty offences) corresponded to the trends in criminal law of the time.[8] It is important to note that the two Hungarian Penal Codes did not enter into force in Transylvania until much later, on 1 September 1880.[9]

It was against this backdrop that Romania started the process of legal unification and harmonisation in 1918. Although the Hungarian Penal Codes were applicable in Transylvania until the entry into force of the Penal Code of Carol II, as confirmed by the Supreme Court of Cassation in 1936,[10] during the nearly twenty years between 1918 and 1937 a number of specific criminal laws and provisions were adopted. Moreover, as the Romanian jurist Traian Pop pointed out in his 1923 work, comparing the Csemegi Code with the criminal law applicable in the territory of the Old Kingdom of Romania, the Hungarian legal system remained in force only in general, the clash of the two legal systems was resolved by judicial practice, which did not always prove to be a good solution.[11]

The general characteristic of this process of legal unification is marked by the intensification of criminalisation and the aggravation of penalties.[12]

In the year of the adoption of the new Romanian Constitution, on 17 June 1923, the Law on the Suppression of Illegal Speculation was adopted, under the provisions of

7 Barna Mezey (2007): Magyar jogtörténet, Osiris Kiadó, Budapest, p. 329.
8 Mezey (2007): p. 342.
9 Kádár (2018): p. 419.
10 Decision No 1936/112 of the Supreme Court of Cassation *apud*. Sebastian Cercel: Impactul Constituției din 1923 asupra unificării legislative a României Mari, *Revista Dreptul*, 2021/9, www.sintact.ro
11 Gábor Balás (1982): *Erdély jókora jogtörténete. 1849–1947 közti időszak*, Magyar Jogász Szövetség, Budapest, p. 170.
12 Dumitru V. Firoiu (1992): *Istoria statului și dreptului românesc*, Editura Fundației Chemarea, Iași, p. 306.

which a commission was entrusted with the task of setting the maximum market price of certain products. Furthermore, this Law provided for the prohibition of the marketing of counterfeit goods and the hoarding of certain goods.[13]

In 1924, the Law on the Repression of New Crimes against Public Order and Peace, also known as the Mârzescu Law, after the Minister of Justice at the time (*Gheorghe Gh. Mârzescu*), entered into force. The importance of this Law is shown by the fact that it served as the legal basis for the banning of the Romanian Communist Party.[14] Romania's leaders at the time considered that the provisions of the Penal Code of 1864 are no longer in line with the policy of criminal repression in the light of the emergence of "*revolutionary communism.*"[15]

The Mârzescu Law criminalised, among other offences, the conclusion of agreements or the establishment of associations with the purpose of preparing or committing crimes against persons or property (Section 2); the display or public wearing of emblems, flags or banners, if they indicated affiliation to such an association (Section 10); or propaganda among the military (Section 12).[16]

However, the provisions of the Mârzescu Law proved insufficient and were first amended in 1927, when other acts considered to be "*against the State*" were criminalised.[17] Even this amendment was not sufficiently effective, as new forms of resistance emerged, such as the barricade of the CFR workers in the Griviţa factories, the solidarity strikes in enterprises in Bucharest or other actions in support of the workers in Griviţa.[18] These circumstances led to the adoption of additional provisions on 12 May 1933 (known as the Mironescu Law[19]).

The Mironescu Law also criminalised, in comparison with the provisions of the Mârzescu Law, any agreement to prepare or commit even a single determined offence against a person or against property, if this was intended either to establish the dictatorship of a social class by force or to implement the instructions of a foreign association that would attempt to change the social order in Romania.[20] It is important to underline that the Mironescu Law was the first to regulate the legal institution of house arrest in Romania, prohibiting residence outside the locality or the region where the criminal offence was committed.[21]

Among the newly adopted special criminal laws applicable in the territory of the entire country, the following, sometimes authoritarian acts of legislation are also worth mentioning: the Law on the Protection of the Peace and Reputation of the Country, passed on 2 April 1930, which severely punished sedition;[22] the Law on the Protection

13 Cernea, Molcuț (2006): p. 339.
14 Marius Andreescu: Constituționalismul Marii Unirii, *Pandectele Române*, 2015/5, www.sintact.ro
15 Firoiu (1992): p. 306.
16 Firoiu (1992): p. 307.
17 Firoiu (1992): p. 307.
18 Ion T. Amuza (2001): *Istoria statului și dreptului românesc*, Editura Sylvi, București, p. 269.
19 Cernea, Molcuț (2006): p. 340.
20 Firoiu (1992): p. 308.
21 Firoiu (1992): p. 308.
22 Cernea, Molcuț (2006): p. 339

of State Order adopted on 7 April 1934[23] (which provided for the dissolution of political groups that endanger the political and social order, and the abolition of secret associations and societies[24]); or the Law on the Abolition of the Death Penalty.[25] In addition to the foregoing, mention should be made of the Code of Military Justice or the Law on the Regulation of Collective Labour Disputes, adopted in 1920, which criminalised sabotage and an aggravated form thereof.[26] Also in criminal matters, one should mention the Law on the Authorisation of Curfew, adopted in 1933, pursuant to which the Government could declare a state of curfew for six months.[27] As a curiosity, mention should also be made of Law No. 65 of 1935, which criminalised gambling. However, the provisions of this Law allowed certain spa towns to carry out this activity. The only one in Transylvania to have been granted such a licence was the town of Szováta (Sovata).[28]

In addition to the adoption of all these special laws, the drafting of a unified penal code was also begun. The adoption of the new code was made considerably more difficult by the fact that in 1928 the National Peasants' Party (*Partidul Național Țărănesc*) came to power and was strongly opposed to the codification process. After repeated attempts, the new code was finally adopted on 18 March 1936, during the Liberal government, and came into force on 1 January 1937 throughout Romania,[29] including Transylvania, thus replacing the Csemegi Code.

The new code reflected quite conclusively the fascist turn in Romanian politics.[30] The code regulated criminal offences meticulously, moreover a sharp tightening of penalties can be observed.[31]

The adoption of the new code, named after the reigning dictator-king Carol II, marked the end of the process of unification and harmonisation in the field of criminal law. Thus, some twenty years after the union, Transylvania was effectively integrated into the unified Romanian criminal legislation. However, there are a number of differences between the two codes; therefore, the transition in Transylvania may not have been smooth.

One of the most significant changes was that the Penal Code of Carol II regulated all three forms of criminal offences (crimes, misdemeanours and petty offences) in a single Act. Moreover, the Penal Code of Carol II distinguished between ordinary offences which could become political offences in relation to the circumstances in which they were committed and ordinary offences which could not become political under any conditions.[32]

23 Firoiu (1992): p. 308.
24 Cristian Ionescu (2016): *Dezvoltarea constituțională a României. Acte și documente 1741–1991*, Editura C.H. Beck, București, p. 756–759.
25 Kádár (2018): p. 419.
26 Liviu P. Marcu (1997): *Istoria dreptului românesc*, Editura Lumina Lex, București, p. 245.
27 Ioan Bolovan, Dorel Moțiu (1998): *Istoria dreptului românesc*, Cluj-Napoca, p. 84
28 Balás (1982): p. 171.
29 Cernea, Molcuț (2006): p. 338.
30 Firoiu (1992): p. 309.
31 Firoiu (1992): p. 309.
32 Firoiu (1992): p. 309.

Perhaps an even more important difference is that the Penal Code of Carol II provided for the criminal liability of legal persons, which was not yet included in the Csemegi Code. The new provisions prescribed three measures against legal persons: closure of premises, suspension and dissolution.[33] The regulation of the criminal liability of legal persons was facilitated by the Second International Congress of Penal Law, which was held in Bucharest from 6 to 12 October 1929. One of the main themes of this Congress was precisely the issues related to legal persons.[34]

In addition to these changes, there are also significant differences between the two codes in the regulation of specific criminal offences, which led to a sharp change in the legislation of these offences in Transylvania almost overnight. In the following, these changes will be illustrated by the regulation of some specific criminal offences.

III. CHANGES IN THE REGULATION OF CERTAIN CRIMES WITH THE ENTRY INTO FORCE OF THE PENAL CODE OF CAROL II

With the adoption of the new Penal Code, the regulation of a number of criminal offences changed, new offences were added, while in many cases the aggravating and mitigating circumstances were amended.

1. Neonaticide

Pursuant to the provisions of Section 284 of the Csemegi Code, a mother who killed her child born out of wedlock during or immediately after childbirth was punishable by imprisonment of up to five years.

It should be noted that only the mother of the child could be the active subject of the crime, and only if she was not married at the time of the birth. A married woman, if her child resulted from adultery, was still liable for homicide (this classification was also confirmed by the Curia).[35] The crime had to have occurred during or immediately after childbirth otherwise the mother was again liable for homicide. The term "*immediately after childbirth*" does not refer to a few minutes, but to the period of pain and mental anguish caused by childbirth.[36]

Contrary to the provisions of the Csemegi Code, Section 465 of the Penal Code of Carol II was much more specific in setting the time limit for committing neonaticide, stating that a mother who killed her natural child before the expiration of the statutory time limit for registration of the birth at the Civil Registry is punishable by three to five years of dungeon (severe detention). It is worth highlighting that the Penal Code of Carol II used the term "*natural child*" to define children born out of wedlock. The

33 Constantin Mitrache, Cristian Mitrache (2019): *Drept penal român. Partea generală*, Editura Universul Juridic, București, București, p. 156.
34 Mitrache, Mitrache (2019): p. 155.
35 Ferencz Finkey (1909): *A magyar büntetőjog tankönyve*, Grill Károly Könyvkiadóvállalat, Budapest, p. 537–538.
36 Finkey (1909): p. 537–538.

Romanian legislator presumably incorporated this term into its own legislation from Italian family law (*figlio naturali*).

For the crime of neonaticide to exist, the following essential elements had to be fulfilled, pursuant to the regulations of the Penal Code of Carol II: there had to be a natural child; the child had to have been born alive; the child had to have been killed within the statutory time limit; and the mother had to be the perpetrator.[37] With regard to the statutory time limit for registering a birth, it should be noted that it was irrelevant whether or not the birth had been registered within the time limit, which used to be 3 days.[38]

The two codes contain essentially similar provisions on neonaticide: the active subject can only be the mother of the new-born child and the material object of the crime must be the body of a child born out of wedlock.

However, there are also significant differences between the regulations, particularly as regards the time limit for the commission of the crime. While the provisions of the Csemegi Code stipulated that the neonaticide has to be committed during or immediately after birth, the Penal Code of Carol II specifies an objective time interval: the expiry of the statutory time limit for registration of birth at the Civil Registry. Thus, while in the case of the Csemegi Code it was up to the judicial body to determine whether the neonaticide had been committed within the stipulated time period, while the mother was suffering from the physical and psychological pains of childbirth, in the case of the Penal Code of Carol II the courts did not have to take into consideration these factors, as an objective time limit was provided.

The two codes also differed in terms of the provided punishment, as the Csemegi Code imposed a prison sentence on the offender, while the Penal Code of Carol II provided for dungeon (severe detention) sentence. Under Section 32 of the Penal Code of Carol II, in case of dungeon sentence, prisoners serving sentences of 3 to 7 years spent 8 months, while those serving sentences of 7 to 20 years spent one year in solitary confinement day and night. At the end of this period, the prisoner spent his days working inside the prison and his nights in a segregated cell. It can therefore be observed that the prison sentence provided for by the Csemegi Code was a lighter punishment.

2. Embezzlement

Pursuant to Section 355 of the Csemegi Code, whoever appropriated or pawned any foreign movable property in his possession or custody committed embezzlement. Also pursuant to Section 355, appropriation may be committed by alienating or using the movable property, by refusing to return or by disposing of the movable property as one's own. It is important to point out that pursuant to the provisions of Section 356, if the value of the embezzled property was not more than one hundred forints, embezzlement was a misdemeanour, otherwise it was considered to be a crime. The misdemeanour of embezzlement was punishable by imprisonment of up to one year in jail,

37 Mircea Djuvara (1937a): *Codul Penal Carol al II-lea adnotat. Volumul III. Partea specială*, Editura Librăriei SOCEC & Co, București, p. 76–77.

38 Djuvara (1937a): p. 76.

while the crime of embezzlement was punishable by imprisonment of up to five years in prison, as well as by deprivation of office and suspension of political rights.

It is important to point out that the Csemegi Code regulated embezzlement committed by public officials as a separate offence in its Section 462, under the name of *"official embezzlement"*, so the active subject of embezzlement criminalised by Section 355 could be any natural person, except for public officials.[39] The Csemegi Code itself provided for two main forms of committing embezzlement: appropriation and pawning; however, appropriation can have various forms, such as disposal, use or refusal to return. It is essential, however, that the appropriation or the pawn had to be unlawful and intentional in all cases.[40]

In contrast with the provisions of the Csemegi Code, the entry into force of the Penal Code of Carol II in Transylvania brought about significant changes in the regulation of the offence of embezzlement. Pursuant to Section 236 of the Penal Code of Carol II, a public official who appropriated or disposed of money or other movable property handed over for administration or custody, by virtue of his office, committed the misdemeanour of embezzlement and was punishable by correctional imprisonment from 4 to 6 years, a fine from 5,000 to 10,000 lei and correctional prohibition from 2 to 5 years. In addition to these, the judge could also order the loss of pension rights in all cases. In addition to the basic form, Section 237 also provided for an aggravated form of embezzlement, for situations where, in order to commit the act or to conceal or prevent its detection, or to retain the proceeds, the perpetrator committed forgery, destruction or any other offence for which there is no more severe penalty.

It should be noted that the two necessary elements of the offence of embezzlement under the provisions of the Penal Code of Carol II were the quality of public official, and that of custodian or administrator of the embezzled property.[41] Under the provisions of the Penal Code of Carol II embezzlement was still seen as an infringement of public order, and it was not applicable to private officials.[42]

It is to be observed that, while the Csemegi Code differentiated between the misdemeanour and the crime of embezzlement, depending on the value of the embezzled property, the Penal Code of Carol II did not apply such a division, but rather regulated the misdemeanour of embezzlement in a uniform manner.[43]

The most substantial difference between the regulations of the two codes is the active subject of the criminal offence: while under the provisions of the Csemegi Code, as mentioned above, the active subject of embezzlement could be any holder or custodian, the Penal Code of Carol II classified as embezzlement only the act committed by a public official, which was, however, a completely distinct offence under the provisions of the Csemegi Code. In this way, the range of active

39 Finkey (1909): p. 677.
40 Finkey (1909): p. 678.
41 Djuvara (1937b): *Codul Penal Carol al II-lea adnotat. Volumul II. Partea specială*, Editura Librăriei SOCEC & Co, București, p. 103.
42 Otay Deniz: Delapidarea. Probleme de actualitate, *Penalmente Relevant*, 2016/2, www.sintact.ro
43 Djuvara (1937b): p. 102.

subjects of the crime has been narrowed after the entry into force of the new code in Transylvania.

3. Bigamy

Last but not least I present, a criminal offence whose regulation has changed very slightly with the entry into force of the Penal Code of Carol II.

Pursuant to Section 251 of the Csemegi Code, a person who married repeatedly while is in a valid marriage or an unmarried person who knowingly married a married person commited bigamy and was punishable by imprisonment of up to three years. The party who misled the other party about his or her marriage was punishable by imprisonment of up to five years. In addition, a priest who, knowing about the bigamy or through negligence, married the spouses was also punishable under Sections 252 and 253 of the Csemegi Code.

The legal literature of the time noted, in connection with the regulation of bigamy, that if the first marriage was annulled or declared null and void, double marriage could not be established.[44] At the same time, in the case of the second marriage, the formal conclusion was sufficient and its consummation was not necessary.[45] It is worth highlighting that after the entry into force of Act XXXI of 1894 the term *"assisting priest"* was to be understood as the civil servant (marriage officer) who assisted in the conclusion of marriage.[46]

The provisions of Sections 443 and 444 of the Penal Code of Carol II contained similar provisions to those of the Csemegi Code. Pursuant to Section 443, the misdemeanour of bigamy was committed by a person who, being lawfully married, entered into another valid marriage, as well as by a person who, not being married, concluded a marriage with a person whom he or she knew to be married. Under the provisions of Section 444, the civil registrar who officiated the second marriage, knowing that one of the parties is already married, as well as the priest who performed such a wedding ceremony was liable to punishment. It follows from the provisions of the above-mentioned sections that the offence of bigamy was committed and consummated at the moment of the officiation of the second marriage.[47]

It is important to highlight the final clause of Section 443, which, as it were, incorporated the principle expressed in legal practice in connection with the provisions of the Csemegi Code that the annulment or nullity of a marriage excluded the existence of bigamy. The annulment or nullity of any of the marriages could have been ascertained and pronounced even by the criminal court judging the charge of bigamy.[48]

44 Finkey (1909): p. 611.
45 Finkey (1909): p. 611.
46 Finkey (1909): p. 612.
47 Djuvara (1937a): p. 6.
48 Djuvara (1937a): p. 3.

IV. CONCLUDING THOUGHTS

Transylvania underwent significant changes in the first decades of the twentieth century, not only geographically, socially and politically, but also in terms of legal order. The unification and harmonisation of criminal law in Romania between 1918 and 1937 was a major process that lasted almost twenty years and was not facilitated by political instability. Although the process of legal unification was completed with the adoption of the Penal Code of Carol II, it is difficult to assess the impact of this process on society. It is perhaps even more difficult to assess the impact on citizens of changes in the content of legal institutions or offences.

In this study, after a brief description of the unification process, the aim was to assess some of these effects on society through the changes in the regulation of some specific offences. Although this is by no means a comprehensive overview of the changes, it does provide a fair reflection of the legal challenges of the period in question.