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The Hierarchy of the Grounds for Divorce in Transylvanian Reformed Marriage Law in the Second Half of the 19th Century¹

This study aims to analyse the hierarchy of the grounds for divorce in Transylvanian reformed marriage law. It focuses not only on Peter Bod's Marriage Law, but also analyses in detail the practice of marriage courts of Transylvanian Reformed Church. This paper will attempt to determine the reasons and aspects that led to the development of the order of divorce and to present the system of grounds for divorce. It study the practice at the end of the 19th century.

Keywords: marriage, private law, divorce, Transylvania, Reformed Church

1. Introduction

In Transylvania, Protestant matrimonial jurisdiction was preserved from the mid-16th century until the Law XXXI of 1894, which introduced civil marriage and matrimonial jurisdiction. These almost 350 years gave the opportunity for the establishment of a special order of matrimonial jurisdiction in the Transylvanian Reformed Church. An important element of this particular order was the hierarchy of the grounds for divorce, which was formed by the practice of the judiciary and the canon law. In this study, I will attempt to determine the reasons and aspects that led to the development of the order of divorce and to present the system of grounds for divorce, with particular reference to the situation at the end of the 19th century.

2. General characteristics of Transylvanian Reformed divorce law and judicial practice

The most important source of the Transylvanian Reformed marriage jurisdiction was *Péter Bod's* Marriage Law, which was cited by almost every court and in every lawsuit. *Péter Bod* distinguished between the annulment of a marriage and the dissolution of a marriage.² The marriages were invalid if they suffered from a defect from the outset that prevented them from being valid. A marriage was dissolved when it was validly contracted but, during its duration, one or both of the parties were at fault for serious reasons which led the ecclesiastical judge to decide to dissolve the marriage.³

Transylvanian Reformed marriage law in the 18th century recognised two types of divorce (*divortium*). The first was the temporary separation of the spouses (*separatio a thoro et mensa*), the second was the final or total (*totale*) dissolution of the marriage.⁴ It is important to note that the dogmatic

1 An short version of the paper was presented at the international conference of the Dezső Márkus Research Group for Comparative Legal History (*Family Law Workshop V*) in Pécs on 9 December 2021.

2 BOD, Házassági törvény rajz § 151.

3 BOD, Házassági törvény rajz § 172.

4 BOD, Házassági törvény rajz § 173.

system developed by *Péter Bod* only partially reflected the Transylvanian Reformed jurisprudence of the time, as he adopted many concepts and solutions from German canon law, so its practical implementation or use cannot always be clearly justified.

In the Transylvanian Reformed law on divorce – similar to the approach of the European Protestant denominations – the principle of fault was dominant, which meant that a marriage could be dissolved if one of the spouses had committed a faultful act that was the cause of the dissolution.⁵ This order was relaxed in the course of the 19th century and, as is apparent in the case-law, some elements of the principle of restorability appeared.

In canon law writings, there is a clear distinction between a judicial declaration of nullity of marriage and a divorce, but case law has shown that the defining distinction between the two concepts has blurred by this time. The terms used also showed that, in addition to the misuse of the term, a different approach had also become influential in practice.

The letter also gives an idea of the differences in the approach to marriage law between Hungary and Transylvania. As the diocesan notary put it: *„I have to admit that the Minister does not speak our language very clearly. In Box 2, he asks: how many invalidity proceedings have been initiated? In No 3, how many proceedings have been declared invalid under this heading? In No 4, he asks: how many divorce proceedings have been initiated, and in No 6, how many cases have been definitively dissolved? Why this distinction was necessary, I really do not understand myself, although in our matrimonial law and our legislation, both are final, so the result is the same. This is a source of confusion for the diocesan notaries.”*⁶

The practical use of each of the grounds for divorce varied considerably. I was able to record specific cases only for those grounds for divorce for which the file of the proceedings on such a ground survived in the files of the two matrimonial courts under examination.

The parties seeking divorce did not usually request separation on the basis of a single ground, but, as *Zsuzsánna Kolumbán* defined it, the acts committed formed a „series of sins”, such as alcoholism-aggressiveness-fornication, or alcoholism-inability to perform economic tasks, fornication-aggressiveness, force-lack of sexual relationship-aggressiveness. The judgment, however, referred to the most serious reason.⁷

The central element of divorce was marital fidelity and the breaking of it, fornication, which was also the most important reason for the break-up. Fornication was any act of breaking or violating marital fidelity. The grounds for annulment thus formed a hierarchy of their own, the application of which was one of the most important internal principles and peculiarities of Transylvanian Reformed marriage law. The court had a free hand in enforcing it, and was not bound by the pleas of either the plaintiff or the defendant in their pleadings.

5 HERGER, A nővételtől az állami anyakönyvvezetőig 131.

6 EREL, A2 Ügyiratok, XXII. 41/93. 3. 2.

7 KOLUMBÁN, Házasságra erőltetés és családbomlás 266.

3. Grounds for divorce based on the work of Péter Bod and on the practice of the marriage courts

Adultery was the most serious reason for the divorce law, and the most direct and most serious offence against marriage and marital fidelity. The adultery (*adulterium*) could be public (*manifestum*) or based on a pregnant suspicion (*graviter praesumptum*). Public adultery, the most serious of all grounds for adultery, was committed when credible witnesses had directly witnessed the underlying act and had testified to it before the judges. This had to be accepted as unobjectionable by the judges presiding over the trial.⁸

In a case from 1862, *István Hada* applied for and received a decree of divorce on this ground, as he had managed to prove from several witnesses that his wife had behaved like a prostitute. In another case, the divorce was not based on the fact that the parties had been separated for years, but on the fact that the defendant man, as a married prostitute, had been living openly with a Romanian woman for three years and that the defendant had given birth to an illegitimate child, as could be proved by a birth certificate. In this case, the existence of the child was the inescapable evidence on the basis of which the divorce could be pronounced on the basis of public adultery.

In the case of *Sándor Nagy*, there was also public adultery, according to the ruling of the marriage tribunal⁹, because his wife had a child while he was a soldier for a longer period of time, so he could not be the father.¹⁰ The plaintiff was conscripted after three months of cohabitation and served in the army for nine weeks. When he returned home, he did not find his wife at home and she had taken her belongings with her, so he left her unfaithfully. Yet this was not the basis of the action. Subsequently, the plaintiff called his wife, who was staying at a hotel in Dézs, and did not return home despite the call. She did not give an explanation for her actions until later, when she gave birth to a child, giving a clear indication of her infidelity.¹¹ The plaintiff's testimony was confirmed by witnesses.¹² The High Matrimonial Court upheld the divorce and the underlying legal title.¹³

Section 181 of the Marriage Code formulated the concept of adultery based on a pregnant suspicion, according to which it can be proved by strong evidence that one of the spouses has committed adultery, however, the witness cannot testify to the act of adultery with the immediacy discussed in the case of public adultery. *Bod* recorded that strong suspicion was already sufficient for Protestant denominations to declare a divorce in such a case. This was the case, for example, if the husband ran away with a prostitute and they were found in bed together.¹⁴ The fact that the wife had taken a man into her bed with the intention of fornicating with him also constituted a crime. It is important to underline that the central element was marital fidelity, so that it was not necessary for the sexual act to result in the conception of a child.¹⁵

8 BOD, Házassági törvény rajz § 177.

9 EREL, B7. Házassági törvény szék jegyző könyve 1869. 9^{ik} November 1895-ig 120–121.

10 EREL, B7. Házassági törvény szék jegyző könyve 1869. 9^{ik} November 1895-ig 98. 28.

11 EREL, B7. P/295. Levata. 1–2.

12 EREL, B7. P/295. Testimonial report, 7 March 1882.

13 EREL, A21. D. Kizárólagos Házassági Főtörvényszék jegyzőkönyvek. 1866–1885. 648. 130.

14 BOD, Házassági törvény rajz § 181.

15 BOD, Házassági törvény rajz § 182.

In *Márton Harasztosi's* case against *Kata Péter*, the Marriage Tribunal ruled on suspicion of pregnancy. According to the plaintiff husband's complaint, his wife was having an affair with other men.¹⁶

In the case of *Ferenc Gergely* and *Erzsébet Szűcs*, in which the court also based its divorce judgment on pregnant suspicions, the requirement of indirectness is perfectly visible. Here the witnesses had already heard the bride talking and "hissing" with another man in the hay on the evening of the wedding, but they did not see it directly, so that only adultery based on suspicion of pregnancy can be used as a basis for a divorce.¹⁷

János Bokor asked for a divorce for public fornication in his trial, which began in 1875. According to the plaintiff, his wife was drunk, wasteful and committed fornication,¹⁸ Four different witnesses had on four different occasions directly witnessed (and in some cases intervened) the intercourse between the defendant, *Erzsébet Balázs*, and her former lover, *János Budai*.¹⁹ However, as the case progressed, the plaintiff changed the plea to adultery based on suspicion of pregnancy, but probably none of the recorded testimonies reached such a clear and unquestionable purity of immediacy (especially since there is no knowledge of a child conceived on these occasions) that he could claim separation based on public fornication. However, the judgment is lost, so the decision of the matrimonial tribunal is not directly known, but the fact that the plaintiff changed the basis of his claim to the "more lenient" form during the proceedings suggests that he suspected that his original plea was unfounded.

The case against *Teréz Mátis'* husband, *Ferenc Barátosi*, illustrates the difference between the two forms of adultery and the difficult delimitation issues. According to the plaintiff's wife, she already felt in the first weeks that her husband did not love her. After a year of living together, the husband had left her unfaithfully and was living with another woman in an adulterous relationship. The plaintiff repeatedly asked the defendant, through the pastor's office, to stop the sinful lifestyle, but *Ferenc Barátosi* refused to do so and that is why she decided to ask for a divorce, but initially pleaded public adultery.²⁰ Based on the testimonies of the witnesses, the court finally found only the adultery based on the suspicion of pregnancy to be well-founded, as there was a presumption of sexual intercourse in the case, but the witness did not directly witness it and could not confirm it with at least a second person.

Thus, according to the practice of the marriage tribunals, a marriage could be dissolved on the grounds of public adultery if this could be directly proved. This could therefore be the case if the sexual act was directly witnessed by several witnesses or if it could be clearly proved that the child was not the child of the husband. This was clearly established when one of the parties could not be physically present at the conception, typically because of military service or a journey of several months. It also included a case where the cohabitation had ended for some reason, but the marriage was still valid. A divorce based on suspicion of pregnancy could be invoked if the spouses were seen in the same suspicious circumstances, from which the purpose and nature of the meeting could be clearly inferred, but the sexual act could not be directly witnessed. Judicial discretion played a

16 EREL, B1. A/1. 103. Levata 1.

17 EREL, B1. A/1. 113. Testimonial report, 18 April 1885, 1–2.

18 EREL, B1. A1/97. Levata.

19 EREL, B1. A1/97. Testimonial report, 30 April 1875. See also: A1/100.

20 EREL, B7. P/313. Levata 1–2.

significant role here, as the dividing line between the two was the detail of the witnesses' testimony and was therefore subject to a different assessment in each case and in each matrimonial tribunal.

A ground for divorce was desertion, which could be malicious (*desertio malitiosa*) or unfaithful (*desertio infidelis*).²¹ In 1879, the marriage court of the diocese of Kolozs-Kalota pronounced a divorce for malicious desertion in the case of *Márton Harasztosi* against *Kata Péter*. The plaintiff husband initially sought a divorce on the grounds of fornication based on suspicion of pregnancy, but the court eventually based its decision on the grounds of malicious desertion. Witness testimonies revealed that the couple had been separated for some time, the reason being that the wife had fallen in love and moved away. One of the witnesses said that they had been together for two years before the trial but had fought a lot. Once the husband beat his wife and left her, only the deacon was able to reconcile them. Recently, however, she started to love another man, but they were only seen talking and laughing together.²² It was also on this basis that the Marriage Court of the Diocese of Kolozs-Kalota pronounced the divorce in 1884 in the case of the plaintiff *Zsuzsanna Berei Kereki* against *János Szakács Lékai*. The defendant husband had been rude and abusive to his wife and had left her six years before the trial began and was living with another woman. In this case there is no testimony or evidence of close physical contact or of the existence of a child together, the only certainty is that he left his wife to live with another woman.²³

Records of cases in which a marriage was ultimately dissolved on the grounds of desertion (*desertio infidelis*) did not survive in the records of the two dioceses under examination for the period under review. The records suggest that this is not proportionate to the actual number of verdicts or cases, and that desertion was also linked to a number of other acts.

The rules for this were laid down by the synod meeting in Nagyenyed in 1664. If the court was not convinced after an evidentiary hearing, that the defendant had left his husband or wife without due cause, he or she had to be ordered to return. The innocent party who would have welcomed back the unfaithfully deserting spouse could not be released from the marriage bond until an attempt was made by the ecclesiastical authorities to force the unfaithful spouse back.²⁴

Unfaithful desertion was an umbrella term which, because of its generality and the milder nature of the other causes, was applied in a subsidiary manner. It included all cases where cohabitation had ceased but no more serious act had been committed. If they knew of the abandoner's new partner, there was malicious desertion; if they were seen kissing together, there was fornication based on suspicion of pregnancy; and if, years after the break-up of the cohabitation, but after the birth of a child, there was a claim for divorce on the grounds of public fornication. By the second half of the 19th century, especially after the removal of the right to command the state authorities, the only practical obstacle to the freedom to leave was a fine imposed by the denomination (previously, marriage courts could also initiate a detention by a foreign authority). The church wanted to prevent this by all legal means, because it would have taken the fight against family breakdown, and the remaining control, completely out of the churches' hands. The only less serious reason was unforgivable hatred, which will be discussed in more detail later.

21 BOD, Házassági törvény rajz § 202.

22 EREL, B1. A1/103. Testimonial report 2–3.

23 EREL, B1. A1/125. Levata, 1.; Testimonial report, 6 April 1885, 2–3.

24 BUZOGÁNY – DÁNÉ – KOLUMBÁN – ŐSZ – SÍPOS, Erdélyi református zsinatok 267–268.

This is perfectly illustrated by a judgment preserved in the judgment book of the Marriage Court of Kolozs-Kalota. In the case of *Kata Kovács* against *György Barács*, the wife brought her action on 1 July 1890 on the grounds of unforgivable hatred, stating that the defendant's husband was a dull, gloomy, reserved man who had not a kind word to say to his wife. To prove her allegation, on 11 August 1890, she submitted witness statements, and on the basis of these, she applied for a divorce on the grounds of unforgivable hatred. The matrimonial tribunal found no grounds for a divorce, nor did it find any justification for the six-month separation, and therefore ordered the parties to be reunited. On 15 September, the applicant submitted two certificates stating that she had been asked to take the oath, first before four elders and then before the whole board, but she had refused on both occasions and had therefore applied for a new divorce. The defendant stated that he had already been disgusted by his wife. He also asked for a divorce. In response, the Marriage Tribunal recorded in its judgment that the moral coercion provided for in paragraph 81 of the General Assembly of the Diocese of 1875 had not been to any purpose and "the perpetual divorce had to be pronounced." The sentence was probably pronounced on the basis of the wife's removal on the grounds of unfaithful desertion, as the charges listed were insufficient to plead unforgivable hatred. The General Court added to this that the plaintiff was ordered to pay a fine of five forints to the Orphans' Guardianship Institute of the widow in Kolozs-Kalota for not adhering to her faith.²⁵ A year later, *Anna Mikla*, submitted everything in advance through a lawyer, including a conversion certificate, to divorce her Catholic husband. At the second session, having submitted the two unsuccessful certificates of reconciliation, she applied for and obtained a decree of divorce, citing the 1870 mixed marriage decree and the 1875 decree of moral coercion.²⁶

Thus, the offence of desertion has become a case based on objective facts, where, in the absence of more serious circumstances, only the whereabouts of one of the spouses and the reason for them being unknown or simply refusing to return to their spouse without good reason could be examined. The Church then resorted to the only remaining ecclesiastical means of coercion, the moral appeal. If the exhortation was ineffective, the Church was forced to declare a divorce, thus ultimately declaring the situation to be *de facto*.

However, a thirty-year timeframe is not suitable for examining the grounds for divorce and the social phenomena behind them, as only radical social changes in such a short timeframe leave a significant imprint on this area of private law. In particular, it is difficult to analyse these phenomena on the basis of the practice of two matrimonial courts, and they can be answered by a sufficiently thorough examination of the records of other similar fora.

The issue of desertion included a number of sub-issues, which not only defined the substantive law, but also provided advice and instructions to the judges on how to proceed in each type of case.²⁷

25 EREL, B1. A Kolozs-Kalotai egyházmegye házassági törvényszéke által hozott s főtörvényszéki megerősítést nyert Váloitéleteinek jegyzőkönyve 1889–1895, 24–25.

26 EREL, B1. A Kolozs-Kalotai egyházmegye házassági törvényszéke által hozott s főtörvényszéki megerősítést nyert Váloitéleteinek jegyzőkönyve 1889–1895, 40–41.

27 BOD, Házassági törvény rajz § 186.

If the abandoned party was the reason for the desertion, then he or she was also worthy of punishment.²⁸ Adopting the provision of the *Bod – Geleji* canons, it held that after 4-5 years of waiting, the deserted spouse could be released from the marriage bond.²⁹

This was the basis for the divorce decree of the marriage court in Dézs in the case against *Ilona Gáimer's* husband, *Elek Bányai*. Several of the documents relating to the case are missing, but the surviving witness record shows that no news of the husband had been received in the 16 years prior to the filing of the action. One of the witnesses described him as a waggler and a thief, feared by all and always highlighted for his laziness. When he disappeared, his wife was left alone with the care of their three-year-old child. This, and the subsequent years of struggle, were recounted by a neighbour in his testimony.³⁰ A certificate of desertion or disappearance has also been issued by the police station in Dézs.³¹ The judgment uses the term "unfaithfully deserted", but not as a basis for the divorce, since the evidence did not prove anything else with sufficient certainty, except the fact that nothing could be known about *Elek Bányai* for sixteen years.³²

Separate, detailed rules were also laid down for cases where the spouses had to divorce because of military service or work in commerce, or where one of the spouses was forced to emigrate or escape from punishment or serve a prison sentence, despite the opposition of his or her spouse.³³

The fixed rules of the Ruberian canons and the provisions of the *Compilata Constitutio*³⁴ continued to apply to captive spouses.³⁵ As *Bod* put it: the Emperor's order was to wait five years if no news of the captive was received, the Ruberian Canons set this at three years. Those who received a message or letter, or heard that their spouse was alive, had to wait. If the imprisoned spouse was released, he or she had to take back the spouse who had in the meantime married someone else. If they did not, they had to live in widowhood until their ex-spouse's death.³⁶ *Bod*, referring to *Sylvanus*, considered it permissible to derogate from the general rule if the wife had a child by the new husband, if she was expecting a child by the new husband at the time of her return home, or if she had moved away. If the new husband did not want his wife to return, the old husband could sue the wife on the ground that, having known of the old husband's survival, she had subsequently lived in fornication with the new one. If the wife did not want to return, she could be forced to do so.³⁷

Attacks against life (*insidiae vitae structae*) were taken very strictly by the Marriage Code. It was not expected that the abused party should return to the spouse who had attacked him or her, lest his or her life be a misery and death a consolation.³⁸ In 1885, *Ibolya Lőrincz* applied to the marriage tribunal of the diocese of Kolozs-Kalota to annul her marriage with *János Both*, claiming that it was a crime

28 BOD, Házassági törvény rajz § 188.

29 BOD, Házassági törvény rajz § 190.

30 EREL, B7. P/286. Testimonial report, 17 February 1879.

31 EREL, B7. P/286. Testimonial report, 26 March 1878.

32 EREL, B7. Records of the marriage tribunal 95.

33 BOD, Házassági törvény rajz §§ 191–195.

34 *Compilata Constitutio* l. 1. 8.

35 BOD, Házassági törvény rajz §§ 196–200.

36 BOD, Házassági törvény rajz § 197.

37 BOD, Házassági törvény rajz § 201.

38 BOD, Házassági törvény rajz § 203.

against life. The defendant husband tormented his wife with his constant jealousy, often trying to force them to be together in broad daylight. If this failed, he would beat his wife. Witnesses also recounted an incident where, for a similar reason, he threw a scythe at the fleeing wife, almost killing her.³⁹

Kata Bárdos asked for a divorce from her marriage to *István Balázs* because she could no longer tolerate her husband's abusive behaviour and wanted to be free from further suffering.⁴⁰ She even changed her religion to do so. *Andrásné Balázs*, a 34-year-old Catholic woman with four children, said in her testimony that the parties had not even spent two months together. The reason for this was the husband, who constantly beat his wife with whatever he could: wood, ropes, pitchforks. And on one occasion, when *Kata* tried to escape, her husband threw stones at her, one of which hit her and she almost died.⁴¹ Similar incidents were described by the other witnesses, so that the matrimonial tribunal in Kolozs-Kalota could be convinced beyond doubt of the threat to life that the verdict was based on.

The denial of marital duty (*denegatio debiti conjugalis*) was judged to be similar to adulterous desertion, since it broke marital fidelity in the same way as the change of place in desertion.⁴² To qualify, the marriage had to have an intimate occasion, that is, an intercourse had to take place and subsequently the marriage had to be broken off, and also that the party refusing to obey the marriage duty had to have no real reason for abstaining, only "contumaciousness". *Péter Bod* draws the attention of judges hearing such cases to the need to question the recalcitrant party step by step in order to establish the latent cause. It happened that information came to the attention of the court on the basis of which the plaintiff was sued. If there was no cause, the innocent party was to be given back his or her liberty, given the opportunity to remarry, and the guilty party was forbidden to remarry as a punishment, although this sanction could hardly have been part of practice in the second half of the 19th century.⁴³

A woman who has made herself incapable of conception and thus of childbearing by artificial means or by taking drugs is grounds for divorce. According to the Marriage Code, it was a misdemeanour against marital fidelity not only if the wife did not want to have a child, but also if she had previously used medical substances in fear of childbearing and had consequently given birth to a mentally defective child on several occasions and had induced her incapacity to bear a child in order to avoid this.

Three conditions had to be met. Infertility could not be natural, it had to be deliberately induced. The intentionality had to be clear and the inability to have children had to be brought about by 'slow steps', namely by a prolonged process.⁴⁴

3.2. Changes in the 19th century, with particular reference to jurisprudence and statistics

The *Ehepatent* issued by *Joseph II* in 1783 and introduced in Transylvania in 1786—and thus the jurisdiction of the secular courts in matrimonial matters – was in force for five years, after which the denominational substantive and procedural law was reintroduced. However, its short period of application had a major impact on Reformed marriage law.

39 EREL, B1. A1/115. Levata, Testimonial report, 9 May 1885.

40 EREL, B1. A1/123. Levata, 1.

41 EREL, B1. A1/123. Testimonial report 2–3.

42 BOD, Házassági törvény rajz § 104.

43 BOD, Házassági törvény rajz § 205.

44 BOD, Házassági törvény rajz § 208.

Elek Dósa, in his work on canon law, listed among the grounds for divorce the adultery, unfaithful desertion, attempt against the life of the spouse, refusal to pay marital duties, and the case where the woman artificially and wilfully renders herself incapable of childbearing.⁴⁵ Another ground for divorce was the unforgiving hatred, which I will discuss in more detail later.

Sándor Kolosváry adopted *Dósa's* classification of marriage annulment and dissolution almost in its entirety, with the difference that he distinguished between attempts on the life of the spouse, by which he meant those evil intentions that were made against life, even secretly, by means of poison, or openly, that is to say, personally by the spouse or by a person hired by him; and the offence of cruelty (*nimia saevities*), by which he meant culpable acts which endangered the health or the life of the spouse.⁴⁶

The instruction of the Transylvanian Reformed Marriage High Court of 4 June 1882 on the handling of divorce cases only partially accepted the scientific position. First, under the heading of general definitions, it discussed the concept of divorce. According to this, a marriage contracted under an existing legal form was, during its existence, divorceable by an ecclesiastical court for a reason 'preventing' the marriage from achieving its purpose.⁴⁷ The marriage could be dissolved by annulment (*annulatio*) and final divorce (*divortium*).⁴⁸ There is no mention here of the separation from bed and table, which was still present in Transylvanian Reformed ecclesiastical law at the time, but was not definitively pronounced, being used mostly as a legal institution to promote reconciliation.⁴⁹ It is important to point out, however, that because the possibility of annulment was placed within the divorce, in addition to final separation, the serious doctrinal distinction between the two was blurred, and the fact that *Bod's* work was made the primary source of law further deepened this contradiction.

Among the grounds for divorce were adultery, which could be public (*manifestum*) or based on suspicion of pregnancy (*graviter praesumptum*), desertion, which could be malicious (*desertio malitiosa*) or unfaithful (*desertio infidelis*), offence against life (*insidiae vitae structae*) and denial of marital duty (*denegatio debiti conjugalis*). In addition, a woman who had rendered herself incapable of childbearing by artificial means or by taking drugs was a ground for divorce.⁵⁰

Although the last to emerge, by the end of the 19th century one of the most significant disruptive factors was irreconcilable hatred (*capitale vel: invisible odium, aut insuperabilis aversio*)⁵¹ It did not have a precise definition, since the part of the Marriage Code cited in the case documents only describes and authorises the *separatio a thoro et mensa* in this case. *Bod* considered it acceptable in the following cases: if the husband was cruel to his wife, if the wife constantly scolded her husband, if the marriage was characterised by intolerable moral relations or drunkenness. The judges had a wide discretion in deciding this.⁵²

In the divorce suit of *István Kovács Budai* against the plaintiff *Erzsébeth Gergely*, the husband claimed that his wife called him foolish and stupid words in front of others, and that she only

45 DÓSA, Erdélyhoni evangelico-reformátusok 138–140.

46 KOLOSVÁRY, Az erdélyi ev. ref. egyházkerület 466.

47 1. – 1882. H. F. Sz. Utasítás § 1.

48 1. – 1882. H. F. Sz. Utasítás § 2.

49 DÓSA Erdélyhoni evangelico-reformátusok 142–143.

50 1. – 1882. H. F. Sz. Utasítás § 4.

51 1. – 1882. H. F. Sz. Utasítás § 4 d).

52 BOD, Házassági törvény rajz § 217.

fulfilled her womanly duties by force and very rarely, and that he hated her for this. In this trial, too, the court relied mainly on the testimony of witnesses. This showed that they had not lived together for four years. All three witnesses were unanimous in blaming the wife for the deterioration of the marriage.⁵³ The court first united the parties, but the plaintiff, citing point 81 of the Synod of 1875, declared that he would not move in with his wife, so the marriage court, realising that moral coercion could not help, ordered the divorce.⁵⁴ In *Kata Dézsi's* case,⁵⁵ the court granted a temporary separation, after which they were supposed to continue living together, but the plaintiff wife refused to do so, and the marriage was dissolved.⁵⁶

The practice in the Diocese of Dézs was similar. For example, *Zsuzsanna Németh* wanted to divorce her husband because after the wedding the defendant started drinking and then became so violent that his wife had to escape through the window several times at night and seek refuge with people she knew.⁵⁷ In all cases, the witnesses' narratives confirmed the bad relationship, reporting fights, physical violence, alcoholism, but they could not recall any serious cases that could have led to a divorce on the basis of a more serious ground.⁵⁸ On the basis of these, the parties were sentenced to six months of *separatio a thoro et mensa*, but at the end of this period the divorce was pronounced.⁵⁹

On this basis, *Zsófi Búzás* asked for a divorce from her husband, *János Böndi*. In the documents, she said that her husband was rude, often cursed and was quite aggressive.⁶⁰ Witness testimonies in this case also provide further information and clarify the picture. Three witnesses were heard in the cases of *Zsófi Búzás* and *János Böndi*. In all three testimonies, in addition to describing the defendant husband's behaviour as a rude, violent man, they also described a specific incident. In this case, all three witnesses described the same fight which ended in physical violence. *Ferenc Böndi* (probably a relative of the defendant) gave the most detailed account of the story. At Christmas, he heard a lot of shouting from the couple's house, so he went there. *Zsófi* was lying on the floor, and *János* was lying on top of her, beating his wife with his fist and tearing her hair. He tore off her dressing gown and tore at her shirt. The witness then noticed that the wife's neck was covered with blood, and he intervened and freed her. However, the incident was just one of several assaults during their marriage.⁶¹ On this basis, the court dissolved the marriage, not on the basis of irreconcilable hatred, but on the basis of an attack on life.

The suit of *Mária Sándor* was registered on 31 October 1884 by the Marriage Court of Kolozs-Kalota. In her petition, in the absence of a specific act, she requested the dissolution of her marriage with *János Zöld* on the grounds of irreconcilable hatred.⁶² The proceedings continued on 12 May 1885.⁶³ According to the testimony submitted, four persons were heard. The first witness had given evidence

53 EREL, B1. A/1. 124. Testimonial report 15 April 1885.

54 EREL, B1. A/1. 124. Levata.

55 EREL, B1. A/1. 109.

56 EREL, B1. A/1. 109. Levata.

57 EREL, B7. P/320. Levata.

58 EREL, B7. P/320. Testimonial report 8 March 1885.

59 EREL, B7. P/320. Levata.

60 EREL, B1. A/1. 108.

61 EREL, B1. A/1. 108. Testimonial report 25 April 1880.

62 EREL, B1. A1/112. Levata 1–2.

63 EREL, B1. A1/112. Levata 2.

of a case of an offence against life,⁶⁴ and the plaintiff, on the basis of the stories credibly told in the witness statements, had now applied for a dissolution of the marriage on the ground of an offence against life, which the court granted.⁶⁵

In practice, therefore, in all cases where there was an act on the basis of which a more serious reason could be attributed to the defendant, the divorce was granted on that basis. Where necessary, the courts also changed the legal title in the plaintiff's petition and granted the divorce on the basis of the more serious ground. And divorce was based on irreconcilable hatred only if, as in the case of unfaithful desertion, it could not be based on any other ground. This has usually occurred in cases where the court initially found the plaintiff's application to be unfounded and granted reunification or temporary separation, but the parties did not wish to re-establish cohabitation under any circumstances. In the case of unfaithful desertion, the parties took advantage of the fact that the church had no real means of reuniting and keeping the spouses together. In the case of a judgment based on unforgiving hatred, the only remaining means, even arbitrary ones, was usually separation, or, to counter the delay in the pronouncement of divorce, which was based on the moral coercion of 1875, the temporary solution was *separatio*. The Reformed Church, however, only recognised the fixed term *separatio*, which in the last decades of the 19th century was reduced to six months by judicial practice, so it was not a real means of keeping together disintegrating marriages.

Dósa, Kolosváry and *Sztehlo*⁶⁶ agree that the real source of the irreconcilable hatred is the Ehepatent issued by *Joseph II.*⁶⁷ *Sztehlo* added that the Instruction incorrectly refers to the Marriage Code. The real reason, however, was rather that, as in other areas of private law, the ruling provisions that ignored church law were intended to be ignored and the ruling practice was intended to be reverted to the old laws of the church, as it was intended to preserve the autonomy of the church and the marriage judiciary. However, this also demonstrates that the Marriage Code condemned irreconcilable hatred in specific cases, while at the same time, typically after six months of separation, it declared the dissolution of the marriage. A five-year diocesan data collection from 1893 also gives an idea of the proportion of reasons cited in the proceedings. Adultery was the most frequently invoked ground for divorce, with 398 convictions. The data for the Maros diocese shows 90 cases, but a very high number (52) was also recorded in the statistics for Udvarhely. An interesting result is shown in the register of the Diocese of D^és, where 32 adultery cases were cited, which is not an exceptional number in itself, but it represents more than 57% of the total number of convictions (56) in the diocese.

Desertion is mentioned 299 times as a reason in the statistics, most often in the dioceses of Szilágy-Szolnok (40) and Udvarhely (63). It was usually reported as desertion or unfaithful desertion, but only in three dioceses were the two cases distinguished.⁶⁸ Finally, among the grounds for divorce, there were 172 cases of irreconcilable hatred and 80 cases of attempt on life.

A unique category not included in the Instruction was the change of *separatio* to *divortio* in the diocese of Kolozs^vár, which occurred 61 times, essentially a change of a judgment previously pronoun-

64 EREL, B1. A1/112. Testimonial report 12 April 1885, 2.

65 EREL, B1. A1/112. Levata 3.

66 DÓSA, Erdélyhoni evangélico-reformátusok 139; KOLOSVÁRY, Az erdélyi ev. ref. egyházkerület 166–177; SZTEHLO, A házassági elválás joga 67.

67 II. Jósefnek házassági rendelkezései § 57.

68 Diocese of Kezd, Diocese of Seps, Diocese of Nagysajó.

ced by another adjudicatory forum in cases where the law of one of the parties changed, typically due to a conversion or relocation. A similar situation can also be found in the report of the diocese of Kézsd.

Only three judgments were recorded (two in the diocese of Szék and one in the diocese of Dés) where the most serious reason for divorce was the refusal to perform the marriage duty. This ground for divorce no longer appears in many reports, only ten dioceses having included it at all.

4. Summary

In Transylvanian Reformed marriage jurisprudence, a hierarchical system of grounds for divorce has been developed, partly by the discipline of canon law and partly by judicial practice. This practice, based on a sound dogmatic system, changed in the second half of the 19th century. Among the reasons for this, changes in society and morality, and the struggle for autonomy against the Hapsburg emperor and later the Hungarian government, played a prominent role. The marriage tribunals had a wide margin of discretion and could even change the ground for divorce invoked by the plaintiff, depending on whether the act of one of the parties, as alleged and supported by evidence, was more or less serious.

By the last period of matrimonial jurisprudence, only a few grounds for divorce played a real role in the judgement, but the outstanding ground of reference was the irreconcilable hatred that was the antecedent of the principle of restorability, rather than the examination of fault.

Literature and sources

1. – 1882. H. F. Sz. Utasítás a házassági válóügyek ellátására nézve az erdélyi evang. reform. egyházkerületben [Instructions for the handling of divorce cases in the Transylvanian Evangelical Reformed Diocese]
BOD, Péter: Házassági törvény rajz vagy a házassági törvényekről való tanítás, melyben a mátkaság, megmásolás és elválás körüli házassági különbféle esetek felhozatkak, megvizsgáltatnak, és a tudósok véleményeikből, közönséges zsinatok folytaíkból és végzéseikből meghatározatnak [Marriage law drawing, or teaching on marriage laws, in which the various cases of marriage around engagement, bigamy and divorce are brought up, examined, and determined by scholars from their opinions, common synods' proceedings and decrees]. Kolozsvár 1836
- BUZOGÁNY, Dezső – DÁNÉ, Veronka – KOLUMBÁN, Vilmos József – ŐSZ, Sándor Előd – SIPOS, Gábor: Erdélyi református zsinatok iratai I. 1591–1714 [Documents of reformed synods in Transylvania I. 1591-1714]. Erdélyi Református Egyháztörténeti Adatok 1/2. [Transylvanian Reformed Church History Data 1/2.]. Kolozsvár 2016
- Compilata Contitutio. In: MÁRKUS, Dezső – KOLOSVÁRY, Sándor – ÓVÁRI, Kelemen (eds.): 1540–1848. évi erdélyi törvények [Transylvanian laws of 1540-1848]. Budapest 1900
- DÓSA, Elek: Erdélyhoni evangelico-reformátusok egyházi jogtana [The ecclesiastical jurisprudence of the Transylvanian Evangelico-reformed]. Pest 1863
- Erdélyi Református Egyházkerületi Levéltár = EREL [Transylvanian Reformed Church District Archives], A részleg: Az országos református intézmények levéltárai: A1. Az Erdélyi Református Egyházkerület (Állandó) Igazgatótanácsának Ülésjegyzőkönyvei 1868–1895 [Section A: Archives of the national Reformed institutions: A1. Minutes of the Transylvanian Reformed Church District (Permanent) Board of Directors 1868–1895]

- Erdélyi Református Egyházkerületi Levéltár = EREL [Transylvanian Reformed Church District Archives],
A részleg: Az országos református intézmények levéltárai: A21. A püspöki levéltár iratai és jegyzőkönyvei. [Section A: Archives of the national Reformed institutions: A21. Documents and minutes of the bishop's archives]
- Erdélyi Református Egyházkerületi Levéltár = EREL [Transylvanian Reformed Church District Archives], B1.
Kalotaszegi (Kolozs-Kalotai) Egyházmegye Levéltára, A házassági törvényszék jegyzőkönyvei; Házassági periratok [B1. Archives of the Diocese of Kalotaszeg (Kolozs-Kalotai), Records of the Marriage Tribunal; Marriage registers]
- Erdélyi Református Egyházkerületi Levéltár = EREL [Transylvanian Reformed Church District Archives], Erdélyi Református Egyházkerület (Állandó) Igazgatótanácsának Levéltára, A2. Ügyiratok [Archives of the (Permanent) Board of Directors of the Transylvanian Reformed Church District, A2]
- Erdélyi Református Egyházkerületi Levéltár = EREL [Transylvanian Reformed Church District Archives], B7.
A Dési Egyházmegye Levéltára. A házassági törvényszék jegyzőkönyvei; Házassági periratok [B7. The Archives of the Diocese of Dés. Records of the marriage tribunal; Marriage registers]
- HERGER, Eszter Cs.: A nővételtől az állami anyakönyvvezetőig. A magyar házassági köteléki jog és az európai modellek [From the purchase of a woman to the civil registrar. Hungarian marriage law and European models]. Budapest – Pécs 2006
- II. Józsefnek házassági rendeletei melyek 1786-dik Eszt. Mártius 6-kán tétettek, és Magyarországon Az 1791-beli Diaetának 26-dik Czikkelye által megerősítetttek [The marriage ordinances of Joseph II. which were published on March 6th, 1786, and accepted in Hungary by the 26th Article of the Diet of 1791]
- KOLOSVÁRY, Sándor: Az erdélyi ev. ref. egyházkerület egyház-joga [The ecclesiastical law of the Transylvanian evangelica reformata diocese]. Kolozsvár 1877
- KOLUMBÁN, Zsuzsánna: Házasságra erőltetés és családbomlás az Udvarhelyi Református Egyházmegyében a 19. század folyamán [Forced marriage and family breakdown in the 19th century in the Reformed Diocese of Udvarhely]. Csíki Székely Múzeum Évkönyve VII. []. Csíkszereda 2011
- SZTHELO, Kornél: A házassági elválás joga Magyarországon és az ország erdélyi részeiben [Divorce law in Hungary and Transylvania]. Budapest 1890