

## **Habilitation thesis review by Marian Małecki Professor at Jagiellonian University in Kraków (Poland)**

The work entitled *Prokleti i usmireni. Nekolik kapitol z dejin trestniho prava na Chebsku* consists of 759 typed pages. The dissertation includes an Introduction, 5 substantive chapters, an abstract in Czech and English, a list of abbreviations, and an index of sources and publications for about 100 pages.

### **ASSESSMENT**

The dissertation is devoted to the criminal law of the city of Cheb (German: Eger) in Western Bohemia and the surrounding area known as Cheb Region. The choice of the city and thus the field of the research is not accidental. Apart from the earlier interest in that region and Dr Vilem Knoll's exceptional analytical skills that are worth mentioning, Cheb and the adjacent area concentrate all the most important aspects of a border region — the peculiarities of social, economic and political relations, which translate into a specific approach to adherence or violation of the legal norms. Dr Vilem Knoll has perfectly identified the issue and carried out in-depth research over many years on the subject.

As a result, we may observe the specific infiltration of different, rarely converging influences prevailing on the border of two strong European states: The Kingdom of Bohemia and the German Empire. However, Dr Knoll marks the research area. On p. 5 he is writing: “Výsledkem této práce by mělo být poznání trestního práva a kriminality ve středověku v prostoru Chebu a Chebska, a to v míře, v jaké to umožňují dochované prameny”.

He completed the task masterfully. The work astonishes with its excellent use of sources: Czech (from Cheb, Prague, Plzeň, Karlovy Vary, Jędrzychowice), as well as from Vienna, Regensburg and Dresden. It demonstrates the author's thoroughness in approaching the issue as he went through 260 edited sources, 8 cartographic sources, 28 manuscripts, 14 sources in the form of old prints and 28 unpublished dissertations.

The author begins his analysis from the act of granting Cheb municipal rights, i.e. from Rudolf Habsburg's privilege in 1279. He also described the connections between Cheb law and the Nuremberg law (as well as with the Brno law - *iura civilia quae civitas Brunnensis habet*), such as applying to the local city council in criminal cases for the so-called *ortyl*. Cheb and its judgements were the subjects of academic reports from such institutions as Altdorf, Ingolstadt, Leipzig, Wittenberg and Würzburg. In Cheb alone, the court counselled at the request of 20 other towns which were under its jurisdiction.

Dr Vilem Knoll mentions the famous Carolina of 1532 practised in the city; he examines the judiciary, its hierarchy (classification) and the scope of cases settled by individual courts (the issue of city courts vs. land courts). The author also describes the social status of judges (e.g. *ministeriales* in the early period) or the changes in their professional and social position (which was expressed by the appropriate, variable titles). What is important from the point of view of the public perception of criminal law in the Czech Republic, the author presents the territorial, material as well as state quality of the local judiciary. He also reveals the attempts to involve the Bohemian nobility in the municipal law regime and the fiasco of these efforts, which was possible thanks to the individual rights of a liegeman, the so-called *man*, minor landowners and rich knights. The author considers even people responsible for local forestry or bee-keeping and presents the legal situation of the Jewish population in the city.

Separately, Dr Knoll deals with the location of the court, its position in the imperial palace in Cheb and later in the city hall<sup>1</sup>. The comprehensiveness of the work is also reflected in the attempt — as far as the sources allowed — to present by name certain judges and other court officials. His findings concerning the seat of some court officials, which was located in a place known as *Soudní síň*<sup>2</sup>, are also valuable as they enrich the material of archaeology of law.

Incredibly interesting are the author's comments on the diminishing role of *ministeriales* in favour of burgher judges (cf. the privilege of Rudolf I of Habsburg in favour of the urban patriciate of 7 June 1279). From the time of John of Luxembourg, those privileges served the purpose of ensuring public order, including the possibility of penalising so-called "frivolous soldiers" and other evildoers causing mayhem on public roads. The author shows the evolution of particular legal solutions, including land peace (*Landfried*), truces and peace of God (*treuga Dei, pax Dei*) etc. He also refers to the institution of the local executioner, who allegedly was functioning in Cheb as Master Wenczel as early as 1390.

Dr Vilem Knoll gives a very detailed account of the history of the sources of criminal law in Cheb, referring not only to their origin but also to their subsequent history (cf. e.g. *Kniha Klateb*). He shows the status of the city of Cheb, its political evolution in the field of adjudication — in the context of other so-called royal cities. The precision of the author statements is supported by numerous examples from the source materials, proving the thesis. For example, the willingness of

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<sup>1</sup> On p.61 the author is describing that court: "Městský soud ke své činnosti využíval prostor radnice. Stará radnice byla v Chebu vybudována snad přestavbou staršího kupeckého domu nejdříve v 80. letech 13. století v severní frontě dnešního Jánského náměstí. Jednopatrová stavba nepravidelného půdorysu měla v patře prostorný sál sloužící snad zasedáním městské rady a několik světnic, využívaných asi i k zasedání soudu (-)".

<sup>2</sup> Compare: "Patřili sem však i soudní poslové a knechti. Nelze vyloučit, že jí podléhal i další placený personál související s výkonem soudní, zvláště trestní, jurisdikce, jako byli strážci radničního vězení, městský kat se svými pacholky a podobně".

the local burghers to punish other citizens according to the law of the city of Cheb. The given evolutionary process allows understanding the anomalies — especially from the Polish perspective — that occurred in other parts of the Bohemian Kingdom. The example may be the case from Nysa in Silesia, where, in 1497 the local burgher court sentenced and executed Duke Nicholas II of Opole. For Polish scholars, the incident exemplifies lawlessness, whereas Dr Knoll's depiction of Cheb's law indicates a general tendency of the bourgeoisie to expand their criminal jurisdiction, which was carried out with different results.

Subsequent paragraphs of the work reveal that the question of the autonomy of the clerical state seemed more propitious. The best examples of the fact are the Cistercian monastery in Waldsassen, the monastery of the Friars Minor (Franciscans), the Crusaders with the Red Star, and the Teutonic Commandery in Cheb, all of which took care of their estates as well as individual state laws.

Dr Knoll demonstrates the complexity of relations between the Czech state and the Empire; between the nobility and the burghers. A good example of that was the fight against the so-called *raubritter*, i.e. robber knights, who were, especially (but not only) in the Middle Ages, a massive scourge. Another one was the period of the Hussite Wars. There is also a vivid depiction of the violence on the main roads (*gošcińce*), that possessed *mir* regulations, but they were rarely respected. The same happened in taverns, where murders were rather common. At this point, it should be mentioned that the author presents also the issue of various charges, such as road or bridge tolls (p. 392 et seq.). He also provides an excellent account of the local subtleties of the court in Cheb (such as Hohenzollernské Šestiúřady, Aš, Marktredwitz a další chebské enklávy – as he writes).

A separate section of Dr Knoll's discourse relates to the proscription (Latin: *proscriptio*, German: *acht*, Czech: *klatba*), linking the origins of this institution — often associated as a penal instrument of the Church — with ancient times. The author presents, both, the process of imposing a curse and the consequences connected with it, its removal and reconciliation with the injured party. And again he refers to specific examples<sup>3</sup>. Especially valuable is the information about the process of proscription provided in Cheb special dedicated book (p. 245 et seq. of the reviewed work). The

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<sup>3</sup> On p. 229 the author is writing: “Ze stručných zápisů v norimberských knihách klateb se, jak již bylo uvedeno, mnoho informací o průběhu procesu vedoucího k vynesení klatby nedozvídáme. K doplnění informací můžeme použít zmíněné soudní řády, rejstřík ke ztracené knize městských statutů, policejní řády a městská privilegia z 15. století. Z preambule nejstarší knihy klateb založené v roce 1285 a z porovnání s jinými městy vyplývá, že rozsudky o klatbě, které vydal městský soud, vyhledával šoltýs jako držitel nejvyšší soudní pravomoci nad městem (-)”.

author numbers different types of torts, crimes, their rank and causal connection<sup>4</sup>. He focuses on the places where the crime was committed — whether it was the countryside or the city (p. 89 et seq.). Much space is also devoted to the instruments of the crime: interestingly, the use of crossbows in the robbery was even more popular than the usage of bows (p. 430). As the author meticulously calculates, 36.5 % of men in Broumov possessed this weapon. When it comes to the object of the crime, the author focuses on many, but still difficult to interpret, nuances (such as the *grûsenier* or *herseniier* - part of the helmet, quoted on p. 439 ff.).

There are also interesting examples of reconciliation, avoidance of further punishment, and reparation methods (such as the construction of a reconciliation cross; in Poland better known as a penitential cross).

At the end of his analyses, Dr Knoll examines the Book of Evildoers, along with listed types of crimes, their victims, perpetrators and punishment.

It is difficult within just a few pages to refer to the enormous scientific effort of Dr Vilem Knoll. In my opinion, his work is a model of a perfect monograph, as evidenced by both the content and the skilfully selected bibliography.

The work of Dr Knoll holds not only the value of a legal monograph, but also an interdisciplinary character — it presents the classical, historical and legal aspect of criminal law as well as the history of legal culture, and thus the archaeology of law, political and social history, and the evolution of the political system. Given the multithreading, the impressive use of sources and literature, I consider his work to be an excellent and distinguished achievement. It is a text that is needed not only in the Czech Republic but also in the area of German legal culture, especially, but not only, in Central Europe and Germany.

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<sup>4</sup> Out of many examples, compare: “Při dvou z loupeží zachycených ve zpracovávaných zápisech pachatelé překročili hrozbu násilím a oběti současně ublížili na zdraví. První z těchto zápisů pochází z let 1331 až 1340 a pachatel podle něj žalobce během loupeže těžce poranil, takže málem zemřel – er ... mich verwunt vntz (beinahe bis) an den Tot. 1761 Podle druhého, pocházejícího z let 1341 až 1351, proskribovaný žalobcova bratra gelempt, tedy ochromil či zchromil, a poté oloupil. 1762 V obou případech tedy šlo současně i o z právního hlediska nejtěžší formu ublížení na zdraví, ale při podávání žaloby dostala přednost závažnější skutková podstata loupeže”. (p. 368).