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# The legal context of death in the time of the Mojmírs and the Árpáds

Miroslav Lysý

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**Author**
Miroslav Lysý
Katedra právnych dejín a právnej komparatistiky
Právnická fakulta Univerzity Komenského
Šafárikovo nám. č. 6
P. O. BOX 313
810 00 Bratislava
Slovakia
Email: miroslav.lysy@flaw.uniba.sk
ORCID: 0000-0002-4242-240X

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**Abstract**

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The death of a person is a complex issue fact that older law looked at in two ways. First and foremost, death represented a consequence; the application of a legal sanction. The oldest law considered execution more as a means of healing, as a ritual, and only in the late Middle Ages was execution thought of as a deterrent or a means of retaliation towards a criminal. In the second approach, death could be a prerequisite for a range of legal consequences. For example, a marriage ends with a death, and after the canonical form of marriage was instituted, death was the only legal method of ending a marriage. Naturally, death was key in inheritance law, as it is a prerequisite for obtaining family assets. Legal holdovers from the Árpád period regulated in particular the protection of widows and the interests of the presently forming nobility among the population.

Death, regardless of how it was perceived in medieval times—as a transition to sleep or eternity, a departure to the next world or as a painful event affecting family and close friends—was a natural part of life. Aside from reflecting on the fate of the deceased, coming to terms with human impermanence and pondering the meaning of one's own existence—for which there was a religious answer, death presented the bereaved with purely practical tasks: burial and the exercise of the inheritance right of relatives. It was natural that the family and closest relatives in particular, but not only, bore these after-effects, and it is no surprise that assets remained mainly in the family, which after all, most often handled the funeral details.

The roles of death in the history of law have not yet been given any systematic attention. It is natural that in older legal literature, depending on the structure of the work, death was presented primarily as imparting an important effect on legal capacity, i.e. the ability of an individual to have rights and obligations.[1] This is found in

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1 See: e.g., PUTZ, Carl. *System des ungarischen Privatrechtes*. Vienna : Verlag der G. J. Manz'schen Buchhandlnug, 1870, pp. 68–70; ÖKRÖSS, Bálint. *A magyar magánjog különös tekintettel a gyakorlati étel igényeire is*. Pest : Eggerberger-féle akad. Könyvkereskedés, 1873, pp. 22–24; ZLINSZKY, Imre. *A magyar magánjog mai ervényében különös tekintettel a gyakorlat igényeire*. Budapest : Franklin-társulat, 1897, pp. 53–57.

works dealing with civil law in particular.[2] The phenomenon of death in law, however, goes well beyond civil matters, since death as a punishment is also a very important component.[3] As such, this study attempts to discover a special way to present death in law, and it is also why the questions must be asked whether death in law was a consequence or a cause,[4] a fundamental criterion that serves to divide the following work into two main parts.

## Death as a consequence in law

The oldest law took an interest in the consequences of illegal acts, that is, in the illegal state more than in the perpetrator. A breach of the law was not perceived through ethical standards applied to the person who violated the law; who violated the law was not as important as the violation of the law itself. In such conditions, up to the High Middle Ages, "punishment" in today's meaning of the word did not exist, as any applied sanction was more a reaction to the violation as such. The ethical side of any motives for breaching a legal obligation was not so important.[5] If the application of a legal sanction (which is why we cannot equate it automatically with a punishment) resulted in the death of the person who had breached the law, the result was not punishment but rather a ritual sacrifice. Thus, the aim was not to penalise the perpetrator, but to correct the situation, that is, establish peace.[6] At least German legal historian Hans Hattenhauer interprets German law within such coordinates.

A similar phenomenon can be observed among the Slavs. The law was a means of correction to the "true" state, the ultimate aim of which was Slavic *mirъ* (peace).[7] Therefore, here it applies as well that the subject of a sanction leading to death was not the person who disrupted the "peace," but rather the non-legal state, which the community sought to correct by victimising the perpetrator. Such conflict resolution was more akin to magic than legal procedure, in which the rule of "if I do something—this will happen," applies,

2 General works on the history of private law in Slovakia are also in this category, see: LUBY, Štefan. *Dejiny súkromného práva na Slovensku*. Bratislava : Iura edition, 2002 (1st edition 1946), pp. 165–166; ŠTENPIEN, Erik. *Dejiny súkromného práva v Uhorsku*. Košice : Univerzita Pavla Jozefa Šafárika v Košiciach, 2011, pp. 49–50, 99–109.

3 See: SEGEŠ, Vladimír. *Prešporský pitaval. Zločin a trest v stredovekej Bratislave*. Bratislava : Perfekt, 2005, pp. 101–134; SEGEŠ, Vladimír. *Kriminalita a justícia v stredovekom Prešporku*. Bratislava : Marenčin, 2020, pp. 203–204. In Slovak literature, relatively little is written about the system of punishment in older law. Early modern punishment systems have been elaborated on by: SZEGHYOVÁ, Blanka. *Súdnictvo a súdna prax v mestách Pentapolitany v 16. storočí*. Bratislava : VEDA, 2016, pp. 145–152. However, in older legal literature, classifications of sanctions, including the death penalty, can be found. See: SZLEMENICS, Paulus. *Elementa juris criminalis Hungarici*. Posonii : Typis haeredum Belnayorum, 1811, pp. 69–71.

4 The older theory of law is based on the fact that the majority of legal norms are structured into three elements: hypothesis, disposition and sanction. In such a case, death could be a hypothesis (a prerequisite for the origin or application of some right or obligation) or a sanction that follows, if the consequence is not fulfilled in the form of a disposition. It is not always necessary to understand a sanction as only a punishment. In legal theory today, a more complex, multi-element structure of the legal norm is used, see: PROCHÁZKA, Radoslav – KÁČER, Marek. *Teória práva*. Bratislava : C. H. Beck, 2013, pp. 208–212.

5 HATTENHAUER, Hans. *Evropské dějiny práva*. Praha : C. H. Beck, 1998, pp. 14–15.

6 HATTENHAUER 1998, pp. 17–19.

7 TŘEŠTÍK, Dušan. *Počátky Přemyslovců. Vstup Čechů do dějin (530 – 935)*. Praha : NLN, 1997, pp. 303–305.

and thanks to the magical healing effect of sacrifice, there was never any consideration given towards mitigating circumstances, negligence, intent or contrition when determining a sentence. The sanction must follow the way in which the wrongful situation occurred. An execution, or sacrifice, had to be the consequence of an unlawful state.

With the arrival of Christian law, interest began to turn to the violator of the legal code. New standards started to apply under the influence of Christianity, which were put into practice only very slowly. For a time, both legal approaches worked against each other, like a competition between two legal cultures.[8] In this regard, the story of Prague Bishop Adalbert, who attempted to save an adulteress being threatened with death by her husband's family, is very telling. Contrary to local tradition, the bishop granted her asylum, though the story ultimately ends with cruel revenge against not only the woman, but also against Adalbert's relatives.[9] This story shows that the two systems of law were either in conflict with one another, or in the best case, tolerated one another. Furthermore, archaic law is by its very nature rigid and outdated.

The enforcement of dual law, secular and canonical, can also be seen manifested in the composition of sanctions in the collections of law, as in the *Zakon Sudnyi Liudem* and elsewhere, where a secular sanction, in the form of a crippling punishment for example, is often accompanied by a Church sanction like repentance or fasting. The relative mildness of punishments, however, is noteworthy. What was decided by city collectives a few centuries later with one form of the death penalty is often solved with a fine in the *Zakon Sudnyi Liudem*, even regarding such serious crimes as the rape of a virgin for example.[10] The relative leniency of these sanctions was not a pose, but rather characteristic of the law of that time. In period sources, the need for forgiveness and mercy is strongly emphasised because "he who is forgiven more, loves more."[11] Somewhere within this line of thinking lies also the institution of mercy, which was not only a Christian virtue glorified by legends (e.g. St. Wenceslas[12] in Bohemia or St. Ladislaus in Hungary)[13] but also a major change

8 Among the advice that Pope Nicholas I gave to Bulgarian Prince Boris was the prohibition of carrying out capital punishment, and trials in general, during Christian holidays. The argument was that this is an Earthly matter and during the holidays, one should focus more on matters of God. *Responsa Nicolai papae I. ad consulta Bulgarorum*. Magnae Moraviae fontes historici IV (MMFH). Leges, textus iuridici. Edited by Daša Bartoňková and Radoslav Večerka. Praha : KLP, 2013 (1st edition 1966), pp. 40–41, A. 866, 12.

9 A relatively comprehensive description of the incident can be found in *Vita antiquior auctore Iohanne Canapario*. Monumenta Germaniae Historica (MGH), Scriptores (in Folio) 4 (SS). Edited by Georgius Heinricus Pertz. Hannoverae : Hahniani, 1841, pp. 589–590, c. 19. Regarding the interpretation of the source as a conflict between domestic customary law and ecclesiastical law, see: TŘEŠTÍK, Dušan. *Zápisník a jiné texty k dějinám*. Praha : NLN, 2008, pp. 197–200.

10 *Zakonъ sudnyi ljudьmъ*. MMFH IV, p. 164, c. 9.

11 *Responsa Nicolai papae I. ad consulta Bulgarorum*, pp. 40–41, A. 866, 12.

12 *Legenda Christiani. Vita et passio sancti Wenceslai et sancte Ludmile ave eius*. Edited by Jaroslav Ludvíkovský. Praha : Vyšehrad, 2012, p. 60, c. 6. For more details, see: LYSÝ, Miroslav. Na ceste za zločinom v dejinách mojmírovskej Moravy a arpádovského Uhorska. In *Forum Historiae*, 2022, vol. 16, no. 2, p. 16.

13 *Legenda S. Ladislai regis*. Scriptores rerum Hungaricarum tempore ducum regumque stirpis Arpadianae gestarum, Volumen II (SRH). Edited by Emma Bartoniek. Budapestini : Academia Litter. Hungarica atque Societate Histor. Hungarica, 1938, pp. 518–519, c. 4: "Unde rigorem iustitie lenitate temperans misericordie, talem se erga subditos exhibebat, ut ab eis potius amaretur, quam timeretur."

in the law. From it followed that a sanction in the form of execution was no longer necessary. It was the eventuality of not carrying out an execution, whether due to the failure of the court to impose capital punishment on the accused or because the condemned was pardoned, that led to execution eventually becoming a genuine punishment and not just a magical ritual of atonement.

This also explains why it is common in narrative sources of the early Middle Ages for death to be understood as a sanction for an illegal act, and that this sanction is no longer a mere sacrifice but an execution in the truest sense of the word. Narrative sources especially mention politically significant disputes that could also result in execution, though a lighter punishment was often chosen. The first such significant proceeding in our history is the Bavarian trial of Prince Rastislav (846 – 870), whose indictment was likely based on the fact that he had, from the Bavarian point of view, violated an oath of allegiance.[14]

The consequences of Rastislav's condemnation were such that there was effectively no probability that he would return, as the punishment of being blinded made it all but impossible for a political exponent to regain his position. Thus, blinding usually meant "political death." Hungarian ruler King Stephen I (997 – 1038) tried several options against opponents during his reign. At the beginning of his rule, he had his uncle Koppány ignominiously dismembered as a warning,[15] and he had his cousin Vazul "merely" blinded and deprived of his hearing.[16] A Hungarian prince, evidently from the Nitra region, was also blinded during the rule of Samuel Aba,[17] as was King Peter Orseolo after his toppling.[18] This "civil" death by blinding which eliminated any possibility of a return or accession to the throne, proved to be an effective tool for preventing a rise to power in most cases, and clearly had a certain advantage in that for the "judge"—the ruler who had ordered the blinding—it appeared to be an of act of mercy. Showing leniency to the defeated was an important element in the practice of capital punishment, which was an alternative to banishing.

14 Rastislav took this oath at Devín in 864, see: *Annales Fuldenses*. MGH, Scriptores rerum Germanicarum in usum scholarum separatism editi 7 (SS rer. Germ.). Edited by Fridericus Kurze. Hannoverae : Hahniani, 1891, p. 62, A. 864: "Hludowicus rex mense Augusto ultra Danubium cum manu valida profectus Rastizen in quadam civitate, quae lingua gentis illius Dowina dicitur, obsedit. At ille, cum regis exercitibus congredi non auderet atque loca sibi effugiendi denegata cerneret, obsides, quales et quantos rex praecepit, necessitate coactus dedit; insuper cum universis optimatibus suis fidem se cunctis diebus regi servaturum esse iuramento firmavit, licet illud minime servaverit;" *Annales Fuldenses*, p. 72, A. 870: "Et post paululum inde transiens circa Kalendas Novembris in Baioariam profectus est; ibique cum suis colloquium habens Rastizen gravi catena ligatum sibi praesentari iussit eumque Francorum iudicio et Baioariorum necnon Sclavorum, qui de diversis provinciis regi munera deferentes aderant, morte damnatum luminibus tantum oculorum privari praecepit." See the analysis of the consequences of this oath: LYSÝ, Miroslav. *Moravania, Mojmírovci a Franská ríša. Štúdie k etnogenéze, politickým inštitúciám a ústavnému zriadeniu na území Slovenska vo včasnom stredoveku*. Bratislava : Atticum, 2014, pp. 190–193.

15 *Chronici Hungarici compositio saeculi XIV* (Chron. Hung. comp. saec. XIV). SRH I. Edited by Alexander Domanovszky. Budapestini : Academia Litter. Hungarica atque Societate Histor. Hungarica, 1937, pp. 311–312, c. 63.

16 *Annales Altahenses maiores* (Ann. Alth. m.). MGH SS rer. Germ. 4. Edited by Edmund van Oefele. Hannoverae : Impensis Bibliopolii Hahniani, 1891, p. 24, A. 1041; Chron. Hung. comp. saec. XIV, pp. 320–321, c. 69.

17 Ann. Alth. m., p. 31, A. 1042. Regarding identification of the Nitra prince, see: STEINHÜBEL, Ján. *Nitrianske kniežatstvo. Počiatky stredovekého Slovenska*. Bratislava : Rak, 2016, p. 408.

18 Ann. Alth. m., p. 43, A. 1046.

However even an exile, one could return to their homeland and seize power, (as in the cases of Peter Orseolo, Andrew I, Béla I and others), and Béla II showed that even a blind man could become king (1131 – 1141).

The above examples suggest that the stronger side of conciliation rituals was well aware that executing an opponent was not automatically a better solution. If any leaders in the vicinity of the Holy Roman Empire were to fall out of favour with its ruler, the ritual of reconciliation was more suitable political theatre than a cruel and merciless punishment. Among such, the pilgrimage of Břetislav I of Bohemia to Regensburg shows that committing oneself to this person and gaining a political ally could be an advantage.[19]

The language of narrative sources sometimes contradicts the results of an analysis of diplomatic material, which is why taking note of the documents and legal standards from the Árpád period reveals a more complete picture. From these sources it follows that the death penalty was not always an exceptional punishment but just the opposite; it was relatively common. Such punishment was aimed at those who conspired against the king's life, committed treason[20] or insulted a county head,[21] but also at murderers and thieves. The most common method of execution, if mentioned in sources at all, was hanging. A relatively common connection of capital punishment with the confiscation of property[22] clearly foreshadows the formation of a special devolution of title for noble estates.[23] It needs to be said, however, that the informative value of sources from the Árpád period is considerably limited by the fact that in the 11th and 12th centuries, records on the application of law are an exception and normative sources (thus, Árpád law codes) predominate.

## Death as a legal consequence

An entire spectrum of legal relationships was linked to the death of a person. Before getting into inheritance law, which is most closely tied to death, the focus will begin with those legal relationships that are related to inheritance indirectly.

First of all, marital relations need to be mentioned. From a legal point of view, marriage was originally considered a social condition, which was not a contract but did lead to consequences in the law,[24] and marriage under the influence of Christianity later was still understood in this sense. The concept of

19 HOFFMANN, Hartmut. Böhmen und das Deutsche Reich im hohen Mittelalter. In *Jahrbuch für die Gechichte Mittel- und Ostdeutschlands*, 1969, vol. 18, p. 32; KRZEMIEŃSKA, Barbara. *Bretislav I. Čechy a střední Evropa v prvé polovině XI. století*. Praha : Garamond, 1999, pp. 316–334; RAZIM, Jakub. *Věrní Přemyslovci a barbarští Čechové. Česko-říšské vztahy v raném a vrcholném středověku*. Praha : Leges, 2017, pp. 198–214.

20 *Decreta s. Stephani regis*. Online Decreta Regni Mediaevalis Hungariae: The Laws of the Medieval Kingdom of Hungary. All Complete Monographs 4 (ODRMH). Edited by János M. Bak. Logan : Utah State University, 2019, p. 43, II. 2. https://digitalcommons.usu.edu/lib_mono/4.

21 *Decreta s. Stephani regis*. ODRMH, p. 45, II. 21.

22 For more details, see: GÁBRIŠ, Tomáš. Mikrosonda do sankčného systému arpádovského Uhorska. In *Historický časopis*, 2008, vol. 56, no. 4, pp. 601–603.

23 Regarding devolution of title, see: LUBY 2002, pp. 398–400.

24 REBRO, Karol – BLAHO, Peter. *Rímske právo*. Bratislava : Obzor, 1991, p. 151.

marriage as a private matter of citizens, within which only a few special rules applied, monogamy for example[25] or the prohibition of incest,[26] was associated with this almost exclusively. The Christian concept of marriage, though similar to Roman marriage, recognises only monogamy; in contrast, however, it is based on the concept of the fundamental indissolubility of the union of husband and wife, gradually broadening the number of marital obstacles.[27] So, while Roman marriage and marriage in medieval pre-Christian communities permitted divorce (or separation)[28] as a way of ending a marital relationship, under the influence of canon law, the concept that the death of one spouse was the only proper way of ending a marriage was created.

If a marriage ended with the death of one of the spouses, the question could thus arise whether the widow or widower was able to remarry. Paul the Apostle answered this question authoritatively in his letter to the Corinthians when[29] he wrote that abstinence is better, but if there is no other way, then let the unmarried and widows enter into marriage after all. He was literally writing about widows in his letter to the Corinthians; however, Pope Nicholas I (858 – 867), in a well-known communication, was able to emphatically instruct Bulgarian Prince Boris that if the messenger of the faith that Paul wrote about is a widow, it is necessary to understand by this a man—that is, a widower.[30]

Medieval law also considered the issue of a husband's death if he were far away from the family. Since this was hardly demonstrable, the widow was required to wait a sufficiently long time for another marriage, otherwise she was considered an adulteress.[31] At the same time, the period of time was not specified, so it can be considered relatively loose. Regarding the question of how many times someone could enter into a legal marriage in his or her lifetime, the Church canons (as we also know them from our territory) had their own answer. If a second marriage were to be allowed according to the Old Slavonic translation of the *Nomocanon*, there was some doubt about the third, though such a marriage was still better than "unbridled debauchery."[32] Multiple marriages were already considered "bestial" (literally *скотьско*).[33]

25 Here, for example, in *Zakonъ sudnyi ljudьmъ*, p. 164, c. 13: "Імѣѭи двѣ жєнѣ да ижденетъ мєньшюю съ дѣтьми ієѣѧ и тепеть сѧ, а постъ з лѣт(ѣ)."

26 Again, in: *Zakonъ sudnyi ljudьmъ*, p. 164, c. 12. "Кръвь мѣсѧщии въ свою кръвь свадьбоу дѣють да разлоучать сѧ." Let us recall, however, that the promotion of monogamy in our environment faced big obstacles. The grievances of Prague Bishop Adalbert became notorious examples.

27 GUERREAU-JALABERT, Anita. Příbuzenství. In LE GOFF, Jacques – SCHMIDT, Jean-Claude (eds.) *Encyklopedie středověku*. Translated by Lada Vosáková. Praha : Vyšehrad, 1999, p. 544.

28 From a terminology point of view, the dissolution of a marriage during the lifetime of the spouses was considered a separation in Slovak law until 1949, when this term was replaced by "divorce."

29 1 Cor. 7: 8–9 and 39.

30 *Responsa Nicolai papae I. ad consulta Bulgarorum*, p. 32, A. 866, 3: "Quod enim de muliere sanxit, et de viro intelligendum est, quia e contra saepe sancta Scriptura de viro loquitur, sed et de muliere nihilominus dicere subintelligitur."

31 *Nomokanonъ*. MMFH IV, p. 275, c. 41: "С(вѧ)таг(о) васил(аѣѧ) кан(онъ) гі. Аще котораѣѧ жена, защьгъшю моужю ієга, не дожидеть ієго ни оумьрша ієго оувѣдѣвъши типосагнет, прелюбодѣица ієсть."

32 It is also distinctive that social mores about sexual abstinence were sometimes so strict that unmarried pregnant women were expected to declare themselves widows. KOMOROVSKÝ, Ján. *Tradičná svadba u Slovanov*. Bratislava : Univerzita Komenského, 1976, p. 60.

33 *Nomokanonъ*, p. 277, c. 43.

Remarriage after the death of a husband was possible, strictly speaking. Marriage was not seen as fulfilling the medieval ideal of life but more as a compelled arrangement for a naturally sinful person.[34] It is no surprise then, if traditions restricting multiple marriages were brought to this territory from the environment of the Eastern Councils.

A question naturally arises about the extent to which these standards were actually put into practice. One of the accusations against Moravian Prince Svätopluk I (871 – 894) was that he had "rolled in the mire of abominable debauchery,"[35] though nothing more specific was presented. It is not known what kind of "debauchery" it was. In the end, we can easily rule out bigamy for Svätopluk; it is very likely that he was married twice (and consecutively).[36] Marriages taking place one after another were rather common. Although the remarriage of royal widowers was clearly customary, the remarriage of a widow can be found as well. The interesting case of the widow of Břetislav I, Bohemian Queen Judith, who was supposed to remarry the deposed Peter Orseolo, is demonstrative.[37]

The laws of Stephen I placed a pronounced emphasis on the free will of the widow regarding the question of whether she wants to remarry or not. Stephen's decree explicitly stated that no one should force a widow to remarry, but that she has that right.[38] However, Árpád law code restricts further marriages, much like what happened in the Old Slavonic translation of the *Nomocanon*. Such marriages were considered invalid,[39] though it would certainly

34 The fact that living life in a married state was not a dream ideal is a well-known matter. See: LE GOFF, Jacques – TRUONG, Nicolas. *Tělo ve středověké kultuře*. Praha : Vyšehrad, 2006, pp. 34–37; ROSSIAUD, Jacques. Sexualita. In LE GOFF – SCHMIDT 1999, pp. 641–648. It is not surprising that these notions are present in hagiographic texts from the Mojmír and Árpád periods. More details, including references to individual sources are available in: LYSÝ, Miroslav. Christian Morals and the Ideal of Chastity as Reflected in Medieval Hungarian Sources. In *Beiträge zur Rechtsgeschichte Österreichs*, 2019, vol. 9, no. 1, pp. 50–61.

35 *Βίος Κλήμεντος*. MMFH II. Textus biographici, hagiographici, liturgici. Edited by Dagmar Bartoňková, Lubomír Havlík et al. Brno : Universita J. E. Purkyně, 1967, p. 213, c. 18.

36 STEINHÜBEL 2016, p. 227. This can be ascertained from the obvious large age difference between Svätopluk's sons Mojmír and Svätopluk.

37 COSMAS PRAGENSIS, *Chronica Boemorum.* MGH, Scriptores rerum Germanicarum, Nova series 2. Edited by Bertold Bretholz. Berolini : Weidmanos, 1923, p. 110, II. 18. This was said to have happened after her son Spytihněv II (1055 – 1061) expelled her from the country. It is true that the credibility of the entry from the Dean of Prague is doubtful, because according to Hungarian tradition, Peter Orseolo died after being overthrown a second time in 1046. See: Chron. Hung. comp. saec. XIV, p. 343, c. 85: "*…pre nimio dolore vitam in brevi finivit*." In contrast, imperial sources, which were written earlier and would have no reason to conceal Peter's death, tell only of his being deposed and blinded: *Annales Hildesheimenses*. MGH SS rer. Germ. 8. Edited by Georgius Waitz. Hannoverae : Hahniani, 1878, p. 46, A. 1047; *Herimani Augiensi Chronicon*. MGH SS 5. Edited by Georgius Henricus Pertz. Hannoverae : Impensis Bibliopolii Hahniani, 1844, p. 126, A. 1046; LAMPERTI HERSFELDENSIS, *Annales*. *Lamperti monachi Hersfeldensis opera*. MGH SS rer. Germ. 38. Edited by Oswaldus Holder-Egger. Hannoverae; Lipsiae : Impensis Bibliopolii Hahniani, 1894, p. 60, A. 1046; OTTONIS FRISIGENSIS, *Chronica sive Historia de duabus civitatibus*. MGH SS rer. Germ. 45. Edited by Adolphus Hofmeister. Hannoverae; Lipsiae : Impensis Bibliopolii Hahniani, 1912, p. 300, IV. 33. However, if we still prefer to believe the Hungarian version, it is true that for the Prague chronicler, Cosmas, Judith's second marriage to the blinded Peter was a genuine possibility and something that would have caused shame to her son Spytihněv.

38 *Decreta s. Stephani regis*. ODRMH, p. 25, I. 26.

39 *Constitutiones synodi in civitate Zabolch 20 Maii 1092* (*Ladislai regis decretorum liber primus*). ODRMH, p. 54, c. 1; *Decretum Colomani regis*. ODRMH, p. 113, c. 67; *Decreta synodorum*

be erroneous to understand marriage law regulation only through written (canonical) law, considering that equally important folk customs were still in effect until modern times. Among them were marriage restrictions following from the will of the families of the betrothed, or from property relations.[40] It was the position of the family in particular that was actually most important regarding marriages. Although theoretically a marriage, be it the first or the second, was to be concluded on the basis of free will, family interests superseded this dimension of the marriage.

Despite the fact that marriage was and still is connected in particular with the creation of a new life (and procreation),[41] its associations with death are also important, as is evident above. The death of a spouse was a condition for concluding another marriage; however, this brought not only an ethical dimension conditioned by religion, but property considerations also had an impact. The final part of this study concerns property, since death in law is a central topic of inheritance law.

In questions regarding inheritance, it needs to be remembered that the two basic methods of inheritance, i.e. testamentary and intestate,[42] likely maintained very limited relevance in the earliest period. One of the prerequisites of inheritance is namely individual ownership, which enables the transfer of ownership from benefactor to survivors. A problem occurs, however, with family property, with consequences not only in the creation of a fraternal property community,[43] but also, as Karel Kadlec reminds us, in the common property community between father and sons.[44] The Czech legal historian diverges a little on the concept of paternal property in the Hungarian *Tripartitum*, literally stating that sons acquire donated property from their father, divided into equal shares along with any pertinent debts.[45] Kadlec explains these facts especially with the significant changes in the concept of family-held property in Hungarian history.[46] Be that as it may, family-held property, well documented in the *Tripartitum*, was of older origin without a doubt and can be traced it in the law from the Árpád period. Whether family-held property existed in

*habitorum sub Colomanno rege* (*Synodus Strigoniensis*) *1105 – 1116*. ODRMH, pp. 139–140, 141, cc. 54, 70, 80. In Hungary, the influence of Eastern and Western canon law was mixed, also regarding the matter of concluding other marriages, see: KOMÁROMI, László. A bizánci hatás egyes kérdései a középkori magyar hazassági jogban. In *Iustum Aequum Salutare*, 2006, vol. 2, no. 1–2, pp. 159–170.

40 KOMOROVSKÝ 1976, p. 71.

41 Here it needs to be recalled that due to the impossibility of fulfilling the purpose of marriage, *impotentia coeundi* became an explicit obstacle to the conclusion of a valid marriage in later law. LUBY 2002, p. 315.

42 Sometimes anachronistically referred to as "legal inheritance" in the literature; however, for older, uncodified law, the term "intestate" is a more accurate designation.

43 See Modern Hungarian jurisprudence: HUSZTY, Stephanus. *Jurisprudentia practica seu Commentarius novus in Jus Hungaricum. Liber secundus*. Agriae : Typis scholae episcopalis,1778, pp. 256–257.

44 KADLEC, Karel. *Verbőczyovo Tripartitum* a *soukromé právo uherské i chorvatské šlechty v něm obsažené*. Praha : Nákladem české akademie Františka Josefa pro vědy, slovesnost a umění, 1902, p. 236.

45 *Tripartitum opus iuris consuetudinarii inclyti regni Hungarae per magistrum Stephanum de Werbewcz personalis praesentie regiae maiestatis locum tenentem accuratissime editum*. ODRMH, pp. 1230–1231, I. 40.

46 KADLEC 1902, pp. 236–237.

an even earlier period is debatable, of course. Linguistic borrowings into the Hungarian language (*család* – tribe) could suggest this.[47] On the other hand, it is impossible to rule out the possibility that the Hungarian legal environment itself developed in a similar manner to the surrounding Slavic one.

In the environment of family-held property, however, inheritance did not actually have much significance as it could only regulate the ownership of property in the family. In general, however, family land was the property of the "grandfathers," interpreted in etymological works as immovable property, or earth.[48] From this it would follow that this immovable property originating from "grandfathers" could not be the subject of inheritance or disposition in the case of death. Any other opinions in such a case are mere considerations that can be scarcely supported with written sources.[49]

Medieval national mythology speaks indirectly of the relationship between the cult of ancestors and land ownership. Looking at Cosmas's *Chronicle of the Bohemians*, however, a story about the arrival of the first inhabitants to Bohemia is based on the idea of the initial occupation of a territory without its own inhabitants, which would make this land something like *res nullius*. These initial inhabitants were said to carry with them the "household gods" (*penates*), i.e. evidently the images of ancestors (the "grandfathers,"[50]) with whom they were all meant to join on Mount Říp and from there take possession of the land named after *Boemus* as Bohemia. The presence of the "grandfathers," the symbolic ancestors of legend, meant above all that by occupying the land into ownership, it first becomes an inheritance; that ownership of land is not only a legal situational relationship between living persons (subjects) and the land (object), but this relationship is vertical across time, and it belongs to generations of the living and the deceased, future generations as well. The Czech legend about the settlement of Bohemia by the first inhabitants is thus not only a common ethnogenetic myth where the claim to ownership by the inhabitants supposedly arises, but also a story about how the form of this ownership was understood by those who retold the legend, in this case the Prague chronicler Cosmas. This was ownership of the ideological unity of (no longer living) ancestors, contemporaries and (not yet born) descendants.

47 As noted by: RAUSCHER, Rudolf. *Slovenské právní dějiny v rámci dějin práva ve střední Evropě*. Bratislava : Nákladem Právnické fakulty Univerzity Komenského, 1927, pp. 15–16.

48 MACHEK, Václav. *Etymologický slovník jazyka českého*. Praha : NLN, 2010, p. 113; REJZEK, Jiří. *Český etymologický slovník*. Voznice : Leda, 2004, pp. 123–124; KRÁLIK, Ľubor. *Stručný etymologický slovník slovenčiny*. Bratislava : VEDA, 2015, pp. 113–114.

49 For example, for Třeštík, a Slavic village was a set of free persons with "grandfathers" (i.e. ancestors), and in his theses they were supposed to represent a set of equal and free landowners. The freedom of the village was then guaranteed by the tribe: TŘEŠTÍK 1997, pp. 60–61. The problem with this theory rests not only in its vague connection with written sources, but mainly in the fact that Třeštík in no way specifies what the content of this free ownership should be. The second matter is then the scheme regarding the transition of so-called family common lands to the so-called neighbouring common lands, which belongs more to theoretical ideas not substantiated by sources. KUČERA, Matúš. *Slovensko po páde Veľkej Moravy*. Bratislava : VEDA, 1974, pp. 39, 339–340.

50 Although the rite in Cosmas was taken from the text of Virgil, the content of the rumour was evidently authentic, see: COSMAS PRAGENSIS, *Chronica Boemorum*, p. 7, I. 2. A detailed analysis is expounded upon in: TŘEŠTÍK, Dušan. *Mýty kmene Čechů (7. – 10. století). Tři studie ke „starým pověstem českým"*. Praha : NLN, 2003, pp. 69–71.

Unlike the Czech tale, authors of the Hungarian chronicle tradition could not pretend that the Hungarians came to Pannonia and occupied it as *res nullius*. Therefore, they used the notion of a Hunnic origin of the Magyars, thanks to which Anonymus (notary of Béla III), the author of *The Deeds of the Hungarians*, could pretend that the mythical Álmos was a descendant of the Hunnic king Attila.[51] He even put into his son Árpád's mouth the words that his: "ancestor, the most powerful King Attila [once] owned the land between the Danube and the Tisza as far as the borders of the Bulgarians [...] [and now] I ask only for a part of it for my flocks, to which I have the right."[52] Inferring ownership of the land from the title of inheritance from ancestors was asserted in the Hungarian chronicle tradition as *res nullius*, like the Czech legend. At the same time, however, despite the existence of actual motives for laying claim to the territory in the Hungarian legend (the "divine" leadership of Álmos, the conquest of the land from its inhabitants, the cunning purchase), Anonymus's *The Deeds of the Hungarians* most emphasises the Hun origin.

It is necessary to recognize in this context that for this medieval and all but archaic legal thinking, it was completely alien for land to be the subject of some kind of free disposition. Heritability, practically all the way to the perpetuity of human fate and its social status, was tied to land. If a person was a "top" landowner, he was a noble, and if he were a "bottom" (useful) person, he was a subject.[53] Land could be acquired (in a battle, by deception, as *res nullius*, or by inheritance), but it took a relatively long time before it could be considered the subject of legal turnover.[54] Such land was an ancestral inheritance in the broadest sense of the word, like properties gifted by the Hungarian king Géza I (1074 – 1077), labelled as *hereditates*.[55] Stephen I also received property gifted by inheritance, from Duke Lampert (*dedit in hereditatem*).[56] The term "hereditary" land—land acquired from generation to generation—has greater logic if it is donated to a specific family or a specific person. If it is donated to a contemporary institution, however, then the term *hereditas* is inappropriate, though the way the term applied to land ownership is significant. This is stated eloquently in the basic privilege for Trnava from 1238, where the term *hereditas* is synonymously linked to

51 ANONYMUS, *Gesta Hungarorum. P. magistri, qui Anonymus dicuntur, Gesta Hungarorum*. SRH I. Edited by Desiderius Pais. Budapestini : Academia Litter. Hungarica atque Societate Histor. Hungarica, 1937, pp. 39–40, c. 5.

52 ANONYMUS, *Gesta Hungarorum*, pp. 53–54, c. 14. Slovak translation: *Kronika anonymného notára kráľa Bela. Gesta Hungarorum*. Translated and edited by Vincent Múcska. Budmerice : Rak, 2000, p. 57.

53 It must also be said that the developed doctrine of shared ownership in Hungary only appeared in modern jurisprudence. For more detail, see: LYSÝ, Miroslav. Delené vlastníctvo v práve platnom na území Slovenska. In *Acta iuridica Olomucensia*, 2021, vol. 16, no. 1, pp. 23–31.

54 Not to mention the fact that land as capital is clearly an invention of the modern age. Legal turnover with land in our territory was common within mortgage contracts, which represented a collateral element with a loan.

55 *Codex diplomaticus et epistolaris Slovaciae 1* (CDSl). Edited by Richard Marsina. Bratislava : Vydavateľstvo SAV, 1971, pp. 54, 56, no. 58. It needs to be noted, however, that this part is likely interpolated. On the other hand, the term itself, although inserted into the text later, remains telling.

56 CDSl 1, pp. 71–72, no. 74.

the expression *possessiones suas immobiles*,[57] which at that time meant land belonging to the township.

The word *hereditas* is also a highly interesting phenomenon regarding the ownership of institutions, as it leads to several important conclusions. The first has been noted; land was to be acquired "in perpetuity," or at least for a sufficiently long time. Therefore, it was in the interest of each recipient to obtain such an object of property *hereditatis iure*.[58] Hungarian donation practices denoted that heirs could no longer freely dispose of such property.[59] A second important conclusion is related; the designation *ius hereditatis* as the equivalent of immovable property (or object of land ownership) was principally bound to permanent ownership and a usufruct relationship.[60] In this way, the designation could very likely relate to the fact that donations before the 13th century did not have to be permanent. As such, it was not important whether this inheritance related to a family or to institutions, such as a church or a town. Although this designation and method of donating is seen even earlier, it becomes widespread mainly in the 13th century.

Finally, the Golden Bull of Andrew II from 1222 for royal servants is also revealing because among other things, it stipulates what should happen to the estates of royal servants (*servientes*) if they die without a male heir. The result is the institute of the so-called "daughter quarter" (*quarta filialis*) and the possibility of testing freedom.[61] This provision was also confirmed in a modified form in the renewed Golden Bull of Andrew II in 1231, which, aside from the above-mentioned facts, also included the death of the king.[62] When the Golden Bull was renewed by his son Béla IV in 1267, the arrangement of the inheritance of nobles' properties was formulated a bit less clearly than in previous versions. Here too, emphasis was put on the fact that these properties were inherited by more distant relatives.[63]

57 CDSl 2. Edited by Richard Marsina. Bratislava : Vydavateľstvo SAV, 1987, p. 31, no. 44: "Item nullus ipsorum hereditates vel possessiones suas immobiles in ipsorum terminis constitutas cuiquam vendere possit vel conferre..."

58 E.g. CDSl 2, p. 239, no. 342.

59 Leastwise: LUBY 2002, p. 403. It needs to be recalled, however, that this statement by Luby was evidently valid primarily in connection with the completion of the donation system, which was not yet the case in the 13th century.

60 ŽEMLIČKA, Josef. *Počátky Čech královských 1198 – 1253. Proměna státu a společnosti*. Praha : NLN, 2002, p. 224.

61 CDSl 1, p. 200, no. 270: "Si quis serviens sine filio decesserit, quartam partem possessionis filia optineat, de residuo, sicut ipse voluerit, disponat..." Louis I later explicitly cancelled the possibility of testing freedom in his decree from 1351, which completed the donation system. The provision protecting the dowry of widows was also indirectly related to inheritance.

62 CDSl 1, p. 268, no. 375: "Si quia serviens noster sine herede decesserit, quartam possessionum filia optineat, de residuo, sicut ipse voluerit, disponat; et si morte preventus disponere non posset, propinqui sui, qui eum magis contingunt, optineant; et si nullam penitus cognationem habuerit, rex habeat." The donation system in Hungary was not completed until more than a century later and it included the *defectus seminis*, no longer by death in favour of the king, but by the so-called devolution of title, on the basis of which the property of an extinct family travelled *ad manus regias*.

63 *Privilegium 1267*. ODRMH, p. 184: "Item volumus, quod si aliquem de nobilibus sine heredibus mori contingeret, possessiones et bona ipsius medio tempore non distrahantur, nulli donentur, nulli conferantur, nulli perpetuentur, donec cognati et generationes eiusdem decedentis ad nostram presentiam evocantur et ipsis ac baronibus nostris presentibus de eisdem ordinetur, sicut dictaverit ordo iuris. Interim autem et possessiones et bona ipsius decedentis cognati et generationes debeant conservare."

As early as the 13th century, the duality of the fate of an estate, which depended on the sex of the survivors, became evident within the framework of inheritance. The estate was to go first and foremost to male descendants due to the fact that nobles acquired property for merit, often military success.[64] As a result, women gained some legal advantages over men. Aside from property rights as a part of marital relations, special institutions also fell within inheritance law, which concerned noble persons of the female sex. The beginning of these women's *privileges favorabilia* stretch back to the Árpád period and follow from the emphasis that medieval society placed on the protection of widows and orphans.[65] Above all, this includes a widow's right to live on the property of the family into which she married.[66] This right lost only if she were to marry again. According to another provision, a wife had the right to "hold"[67] her husband's property if he left the country, and only if she sought to voluntarily marry could she take her clothes with her.[68] In a later period, these provisions became the foundation of the developed institution of a widow's inheritance, with its essence stemming from the different legal status of the two sexes. The power of noble men over their family properties was compensated for by the institutes in favour of widows, with a woman's property security stretching beyond the boundaries of a widow's inheritance; it also naturally included property relations between spouses. In the Hungarian environment, these property relations were a legacy of standards evidently deriving from the Frankish environment,[69] and from this we can assume why they are not found in the so-called Great Moravian legal monuments which had a stronger Byzantine legal influence.

## Conclusion

In the 13th century, a major transformation in Hungarian society took place. Nobility arose (by the granting of subjective rights this time not only to specific persons or families, but to the entire social group designated as *servientes regis* or *nobiles*), and its property rights secured, with inheritance and

64 Although later law also recognised the donation *heredibus et posteritatibus utriusque sexus*, see: LUBY 2002, pp. 170, 395–396.

65 See: *Decreta s. Stephani regis.* ODRMH, pp. 21–22, I. 2.

66 *Decreta s. Stephani regis.* ODRMH, p. 25, I. 26: "Volumus quidem, ut et vidue et orphani sint nostre legis participes tali tenore, ut si qua vidua cum filiis filiabusque remanserit atque nutrire eos et manere cum illis, quamdiu vixerit, promiserit, habeat postestatem a nobis sibi concessam hoc faciendi et a nemine iterum cogatur in coniugium. Si vero mutato voto iterato nubere voluerit et orphanos deserere, de rebus orphanorum nichil omnino sibi vendicet, nisi tantum sibi congrua vestimenta."

67 In the text, the term is *possideat*, which here will mean a kind of property hold, not its ownership.

68 *Decreta s. Stephani regis.* ODRMH, p. 26, I. 30: "Ut gens utriusque sexus certa lege et absque iniuriis maneat et vigeat, in hoc regale decretum statutum est, ut si quis protervitate preditus propter abhominationem uxoris patriam effugerit, uxor cuncta, que in potestate mariti habebantur, possideat, dum velit expectare virum, et nemo in aliud coniugium cogere presumat. Et si sponte nubere velit, liceat sumptis congruis sibi vestimentis et dimissis ceteris bonis ad connubium ire. Et si vir hoc audito redierit, ne liceat sibi aliam ducere preter suam, nisi cum licentia episcopi." The claim on the clothing became a part of a widow's inheritance, which was later distorted in later times.

69 For more detail, see: HUDÁČEK, Pavol. Právne postavenie vdovy v stredovekom Uhorsku do roku 1222 a otázka venného. In *Historický časopis*, 2013, vol. 61, no. 2, p. 229. The analysis of inheritance documents is especially referred to in this study.

the permanence of ownership playing a principle role. In the end, the origin of privileged towns and the competition of emerging municipal law also take unprecedented importance, and inheritance law is undoubtedly a part, though its specific form can only be reconstructed on the basis of later legal collections.

When Hungarian law is studied in relation to the death of a person up to the end of the 13th century, it is clear that it is only partially developed. It was natural that in death, a biological and social reality, human fate transfigured into everyday life and a part of the cycle of life or the counting of time, and was at the same time an important fact for contemporary customary law, permeating canon law and the emerging statutory law. Just as death took a complexity of forms in real life, it was manifested likewise in the world of legal standards.