

## *De Ardentissimo Amore*: Between Rape and Adultery – a Sixteenth-century Trial

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### Abstract

*Quite often, studying medieval sexuality and sexual practices, for most territories, can prove to be difficult, and even more so when assessing eastern European territories, such as medieval Transylvania. One reason for this is that usually rape, adultery, and other types of illicit sex were seldom noted in official records. Another is that the quantity of medieval texts is reduced in comparison to Western and Central Europe. Moreover, for territories like Transylvania, researches regarding themes belonging to this area have rarely been in focus. The present paper aims to analyse a case surrounding illicit intercourse based on a charter discovered during the national project of digitization of the Romanian National Archives, in the Archival fund U IV from the Sibiu National Archives. The main goal is to put this court case in the context of the epoch and determine the possible outcomes of this trial.*

**Keywords:** Rape; pregnancy; appeal; witness; illicit sex; family disgrace; Cincu; Transylvania; middle Ages; charter; trail.

*De Ardentissimo Amore*.<sup>1</sup>  
Between Rape and Adultery –  
a Sixteenth-century Trial

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## Introduction

The present research aims, on the one hand, to discuss a particular case and, on the other, to illustrate how it can contribute to understanding sexuality in medieval Transylvanian society. It will focus on a trial charter issued in 1545<sup>2</sup> that concerns a certain *Lucas Tryster* as plaintiff against *Benedictus*, son of *Georgius Fabrius*. The latter presumably raped *Trysters'* daughter. The charter and the information it contains reveal a number of different features. The girl in question, *Zabina*, could have actually been in love with *Benedictus*, as argued by his defence. At the same time, the confessions show an obsession that *Benedictus* had in physically possessing the girl. Thus, it is unclear if she was forced into an illicit relationship with him or not. If the latter was the case, she must have been seen as a woman of low morals.

In practice, the main purpose of the paper is to analyse this particular charter. First, it will examine the specific Hungarian legislation related to acts of illicit sex during the Middle Ages and the premodern period. The contents of the charter itself will be analysed in close detail, illustrating not only the conflicting accounts from both

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<sup>1</sup> Excerpt from the original charter located at Arhivele Naționale ale României – Sibiu, Fond Magistratul orașului și scaunului Sibiu, Colecția de documente medievale, U IV, nr. 470 [National Archives of Romania, Sibiu, archival fund Magistrate of the city and seat Sibiu, Medieval charters collection, U IV, no. 470], available online at [www.arhivamedievala.ro](http://www.arhivamedievala.ro).

<sup>2</sup> See note 1 for the location of the charter.

sides but also how they reflect the mixing of customs within Central and Eastern European societies in the Middle Ages.

When it comes to sexual deviance, Ruth Mazo Karras' book on common women<sup>3</sup> is certainly the best documented work in the field, transcending the borders of England and offering a wider perspective on how Europeans perceived sexuality. The entire discussion on this subject has come a long way and followed various research paths. As Albrecht Classen debated, reactions and attitudes towards sexuality were in deep connection with almost every aspect (lay or religious) of everyday life.<sup>4</sup> The medieval concept was structured, as showed by Joyce E. Salisbury, on the way early Christians saw the connections between divinity and sex.<sup>5</sup> Dyan Elliott went so far as to believe that the influence of religious concepts could be seen in the way people treated body reactions related to sexuality.<sup>6</sup> As one might expect, the legal system ended incorporating the Christian prejudice towards sex, as James A. Brundage explained so well in his monography regarding the relationship between law, sex and religion in the Middle Ages.<sup>7</sup> For Transylvania, Wallachia and Moldavia<sup>8</sup> the history of medieval women and attitudes towards sexuality is poorly documented. One author that briefly confronts this problem is Șarolta Solcan who discusses the right that the father had in Wallachia and Moldavia over his daughter when

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<sup>3</sup> Ruth Mazo Karras, *Common Women, Prostitution and Sexuality in Medieval England* (Oxford: Oxford University Press, 1996).

<sup>4</sup> Albrecht Classen, "The Cultural Significance of Sexuality in the Middle Ages, the Renaissance, and Beyond. A Secret Continuous Undercurrent or a Dominant Phenomenon of the Premodern World? Or: The Irrepressibility of Sex Yesterday and Today," in *Sexuality in the Middle Ages and Early Modern Times: New Approaches to a Fundamental Cultural-Historical and Literary-Anthropological Theme*, ed. Albrecht Classen (Berlin-New York: De Gruyter, 2008), 2-4.

<sup>5</sup> Joyce E. Salisbury, "When Sex Stopped Being a Social Disease: Sex and the Desert Fathers and Mothers," in *Medieval Sexuality: a Casebook*, ed. April Harper and Caroline Proctor (New York: Routledge, 2008), 47.

<sup>6</sup> Dyan Elliott, "Pollution, Illusion, and Masculine Disarray: Nocturnal Emissions and the Sexuality of the Clergy," in *Constructing Medieval Sexuality*, ed. Karma Lochrie, Peggy McCracken, James A. Schultz (Minneapolis: University of Minnesota Press, 1997), 3-6.

<sup>7</sup> James A. Brundage, *Law, Sex, and Christian Society in the Middle Ages* (Chicago: University of Chicago Press, 2009).

<sup>8</sup> Transylvania, Wallachia and Moldavia are the largest historical regions that cover the territory of present-day Romania.

she was caught sinning with another man.<sup>9</sup> Georgeta Fodor dedicated a part of her Ph.D. dissertation to the position of prostitutes and enslaved Roma women,<sup>10</sup> while Maria Magdalena Székely dedicated some studies<sup>11</sup> to the social position of women in later centuries. In what concerns the interactions between sexuality and the legal system of Transylvania, Julia Derzsi analysed the subject in a few studies, as well as in some sections of her Ph.D. dissertation, especially for the sixteenth and seventeenth centuries.<sup>12</sup> The majority of published studies on the subject in Romania is focused more on a general view. They mostly take into consideration the geographical territories adjacent to Transylvania, namely Moldavia and Wallachia. Given the narrow historical niche of the subject and the fact that research on attitudes towards medieval sexuality in Transylvania is rare, a series of aspects must be taken into consideration. These include religious aspects and customs derived from the variety of ethnical groups that lived in the region. It must also be taken into consideration that Transylvania was part of the Hungarian Kingdom and thus subjected to its laws. This

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<sup>9</sup> Șarolta Solcan, *Femeile din Moldova, Transilvania și Țara Românească în Evul Mediu* [Women from Moldavia, Transylvania and Wallachia in the Middle Ages] (Bucharest: Editura Universității București, 2005), 7-13.

<sup>10</sup> Georgeta Fodor, *Destine comune. Viața femeilor între public și privat. Țara Românească, Moldova și Transilvania. Secolele XV-XVIII* [Common destinies. Womens' life between public and private. Wallachia, Moldavia and Transylvania. 15<sup>th</sup> – 17<sup>th</sup> c.] (Cluj-Napoca: Argonaut, 2011).

<sup>11</sup> Maria Magdalena Székely, *Grădina rozelor. Femei din Moldova, Țara Românească și Transilvania (sec. XVII-XIX)* [The Garden of Roses. Women from Moldavia, Wallachia and Transylvania (17<sup>th</sup> – 19<sup>th</sup> centuries)] (Bucharest: Editura Academiei Române, 2015); eadem, “Născută spre a fi doamnă: Maria, ultima soție a lui Ștefan cel Mare” [Born to be a lady: Maria, the last wife of Stephen the Great], *Analele Putnei* 8 (2012): 315-348; eadem, *Maria Asanina Paleologhina. O prințesă bizantină pe tronul Moldovei* [Maria Asanina Paleologhina: A Byzantine princess on the throne of Moldavia] (Suceava: Editura Musatinii, 2006).

<sup>12</sup> Julia Derzsi, “Aspecte și forme ale criminalității în orașul și scaunul Sibiu la începutul secolului al XVII-lea. Modalitățile unei cercetări empirice” [Forms and aspects of criminality in the city and seat Sibiu at the beginning of the 17<sup>th</sup> century: Proceedings of an empirical research], in *Orașe vechi, orașe noi în spațiul românesc: Societate, economie și civilizație urbană în prag de modernitate (sec. XVI-jumătatea sec. XIX)*, ed. Laurențiu Rădvan (Iași: Editura Universității Iași, 2014), 31-54; eadem, “Delict și pedeapsă. Funcționarea jurisdicției penale în orașele din Transilvania în secolul al XVI-lea [Crime and punishment. The operation of criminal jurisdiction in the cities of Transylvania during the sixteenth century],” Ph.D. diss. (Lucian Blaga University of Sibiu, 2012).

offers a strong basis for the assessment of this particular case. Apart from this, given the geographical location of the trial and the fact that the persons involved came from the Saxon region of Transylvania, they were under a particular customary law specific to this geographical location and to the ethnic people to whom they belonged – in this case the Saxons

For Transylvania, the whole situation is even more complex. The mixture of ethnic and religious beliefs, as stated above, combined with the administrative system – which gave some communities the right to govern themselves within the Hungarian Kingdom – may only complicate the understanding of the way such situations were regarded inside the community.

The seventeenth-century Chronicle of Transylvania written by Georg Kraus<sup>13</sup> gives some insight into the Lutheran perceptions of sexual deviance. Those found guilty of illicit sex could have been sentenced to death at this time, showing that such practices were common before this text was written.<sup>14</sup> This is just one example of a regional development that affected the general mentality. It must be taken into consideration that this territory, in particular, stood at the crossroads of Catholicism, Orthodoxy, Protestantism (Lutheranism, Calvinism) as well as Hungarian and regional, Saxon and Szekler laws, depending on the administrative subdivision.

## **Hungarian legislation**

It is well known that Transylvania was part of the Hungarian Kingdom for the largest part of the last 1000 years, including the Middle Ages. Because of this, as one might expect, usually the legislation applied in the Kingdom was valid for Transylvania as well. Despite of this fact, the customary note – given by the ethnic groups (Szecklers, Saxons, etc.) and, after the Reformation, by the different religious confessions – must not be neglected. Some attitudes regarding sex were regulated by

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<sup>13</sup> Georg Kraus, *Cronica Transilvaniei 1608-1665* [The Chronicle of Transylvania: 1608-1665] (Bucharest: Editura Academiei Republicii Populare Române, 1965).

<sup>14</sup> Ionuț Costea, “Repere pentru o istorie a cuplului și a prostituției în Transilvania veacului al XVII-lea. Studiu de caz: Cronica Transilvaniei de Georg Kraus” [Traces of a history of couples and prostitution in 17<sup>th</sup>-century Transylvania. A case study: The chronicle of Georg Kraus], *Revista Bistriței* 12 (1999): 17-19.

the lay state only at the end of the medieval period, initially adultery and prostitution being constrained only by the Church. It was only later that adultery was regulated in the laws of the Kingdom. Prostitution, on the other hand, was not mentioned at all in Hungarian legal decrees during the Middle Ages.

The first mention of adultery comes under ecclesiastical law. During the reign of King Ladislaus I (1077-1095), the Synod of Szabolcs (May 21, 1092) issued several regulations regarding adultery and the raping of women. According to the decree, any woman who had committed adultery was punishable before God. The husband was given the option to forgive and welcome her back as his legitimate wife once she had served the sentence issued by the ecclesiastical court.<sup>15</sup> In opposition to this permissible attitude towards adultery, rape was an unpardonable crime. The men who took the virginity of women by force had to answer to the courts as if they had committed homicide.<sup>16</sup> The same synod stated that women who sold their bodies – namely prostitutes – were to be judged in accordance with the impact that their crime had.

The first Hungarian king who regulated adultery outside of the Church was Coloman the Learned (1095-1116). During his reign, a decree was issued containing several laws known as the laws of King Coloman. Article 61 mentions that deeds of adultery should be punished according to the gravity of the situation.<sup>17</sup> The Synod of Esztergom (1105-1116), held during the reign of the same king, revisited Church attitudes concerning adultery and rape.<sup>18</sup> Sentences were given to those who accused women of adultery if these accusations were proven to be false.<sup>19</sup> Rapists were subject to canonical penance, but only if they were of noble descent. The ones who could not pay this penance were to be sold as slaves in conformity with the laws issued by King Ladislaus I.<sup>20</sup>

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<sup>15</sup> *The Laws of the Medieval Kingdom of Hungary. Decreta regni medievalis Hungariae. Series I 1000-1526*, Volume I:1000-1301, trans. by Janos M. Bak, Gyorgy Bonis, James Ross Sweeney (Budapest: Central European University Press, 1999), 55.

<sup>16</sup> *Ibid.*, 56-57.

<sup>17</sup> *Ibid.*, 31.

<sup>18</sup> *Ibid.*, 60.

<sup>19</sup> *Ibid.*, 63, 77.

<sup>20</sup> *Ibid.*, 63.

In 1514, during the reign of Vladislav II (1490-1516), those who were proven to be rapists of virgins were considered dangerous and thus sentenced to death.<sup>21</sup> The decree of November 19, 1514 mentions that their entire family and their lineage were subject to disgrace. None of the immediate family of the accused could ever hope to hold a public office or to have any privilege. These statutes were reconfirmed in 1521 during the reign of King Louis II (1516-1526).<sup>22</sup>

In the first half of the sixteenth century, Stephen Werbőcz<sup>23</sup> managed to bring together the laws of the Kingdom of Hungary and give them a rigorous and unified form. These new laws covered various aspects of social life, including marriage and relationships between men and women. It was the first time in lay law that the sin of adultery was mentioned and punished, covering conditions in which women could lose or keep their dowry as well as the possibilities of divorce.<sup>24</sup>

By the end of the sixteenth century, such cases of minor criminality were solved within the communities by a judiciary seat responsible for the administrative unit.<sup>25</sup> Aspects like adultery, bigamy and other sexual offences started to be more often considered as the responsibility of local authorities. The Church did not agree with the practice of keeping concubines but it tolerated them.<sup>26</sup> It was mentioned that, usually, serfs did not appear often in cases of this type, except when their lords became involved in the legal process.<sup>27</sup> It was only after the Reformation that the Saxon cities of Transylvania began to document regulations on what deviance meant. In the 1570s, the term “deviance” was finally defined by legal statutes.<sup>28</sup>

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<sup>21</sup> *The Laws of the Medieval Kingdom of Hungary*, Volume IV: 1301-1457, trans. János M. Bak et al. (Budapest: Central European University Press, 2010), 196-197.

<sup>22</sup> *Ibid.*, 251.

<sup>23</sup> Stephen Werbőcz (1458?-1541) was a Hungarian statesman and law-writer, known as the author of the *Tripartitum*, that served as the Hungarian book of law until the nineteenth century.

<sup>24</sup> *The Laws of the Medieval Kingdom of Hungary: The Customary Law of the Renowned Kingdom of Hungary: A Work in Three Parts Rendered by Stephen Werbőczy*, trans. János M. Bak et al. (Budapest: Central European University Press, 2005), 187.

<sup>25</sup> Derzsi, “Aspecte și forme,” 36.

<sup>26</sup> *Ibid.*, 48.

<sup>27</sup> *Ibid.*, 49-50.

<sup>28</sup> Derzsi, “Delict și pedeapsă,” 53-54.

In 1570, a judicial statute of the Saxon municipality from Transylvania<sup>29</sup> was instated as the code of law for the Saxon community.<sup>30</sup> This codex has a special chapter dedicated to adultery, condemning all types of sexual practices that went against Church Law, particularly those that broke the sacred bond of marriage.<sup>31</sup> There are parallels between this Statute and both Roman and German and legal traditions. Examples of this are the way the man and the woman are punished – beheading, drowning, or another form of punishment based on the personal history of the parties involved.<sup>32</sup>

### **The Charter from 1545**

The present paper focuses on a charter issued by the judicial seat of Cincu on May 25, 1545.<sup>33</sup> The document was discovered during the “Digitization of medieval charters from the Romanian National Archives,” a project conducted between 2014 and 2016. The document is an original, dated 1549, and it was issued during a trial. It is written on paper, as most of the sixteenth-century charters. The remains of a seal (probably belonging to the seat of Cincu) can be observed on the back of the charter. There are no alterations or degradations on the surface of the paper. On the back of the charter, there are three pieces of written text. The most important is the address of the recipient – in this case the magistrate of Sibiu. The second text represents a summary of the charter’s content, written around the seventeenth century, in Latin. The last text is written in German and dates from the middle of the sixteenth century, subsequent to the issuing of the charter. It is an abstract of the sentence given by the magistrate of Sibiu at the end of the trial. It reveals the way the whole case ended and shows what the consequences were.

The charter represents an appeal to the magistrate of the city *Cibinium*<sup>34</sup> (Sibiu, Sibiu County) as the higher court of justice of the Saxons. The case follows an interesting conflict between *Lucas Tryster*

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<sup>29</sup> Original title: *Statuta iurium municipalium Saxonum in Transilvana*.

<sup>30</sup> Derzsi, “Delict și pedeapsă,” 61.

<sup>31</sup> Ibid., 74.

<sup>32</sup> Ibid., 75.

<sup>33</sup> See note 1; available at [www.arhivamedievala.ro](http://www.arhivamedievala.ro) (accessed 22.08.2017).

<sup>34</sup> Today *Cibinium* is called Sibiu (in Romanian), Hermannstadt (in German) or Nagyszeben (in Hungarian).



and a certain *Benedictus*, son of *Georgius Fabrius*, about the rape of *Zabina*, *Tryster*'s daughter. The charter contains fifteen testimonies that can help reconstruct the events.

The father, enraged by the fact that *Benedictus* had taken the virginity of his daughter and impregnated her, makes an appeal to the magistrate of Sibiu for a retrial of the case. The judicial seat of Cincu had already debated the conflict, but justice was not found on the side of the *Tryster* family. *Benedictus*' actions harmed not only the young woman but also her family, and his own family that had fallen into disgrace. This meant that he had to answer for his deed in front of the court, as it was the only way that *Lucas Tryster* could clear the family's name.

The first two witnesses, *Mathias Scherer* and his son *Anthonius* testified on behalf of the apparent lovers. They had seen *Benedictus* and *Zabina* the previous year (about a month before the harvest) near the grain crops. The two were under the cover of night and seemed to be sinning. *Benedictus* saw that they were being watched and went to talk with *Anthonius*. He told him how he tried to push the girl out of his life but could not. They had made love that night and it had not been the first time. He pleaded that his feelings of love were true. *Mathias Scherer* confirmed these events and his testimony was even more conclusive. In his opinion, the two were not just having passionate intercourse in that night, but it was clear that they were also in love, a love so intensive that no one should have tried to break it.

Another witness, *Valentinus Salomon*, mentions in his testimony that, to his best knowledge, the story began at least five years prior to the trial. It was then that *Benedictus* told him that he was in love with the girl and would do anything to have her, especially since she had the same feelings for him. *Egydius*, son of *Georgius Stephen*, confirmed this confession. Three years before, while working with *Valentinus*, they saw *Zabina* meeting with a man under the protection of night. She was compliant to the wishes of the man. This man used his body to cover hers. At this point, the two witnesses – *Egydius* and *Valentinus* – caught the eyes of *Benedictus*. The two men understood what was happening and decided that it was not their place to make any comments on the events. *Abraham*, son of *Severinus Kesner*, later confirmed what *Egydius* had seen. It must be noted that there is no mention of the name of the man with whom *Zabina* met. The sole role of the witnesses was to show

that the young woman was not pure and had the habit spending time with men, away from the eyes of others.

The testimony of *Urbanus Salomon* further confirmed that the man in question was in fact *Benedictus*. The witness saw them connected to one another, *Benedictus* to *Zabina* and *Zabina* to *Benedictus*. This suggests that this was during one of their moments of intimacy. *Brigita*, daughter of *Petrus Drotlof*, had seen the unmarried girl. She was aware of her surroundings. *Brigita* decided to follow her. She discovered that *Zabina* was standing over a man having intercourse with him. It was only later that *Ioannis Thormaj* revealed that the man was *Valentinus*, brother of *Michael Seheb*. *Zabina* was stroking the man's genitals as they were lying down in a ditch near the village. She then undressed and so did the man. Then he penetrated her. Enraged by the accusations, *Zabina* defended herself, saying that she did not do anything illicit, even if she was seen naked standing on top of a man. It must be noted that *Brigita* and *Ioannis Thormaj* were the only ones who suggested that the girl was seen with a man that was not *Benedictus*. This must have had a strong impact on the opinion of those present at the trial. Yet, *Zabina* did not perceive her actions as being wrong.

*Anthonius Salomon* was another person who gave testimony about the interaction between *Zabina* and *Benedictus*. The information of *Anthonius* had come from his sister. To the best of his knowledge, the woman was not being forced, but enjoying herself. He believed that the two were very much in love and soon to be wed. *Effermia*, daughter of *Solomnus*, actually accused *Zabina* during the trial that she had fornicated with *Benedictus*, without taking under consideration moral law. *Zabina's* answer was abrupt: *verum est, sed modo tu tace ego volens et ex animo tacebo* (It is true, but be silent about it, then I also will and sincerely stay silent)<sup>35</sup>. It shows the frustration that she developed over the trial and how much persecution she had to endure.

Apparently, the two persons in discussion were actually in love, but their parents forbade the relationship. There are several testimonies to this. *Thomasus Kreiser* mentions that *Benedictus* had told him that he was in love with the girl and wanted to marry her. In the end, his parents had agreed to him marrying *Zabina*, as *Sigismundus Hon* confirmed, but his sisters were of another opinion. *Benedictus* had told both *Thomans* and

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<sup>35</sup> Excerpt from the original charter –see note 1 and in the attached appendix.

*Sigismundus* that they were not comfortable with the idea of their brother being married to such a woman. She was responsible for much of the disgrace their family had fallen into, and they did not want to be associated with a person with such low moral values. To Clara, the wife of *Vdalricus Trister*, *Benedictus* even said that *Zabina* was also in love with him and there was nothing in the world that could part them except for death. *Lazarus*, son of Nicolaus *Sinerth*, confirmed that there was a connection between the two and they went to large lengths in order to talk with one another. They used him to carry messages between them. *Zabina* testified in her defence that she had only asked *Lazarus* to pay his debt, as he owed her money. In this way, she was trying to show that he had a conflict of interest and a motive to lie.

*Ursula*, a servant, told the court that *Benedictus* had promised her that they would become husband and wife. *Zabina* was the reason the man broke the promise made to *Ursula*. Because of this, *Zabina* was considered responsible for breaking of a sacred bond (the engagement). She thus became part of the adulterous behaviour of *Benedictus*.

The confession of *Zacharias Fancoth* confirmed most of the other ones. One night, while he and his wife were on the porch of their house, they saw a woman passing by on the street. His wife went to check who it was and what she was doing. It was *Zabina* meeting a man who pulled her close to him. *Zacharias's* wife turned to him and said that it was not their business to get involved in such things and that they should leave them alone.

The most revealing confessions were probably that of *Mathias Keczel* and *Stephanus Drotlof* on the one side and *Valentinus Orcz*, on the other. The first two confirmed that *Benedictus* wanted *Zabina* no matter the cost. If he could not have her as his wife, he was determined to possess her by any other means. *Valentinus Orcz*, on the other hand, confessed seeing *Zabina*, in the ditch, near the village, on a Sunday. She was crying, praying and constantly repeating: “*Zabine Zabina tu carpis iter, vide ne oculi et iter hoc te penitendo decipiat*” (*Zabina, Zabina, you take this path, but make sure that your eyes and this path won't deceive you to regret it*).<sup>36</sup> It can be observed that she was repenting her sins. She later understood the consequences of her actions, as well as how much they affected not only herself, but also her family.

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<sup>36</sup> Excerpt from the original charter –see note 1 and in the attached appendix.

The court of Cincu sentenced *Zabina* to pay a fine of six florins, accumulating the value of 40 ducats. It must be noted that *Benedictus* did not receive any penance, nor was he found guilty of anything.

As there have to be found other charters regarding this trial, nothing can be said about how the events later unfolded. However, on the back of the charter, a short German text is visible. Although it does not give details about how the investigation or the trial was carried out by the magistrate of Sibiu, it does mention the sentence. *Zabina* would not suffer any punishment supposing that *Benedictus* was not the father of her child. It is important to note that out of this so-called forbidden love, a child was born. What happened next cannot be determined on the basis of this charter.

### **What can these events unveil?**

The charter, although the only one known up until now which refers to this case in particular, shows a multitude of attitudes. The presumption of the father is that his child had been forced to lose her virginity and thus she was discredited and would not be suitable for marriage. For *Benedictus*, the accused, this would have been fatal under Hungarian law. Accusations of rape could, in the absence of a viable justification, lead to his death.<sup>37</sup> This meant that he had to prove his innocence.

*Zabina* was the unfortunate party of this dispute. Not only did *Benedictus* take her virginity, but he had also impregnated her – as far as her father stated. As a result she was not seen as a pious woman eligible to marry in the same conditions as other women. Moreover, some of the testimonies seem to state that *Zabina* was seen with a man, but it was not clear for the witness whether it was *Benedictus* or not. Even though the charter does not mention that she was considered a whore – as it was the custom in other parts of Europe<sup>38</sup> to call women that had sexual relations outside of marriage – the attitudes towards her were drastic. This can be seen especially in the reaction that the sisters of *Benedictus* had to the idea of him to marry her – he could not receive the sacrament of marriage with a woman that had fallen into disgrace.

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<sup>37</sup> See the previously discussed law issued under King Vladislav II and confirmed by King Louis II.

<sup>38</sup> See the first chapter from Karras, *Common Women*, 15-43.

It is unusual to find confessions that depict a man pulling and forcing a woman in contrast with other confessions arguing that there was a strong emotional connection between the pair, especially since charters referring to physical relationships are rare. On the side of *Benedictus*, several persons confirmed that he was very much in love with the girl and had been vocal about it. Even this leaves enough space for interpretation. The confession of *Sigismundus Hon* is relevant for the case. He mentions that *Benedictus* had argued to his father that the only way to relinquish the disgrace his family had fallen into was to marry the girl. There is no trace or suggestion of love, only of social interest in his argument. More than that, his predilection towards the girl seems to be more of an obsession than anything else. As he had confessed to *Mathias Keczel* and *Stephanus Drotlof*, he had to and would have the girl, even if he could not marry her. This suggests the fact that he was even willing to force her into giving him her body. There is no definition for the given period of what rape actually constituted. Moreover, there has been a lot of dispute in the Middle Ages with regard to how much force was required for an act to be considered rape.<sup>39</sup>

*Zabinas'* feelings are even harder to determine. The first two testimonies state the fact that she was forced to have sexual relations with Benedict. In contrast, the other testimonies illustrate that she did meet and had intercourse with him on several occasions over a larger time span. Her reaction – *verum est, sed modo tu tace ego volens et ex animo tacebo* (it is true, but if she does not say anything, I sincerely will not say a thing),<sup>40</sup> is the most solid proof of the fact. At the same time, it shows that she believed that justice was on her side. The man might have forced her into the relationship. *Valentinus Orcz* stated that she was crying in despair because of what she had done. Then there was the fact that she had been seen naked in the presence of a man that was not *Benedictus*. Thus, she was seen as woman of low moral value because she was willing to sin with other men. The court had seen her as the one who used charms to make a man sin, as she was the one to pay his fine and Benedict was absolved of the crime.

It is important to know that the charter does not describe or mention the moment in which the father found out about what *Zabina*

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<sup>39</sup> Louise M. Sylvester, *Medieval Romance and the Construction of Heterosexuality* (Basingstoke: Springer, 2007), 46.

<sup>40</sup> See note 35.

did. The fact that he discusses the threat brought to his potential heirs is not a clear indication to whether she had already been married by the time the trial started. Two possibilities are in question. She could have not been able to marry, or at least not easily, because people knew that she was a woman of loose moral. On the other hand, it could have been discovered that she was not a virgin once married and the husband could have sent her back to the father. This would have made her guilty of adultery. Of course, as the German text shows, the bigger reason was the birth of a child who was illegitimate. If the event had happened a few decades before, we could have known for sure, as the case would have been judged by an ecclesiastical court.<sup>41</sup> The ecclesiastical court had the power to determine how good or bad a certain person was, whereas a civil one did not have the same divine power of character judgement.<sup>42</sup>

The court could have argued that *Zabina* was still a virgin, were it not for the child. The dispute concerning virginity in the Middle Ages seems rather complicated. The number of theories presented virginity more as a matter of the mind than that of the body. If she did not engage willingly in the sexual act, she might have still been considered a virgin.<sup>43</sup> But her body mattered as well. By losing her physical virginity, she lost the one condition for a sure paternity once she was married.<sup>44</sup> The court did find her guilty, but there must have been further trials as this charter represents an appeal to a higher court of justice in order to put the case on trial again. After this event, it was revealed that the case was even more important.

Practically, this case is in accordance with later decisions taken by Saxon courts. The Reformation marked a series of constraints and measures that were taken in what concerned all legal matters that were in any way connected with the Church or its beliefs.<sup>45</sup> This rigour settled on fees that were paid when illicit sex came into question

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<sup>41</sup> Stephen Werbőczy transferred cases of adultery under lay law at the beginning of the 16<sup>th</sup> century.

<sup>42</sup> Louise O. Fradenburg, "The Love of Thy Neighbor" in *Constructing Medieval Sexuality*, 137-138.

<sup>43</sup> Kathleen Covne Kelly, *Performing Virginity and Testing Chastity in the Middle Ages* (London-New York: Taylor & Francis, 2002), 6-7.

<sup>44</sup> *Ibid.*, 8.

<sup>45</sup> Derzsi, *Delict și pedeapsă*, 214-217.

(namely consensual sex outside of marriage).<sup>46</sup> Moreover, when a man took the virginity of a woman outside of marriage he could be forced into marrying her in order to reinstate her reputation. The child born from the relationship was the one who could grant her forgiveness in the public eye. The price for this was that she was condemned to be the mother of a bastard and not gain forgiveness. In short, she was forever to be seen as a sinner, whereas *Benedictus* became free.

## Final considerations

The case of *Zabina* and *Benedictus* is the first known case from Transylvania debating sexuality. Although it does not precisely describe an attitude towards this subject, it represents proof that fornication in the first half of the sixteenth century in Transylvania was a serious matter. On the one hand, it shows that women were judged for their sexual conduct. If they committed a respective sin outside of marriage, it was disastrous for the family. The same principle applies for the man involved. Because the actors of this trial were, in all probability, Saxons, it can be argued that Catholic principles did not apply. It has been shown by previous research that Protestant ideas of sexuality were even stricter than the Catholic ones.<sup>47</sup> On the other hand, it shows that misguided sexual interactions could occur based on illicit love.

Such cases have to be studied more thoroughly in the future. They can shed light on various aspects of historical society and its evolution. Moreover, a series of similar studies could reveal the attitudes regarding medieval sexuality and its variations for the territory of Transylvania and thus contribute to the general knowledge of medieval sexuality in all of Europe.

## References

### *Primary sources*

Arhivele Naționale ale României – Sibiu, Fond Magistratul orașului și scaunului Sibiu, Colecția de documente medievale, U IV, nr. 470  
[National Archives of Romania, Sibiu, archival fund Magistrate of

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<sup>46</sup> Ibid., 219-220.

<sup>47</sup> One example can be found in Brundage, *Law, Sex and Society*, 551-575.

- the city and seat Sibiu, medieval charters collection, U IV, no. 470, available at [www.arhivamedievala.ro](http://www.arhivamedievala.ro) (accessed, 22.08.2017).
- Bak, Janos M, György Bónist, James Ross Sweeney. *The Laws of the medieval kingdom of Hungary. Decreta regni medievalis Hungariae. Series I 1000-1526, Volume I: 1000-1301*. Budapest: Central European University Press, 1999.
- Bak, János M., Pál Engel, James Ross Sweeney. *The Laws of the Medieval Kingdom of Hungary: Volume II: 1301-1457*. Budapest: Central European University Press, 2010.
- Bak, János M., Péter Banyó, Martyn Rady. *The Laws of the Medieval Kingdom of Hungary: The Customary Law of the Renowned Kingdom of Hungary: A Work in Three Parts Rendered By Stephen Werbőczy*. Budapest: Central European University Press, 2005.

### *Secondary sources*

- Brundage, James A. *Law, Sex, and Christian Society in the Middle Ages*. Chicago: University of Chicago Press, 2009.
- Classen, Albrecht. "The Cultural Significance of Sexuality in the Middle Ages, the Renaissance, and Beyond. A Secret Continuous Undercurrent or a Dominant Phenomenon of the Premodern World? Or: The Irrepressibility of Sex Yesterday and Today." In *Sexuality in the Middle Ages and Early Modern Times: New Approaches to a Fundamental Cultural-Historical and Literary-Anthropological Theme*, ed. Albrecht Classen. Berlin-New York: De Gruyter, 2008, 2-35.
- Classen, Albrecht, ed. *Sexuality in the Middle Ages and Early Modern Times: New Approaches to a Fundamental Cultural-Historical and Literary-Anthropological Theme*. Berlin-New York: De Gruyter, 2008.
- Costea, Ionuț. "Repere pentru o istorie a cuplului și a prostituției în Transilvania veacului al XVII-lea. Studiu de caz: Cronica Transilvaniei de Georg Kraus" [Traces of a History of Couples and Prostitution in 17<sup>th</sup>-century Transylvania. Case Study: The Chronicle of Georg Kraus]. *Revista Bistriței* 12 (1999): 17-19.
- Derzsi Julia. "Delict și pedeapsă. Funcționarea jurisdicției penale în orașele din Transilvania în secolul al XVI-lea" [Crime and Punishment. The Operation of Criminal Jurisdiction in the Cities in Transylvania during the Sixteenth Century]. Ph.D. diss., Lucian Blaga University of Sibiu, 2012.



- \_\_\_\_\_. “Aspecte și forme ale criminalității în orașul și scaunul Sibiu la începutul secolului al XVII-lea. Modalitățile unei cercetări empirice” [Forms and aspects of criminality in the city and seat of Sibiu at the beginning of the 17<sup>th</sup> century. Proceedings of an empirical research], in *Orașe vechi, orașe noi în spațiul românesc: Societate, economie și civilizație urbană în prag de modernitate (sec. XVI-jumătatea sec. XIX)* [Old cities, new cities in the Romanian Landscape: Society, Economy and Urban Civilisation at the Beginning of the Modern Period (16<sup>th</sup> – first half of the 19<sup>th</sup> century)], ed. Laurențiu Rădvan. Iași: Editura Universității Iași, 2014.
- Elliott, Dyan. “Pollution, Illusion, and Masculine Disarray: Nocturnal Emissions and the Sexuality of the Clergy.” In *Constructing Medieval Sexuality*, ed. Karma Lochrie, Peggy McCracken, James A. Schultz. Minneapolis: University of Minnesota Press, 1997, 3-56.
- Fradenburg, Louise O. “The Love of Thy Neighbor.” In *Constructing Medieval Sexuality*, ed. Karma Lochrie, Peggy McCracken, James A. Schultz, Minneapolis: University of Minnesota Press, 1997.
- Karras, Ruth Mazo. *Common Women: Prostitution and Sexuality in Medieval England*, Oxford: Oxford University Press, 1996.
- Kelly, Kathleen Coyne. *Performing Virginity and Testing Chastity in the Middle Ages*. London-New York: Taylor & Francis, 2002.
- Kraus, Georg. *Cronica Transilvaniei 1608-1665* [The Chronicle of Transylvania: 1608-1665]. Bucharest: Editura Academiei Republicii Populare Române, 1965.
- Salisbury, Joyce E. “When Sex Stopped Being a Social Disease: Sex and the Desert Fathers and Mothers.” In *Medieval Sexuality: a Casebook*, ed. April Harper and Caroline Proctor. New York: Routledge, 2008.
- Solcan, Șarolta Solcan. *Femeile din Moldova, Transilvania și Țara Românească în Evul Mediu* [Woman in Moldavia, Transylvania and Wallachia in the Middle Ages]. Bucharest: Editura Universității din București, 2005.
- Sylvester, Louise M. *Medieval Romance and the Construction of Heterosexuality*. Basingstoke: Springer, 2007.

## *Appendix*

**25 May 1545, Nagy Schenck.**<sup>48</sup> The judges of Nagy Schenck make an appeal to the judicial court of Cibinium, in the case concerning illegal intercourse between Benedictus and Zabina, daughter of Lucas Tryster.

Prudentes et circumspecti domini et amici charissimi, salutem et nostri obsequendi promptitudinem etc.: Noueritis quod cum nos iuxta vetustam sedis nostre consuetudinem, in loco sedis nostre iudicariae consueto, pariter congregati consedissemus comparuerunt coram nobis personaliter, in causa appellacionis a sede Judicatus Regy sedis nostre Schenck, circumspectus vir Lucas Tryster de Martonhetye, ab una parte ut actor, ab altera vero parte, providus vir Christannus Franck in persona cuiusdam Benedicti, filij Georgij Fabri, soceri sui, de eadem, contra quem prelibatus proposuit eo modo quod habuisset filiam unam quandam virginem, nomine Zabinam, quam dictus Benedictus filius dicti Georgij Fabri devirginasset, devirginatam gravidamque factam relinqueret neque eam sibi in uxorem copulari vult, sibi et suis heredibus, presentibus et futuris, in preiudicium et derogamen honoris detrimentumque ~~honoris~~<sup>49</sup> valde maximum, pars autem aduersa, his rebus omnibus super ipsum propositis negavit. Dicens se hac in parte inculpabilem esse neque filium dicti Georgij Fabri, cum Zabina, filia actoris illum negocium unque habuisse neque super ipsum probari poterit quisquam. Actor vero respondit, hoc ipsum de facili probaturum et verificaturum. Nos itaque exauditis ambarum parcium propositiionibus et responsionibus causa eorundem ad probam dimisimus. Quorum quidem testes tandem coram nobis iuris ordine producti, iurati et citati fassi sunt:

Item primus testis Anthonius vocatus, filius cuiusdam Mathie Scherer de Marthonhetye, ex parte actoris, iuratus et citatus fassus est eo modo: uno temporum messis proxime preteriti anni, procul triticum metere habuimus ibidem Benedictus attractus cum Zabina, filia actoris

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<sup>48</sup> Present day Şeica Mare, Marktschelken (in German) or Nagyselyk (in Hungarian), located in Sibiu County.

<sup>49</sup> *honoris* cancelled in the original.

adfuit, cum autem propter distanciam ville, ibidem nocturnas excubias egimus vespere facto. Ego Zabine accubui extunc, Benedictus attractus venit et me de latere Zabine detrusit, ac ipse eidem per integram noctem accubuit, qui se tandem mutuo habuerunt secundum eorum bonum libitum.

Item secundus testis Mathias Scherer, dicti testis pater, iuratus et citatus fassus est eo modo: consideraui ut iste due persone ardentissimo amore, alterutrum prosequutus est, neque vidi, ut alius quispiam in amorem ipsorum irrupisset.

Item Mathias Keczel et Stephanus Drotlof, iurati et citati idem fassi sunt: Nisi quod Benedictus proprio ore dixit, bone deus, dissencio hec inter nos, que si non esset copulare me vellem cum Zabina eamque in uxorem ducerem.

Item Thomas Kreisser, iuratus et citatus fassus est prelibatorum fassionem: in super hec verba cum Benedicto contuli: Benedicte, miror negocium tuum cum Zabina, nihil aliud agitis, nisi quod ora hominum aperitis non ~~est~~ bonum est negocium. Vel combineate vos, vel desistite ab isto amore illicibili. Benedictus attractus respondit, certe quidem eam ducerem, si modo sorores mee non essent obstaculum, ille nolunt ut illam ducam.

Item Ursula ancilla quedam de possessione Brugj, iurata et citata fassa est eo modo: Benedictus attractus proprio ore dixit ignominiam hanc misera mei causa patitur vicissim eam ex hac eximam eliberaboque mihique in uxorem accipiar.

Item Clara que est uxor cuiusdam ~~Luce Trister~~<sup>50</sup> Vdalrici Trister, iurata et citata fassa est eo modo: Benedictus venit ad edes meas, qui citra coactionem cuius piam dixit, vester ero, valeant parentes, nemo nos segregabit nisi mors.

Item Lazarus filius cuiusdam Nicolai Siuerth, iuratus et citatus fassus est eo modo: Benedictus attractus, legauit me ad Zabinam, cui dicerem Zabina, Benedictus inquit certam quandam pecuniam apud te deposuisset, hanc eidem restitueres rogavit.

Item Sigismundus Hon, iuratus et citatus fassus est eo modo ut Benedictus dixit: ego ducerem Zabinam in uxorem et parentes mei voluntary sunt, sed sorores mee nullo pacto consentire volunt. In super pater Benedicti dixit: o tu Benedicte, maxime inhonorasti nos.

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<sup>50</sup> *Luce Trister* cancelled in the original.

Benedictus respondit: pater mi, si peccaui vosque inhonorauī vicissim vos honorabo et vos confratres et consorores mei, licet iam nunc indignemini succensemini que mihi, neque tamen me derelinquetis scio, adhuc quilibet vestrum *erit mihi*<sup>51</sup> auxiliabitur mihi in lignis vehendis.

Item Valentinus Salomon iuratus et citatus fassus est eo modo: Zabina proprio ore mihi fassa est ut cum Benedicto per quinquennium se mutuo adamauerit.

Item Urbanus Salomon iuratus et citatus fassus est: ex parte attracti, eo modo vidi Zabinam inherentem Benedictum sepius sequi, quam Benedictum Zabine.

Item Anthonius Salomon iuratus et citatus fassus est eo modo: hec sepius sororio meo significaui dicendo, pueri isti congregiuntur illicitaque amoris negocia peragunt, vos nihil curatis, videte ne ad extremum vos peniteat. Respondit, quid agam, video ut ardentissime se amant combinaturi et ducturi sunt se in matriomonium.

Item Valentinus Orcz, iuratus et citatus fassus est eo modo: accidit uno die dominico, ut Zabina rippam quandam in villa situatam preteriret et cum regrederetur dixi: Zabina, Zabina, tu carpis iter, vide ne oculi et iter hoc te penitendo decipiat.

Item Brigida filia cuiusdam Petri Drotlof, iurata et citata fassa est eo modo: accidit uno temporum ut<sup>52</sup> iuxta morem puellarum cum solent nere excubias ageremus Zabine accubui apud quondam virum penes quam et decubuit quidam seruator Egregii domini Ioannis Thormaÿ nomine Valentinus qui est frater egregii domini Michaelis Scheh circiter mediam noctem cum expergiscerer penes me palpaui, attrectaui ventrem Zabine nudum esse. Dixi verecundare ut decumbis, extunc Zabina respondit: profecto nihil illicite mecum egit sed solummodo habuit mihi eum supra ventrem nudum.

Item Effemia filia Urbani Salomon iurata fassa est eo modo: accidit ut antecedens testis et Zabina alter carentur, antecedens testis dixit: tace Zabina scis ut ille habuit tibi eum supra ventrem nudum. Zabina respondit: verum est, sed modo tu tace ego volens et ex animo tacebo.

Item Egidius filius Georgii Stephen iuratus et citatus fassus est eo modo: ante triennium, cum Domino Valentino plebano ibidem seruirem, extunc Zabina in una septimana non semel sed sepius circiter

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<sup>51</sup> *erit mihi* cancelled in the original.

<sup>52</sup> Superscript.

primam vigiliam noctis solebat venire et famulo nostro maiori accubuit qui tandem se habuerunt iuxta eorum libitum. Et accidit ut una nocte ego cum altero famulo hic infra nominato famulum plebani, omnino super Zabinam inuenimus, quam et prendere conabamur se tamen nescitur quomodo tam occulte ab oculis nostris ~~potuit oculari~~<sup>53</sup> euanuit.

Item Abraham filius Severini Kesner, iuratus et citatus fassus est precedentis fassionem.

Item Zacharias Fancoth iuratus et citatus fassus est, eo modo: accidit ut una dierum, in crepusculo noctis, in curia mea stans aliquantis per pausarem dum omnes homines iam dormirent Zabina per mediam plateam descendit, uxorem meam consuli [sic!] si bonum videretur villico profectionem Zabine ~~villico~~<sup>54</sup> significabo, ut tentet, quid sibi velit hec nocturna. Zabine profeccio. Uxor mea respondit: Quid nostra interest. vadat quo vult.

Nos itaque utrarum parcium proposicionibus responsionibus allegacionibus sane intellectis ad diligentem petitionem tam actoris quam attractoris sibi per nos causis in premissis finalem petitionem elargiri petentes post maturam deliberacionem inter nos habitam, nos deum et eius iusticiam pre oculis habentes, et quod licet domini iudices sententiam edixerint ut attractus metseptimus iuramento se purgare debeat, tamen ex quo ~~attractus ex omo~~<sup>55</sup> Zabina etiam cum alijs in re venerea se miscuisse dinoscitur attractum in hac re liberum pronuncciamus ita tamen ut Zabine debeat restituere florenos sex et ~~vestem unam pelliceam palleatam~~<sup>56</sup> pallium caprinum in valore denariorum 40. De qua quidem sententia attractus contentus, actor vero minime et causam suam per viam appellacionis ad sessionem de provincialium prouocauit, hec itaque instans petitionis actoris pro iuris uberioris inquisicione dominationi vestre fideliter sub sigillo nostro transcribere curauimus: Quas tandem felices valere cupimus. Datis ex Nagh Senck, feria secunda post festum Pentecostes. Anno domini 1545.

Iudices iuratique consules oppidj et Sedis Senk

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<sup>53</sup> *potuit oculari* cancelled in the original.

<sup>54</sup> *villico* cancelled in the original.

<sup>55</sup> *attractus ex omo* cancelled in the original.

<sup>56</sup> *vestem unam pelliceam palleatam* cancelled in the original.

Verso:

Addressees of the charter:

Prudentibus et circumspectis magistrociuium iudicibus ceterisque iuratis  
consulibus civitatis Cibiniensis et Septem Sedium saxonicalium,  
dominis nobis omni honore observandis

By another hand:

Anno 1545. Causa N. Schenkensis appellata Luca Tryster contra  
Benedictum Fabrum Martonhegienses

By another hand<sup>57</sup>:

Der knecht sol selbst sybent schweren das er yr dy ee nit vorheyssen  
hatt, sol er frey. Und soll er auch schweren das er das kyndt nit  
gemacht hat, sol er frey sein.

So er nit den anderen eydt schwyr, soll er yr geben yr gerechtikeit.  
Vor der geburt des kyndt eyn yar nit zu schaffen gehabt hatt.

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<sup>57</sup> Abstract of the sentence given by the Magistrate of Sibiu and of the 7 Seeds of the Saxons, written in German in the sixteenth century.