

Thesis title in English

Constitutio Criminalis Josephina and its influence on the decision-making practice of the Court of Appeal: Sexual offences in the years 1687—1727

Abstract

This paper captures the development of the juridical practice of the Prague Court of Appeal between years 1687–1727 and examines the influence of the *Constitutio Criminalis Josephina* of 1707/8 on this practice. The research is focused on punishing of the sexual offenses, ie adultery, bigamy, fornication, incest, rape and sodomy. The primary sources for the research are law codes, especially Koldín's Code *Práva městská Království českého* (1579) and "Josephina"; besides them others are used: the *Constitutio Criminalis Carolina* (1532), the *Constitutio Criminalis Ferdinanda* (1656) and Brikcí's *Práva městská* (1536). The practice of the appellate court itself has been examined on the basis of the books of sentences that contain the judgments of that court. Firstly, the relevant legislation of the period was described for each of the offenses and then the judicial practice was examined. The applied methodology can be qualified as quantitative-qualitative comparative analysis which makes possible recognizing the changes that occurred with the implementation of "Josephina".

The main findings of the thesis suggest that "Josephina" was an important turning-point in criminal justice. While in the period prior to its implementation on the one hand abusive punishments were widely used and on the other hand the death penalty was not used in some cases at all. In the second period this practice changes and certain rationalization of punishment can be observed. After 1707 the punishment by the public works and also by the death penalty increases, while the punishments affecting the honor of the perpetrators cease to be used as well as the banishing of the convicts from a village or a country. Another move in juridical practice is to erase the differences between men and women. While until 1707 men were punished more severely than women (they were more often executed, imprisonment or public works were longer), the differences are minimal after implementing the new penal code.

Key words

Constitutio Criminalis Josephina; Appel Court in Prague; Judicial Practice in Early Modern Period