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Sexual Offences in Czech Town Books from the Early Modern Period

The study deals with sexual offenses in the written sources of the Late Middle Ages and the Early Modern Age in the present Czech Republic and Slovakia. It evaluates which actions fall into this category and defines their content under current criminal law. Similarly, it deals with punishments. Then it analyzes specific sources and evaluates the proportion of these deeds compared to other crimes. It provides a view of the society and the functioning of the law.

Keywords: court records – Early Modern Period – Late Middle Ages – punishments – sexual crimes

The broader issue is rather extensive and complicated for a complex elaboration; thus my contribution focuses only on a selected aspect. In addition to a general theoretical overview of the acts that were considered criminal during the feudal period and also punished with a whole range of sentences, I set out to analyse selected town books and their summary of the factuality as to how these offences were punished, or how often the municipal courts had to deal with them. Next, I try to explain the basic concepts related to this group of crimes which can be found in the historical time records. The methodology consisted in the selection of appropriate legal sources, editions and other specialized literature, and an analysis of available resources. I have chosen the probe method and applied it to selected town books, court records and black books from the territories of Bohemia, Moravia and also Slovakia (for comparison) from the period between the 14th and the 18th centuries. I excluded town books from major centres such as Prague, Brno or Bratislava because these cities did not fit in the selected sample as the specific problem of the period was characteristic. Of course, town books that did not deal with criminal law were also excluded, such as directive

books, books of writing debts, inheritances and commitments.

The understanding of moral offences in town law has gone through long-term developments. Some of them are known from Roman law. In our countries, the law began to be implemented from the 11th century, in the law record known as Břetislav's decree that dates back to the year 1039.¹ In the Slovak territory, it was the *Zakon sudnyj ljudem* from 863–869.² The main stimulus for their implementation were the measures of the church, which sought to remove pagan customs from society and focused its attention especially on the areas of marriage and sexual life. They forbid bigamy, fornication, adultery but also the birth of illegitimate children.³ The punishment for these deeds was exile from the country.⁴ For a long time, the church was the one who decided about these actions, until it gradually passed this competence on to the municipal courts as well.

¹ VOJÁČEK, SCHELLE, KNOLL, *České právní dějiny* 123.

² LACLAVÍKOVÁ, ŠVECOVÁ, *Pramene práva na území Slovenska*. I., 49.

³ FRANCEK, *Velké dějiny zemí Koruny české* 218.

⁴ BLÁHOVÁ, HRDINA, *Kosmova kronika česká* 81.

Initially, there is considerable fragmentation and inconsistency in town law. It originated under the influence of German merchants coming to our territory and our ancestors accepting their habits and customs. Thus, it consists of two basic legal families, the law of North Germany, namely Magdeburg, and South Germany, namely Nuremberg.⁵ However, these legal bases underwent a gradual development and each city to which the laws were granted transformed them over time according to their own needs and customs. The earliest legal documents of these laws are town books, which may either contain a direct register of legal norms and regulations or may also contain entries of disputes and their resolutions in the territory of the city. Town law in the area now covered by the Czech Republic was unified by the so-called Koldin Code, which is one of the most important sources of town law. Another type of documents, especially in the criminal law area, are the so-called executions or black books written by town scribes as evidence of the questioning of the accused under torture.

Which acts were therefore regarded as sexual or moral delinquency in town law? They included adultery (*adulterium*), a violation of the marital sexual life with another man or woman outside marriage. The act of bigamy (double marriage) is also related to adultery. Another was fornication, a voluntary sexual act with a person of the opposite sex outside marriage, in the case of a woman with a virgin or a widow. Additionally, there is also non-marital coexistence, typical of the less wealthy layers of society, called the concubinage. Another offence was rape (*stuprum*), which is the involuntary and enforced sexual intercourse with a woman, regardless of whether the woman was married or not. Similarly, child abuse or abuse of a minor belongs here. Following is incest (*incestum*), which is sexual

activity between relatives, usually between siblings or parents and offspring, either as a voluntary or involuntary act. Another is sodomy, which includes several different facts, primarily referring to the sexual intercourse of men with animals. In addition, there is homosexuality, or sex among members of the same sex, or other non-traditional or unauthorized sexual practices. The last of the moral crimes was prostitution and related offences such as profiting from prostitution.

Indirectly, the murder of a newborn (*infanticidium*) and abortion (*abortio*) could be added to these moral offences. Pregnancy is also connected with these but is far more often sanctioned in relation to some of the above-mentioned facts. In some sources, the offence of kidnapping or honour offence, which was usually associated with adultery or rape, also belonged to moral delinquencies.

So how did the substantiation of these deeds work in court? The easiest way was to catch the offender or offenders in the act, calling of more witnesses followed, possibly court officers or a reeve. Another way was the witness oath. The number of required witnesses was different for individual deeds. For example, in the Code of Town and Mining Law of Banská Štiavnica, § 24 reads:

“If a girl or woman sues that she has been abused in a field, one witness is enough, it may be a shepherd or any other man. In the city, two witnesses are enough. If a girl or woman with a torn dress and dishevelled hair, bloodied or not, complains and has no witnesses, the one being sued can defend himself with two witnesses. If the one suing has an intact dress and is not bloodied, the accused can defend himself.”⁶

⁶ Translation by the author, original text in Slovak language: “Ak dievča, alebo žena žaluje, že bola zneužitá v poli, stačí jej jeden svedok, môže to byť pastier, alebo hociktorý iný muž. V meste jej stačia dvaja svedkovia. Ak sa sťažuje dievča alebo žena

⁵ FRANCEK, Zločin a trest 25–26.

Another way was examination – typical of rape, which can be exemplified by the enactment in the Koldin Code: “If the office has information that a virgin had been violated, they may let honest women examine her in private.”⁷ The last way was the confession under torture, which is the content of the black books. For example, the black book of the city of Kutná Hora records the exact process of procuring a statement, either voluntary or “after suffering”, and often the specific methods of torture, for example on a ladder or rack. The type of punishment varied at the discretion of the judges; in general, records included the death penalty for adultery, rape, bigamy, possibly in combination with other crimes, theft or murder. Punishment by drowning or hanging was also possible. An interesting case happened in Kutná Hora, where the accused Šebestyán Rosa of Domažlice was hanged after committing theft, adultery, four rapes and having dressed in women’s clothes for three years, for which he had been exiled from his native village Domažlice.⁸ An interesting and unconventional punishment from a present day perspective was that marriage was considered in the case of rape, if the victim agreed. Only the women were punished by drowning or burying alive, the punishment most commonly given for fornication, abortion or murder of a newborn, often aggravated by impaling. Less cruel punishments were being exiled from the town, beating at the pillory or branding, usually for fornication, adultery or prostitution.

The second part of this paper focuses on assessing the town justice probe. Selected legal

sources are ranked from the oldest to the youngest, regardless of the type of entry and type of document. In each case, the provisions on the offence in question were identified, to which the type of record is assigned, whether it is a normative record or a record of the court proceedings. If possible, the number of record and date is also assigned. Finally, the penalty is recorded if one was pronounced. All the data is clearly projected into a table and subsequently evaluated in a graph – of course only in the case of court proceedings. Only books containing court records provide the most important insights into the court practice of the medieval towns and show the spectrum of sexual offences.

- Town Book of Litoměřice (CZ) 1341–1562
- The oldest Town Book of Olomouc (CZ) 1343–1420
- Law Book of Míšeň (CZ) 1357/8–1387
- Town Book of Žilina (SK) 1379–1561
- Black Book of Kutná Hora (CZ) 1521–1571
- Code of Town and Mining Law of Banská Štiavnica (SK) 1572
- Black Book of Velká Bíteš (CZ) 1556–1636
- Black Book of Rokycany (CZ) 1573–1630
- Town Laws of the Kingdom of Bohemia and Margraviate of Moravia, so called Koldín’s Code (CZ) 1579
- Black Book of Lipník (CZ) 1594–1627
- Black Book of Smidary (CZ) 1631–1769

Among the so-called law books are the Míšeňská book, the Code of Town and Mining Law of Banská Štiavnica and so-called mixed books, containing both normative records and records of court proceedings, Žilinská book and Litoměřická book. The Koldin Code also is part of this group, even though it is not a town book but a codification of town law. For this reason, it was selected for this work. In the second group are books recording the court proceedings and so-called black books. The analysis of the town books is sorted by the age of the books, not by the type.

s roztrhanými šatami a strapatými vlasmi, skrvavená alebo nie a nemá svedkov, môže sa ten, na koho žaluje obhájiť pomocou dvoch svedkov. Ak má žalujúca neporušený odev, nie je skrvavená, môže sa obvinený obhájiť sám.” VOZÁR, Kódex 43.

⁷ Translation by author, original text in Czech language: „Ouřad, maje správu, že by některá panna k porušení přišla, muže ji dáti ženám poctivým v soukromí ohledati.” MALÝ, Práva městská 557.

⁸ BISINGEROVÁ et al., Kutnohorský manuál 17–18.

Town Book of Litoměřice 1341–1562⁹

One of the so-called mixed books, it contains 58 records and deals with unwanted sexual behaviour in only one provision. It is a regulation of the city council about women's manners.

Criminal offence	Type of record	No. ¹⁰	Date	Punishment
adultery	normative	24	5.2.1441	W ¹¹ : expulsion from the town
fornication	normative	24	5.2.1441	W: financial fine M: loss of throat by sword
prostitution	normative	24	5.2.1441	W: expulsion from the town, whipping

The oldest Town Book of Olomouc 1343–1420¹²

The town book from the city of Olomouc includes records of private as well as criminal law. Some entries have a commemorative character. Most of records are brief and rather informative. They often do not contain a punishment and only describe the event.

Criminal offence	Type of record	No.	Date	Punishment
concubinage	court record	58	1353	-
soliciting	court record	58	1353	-
rape	court record	145	1359	-
fornication	court record	240	1370	exile for 100 and 1 years
kidnap	court record	643	1384	-
rape	court record	643	1384	prison, loss of throat

Total number of entries: 729

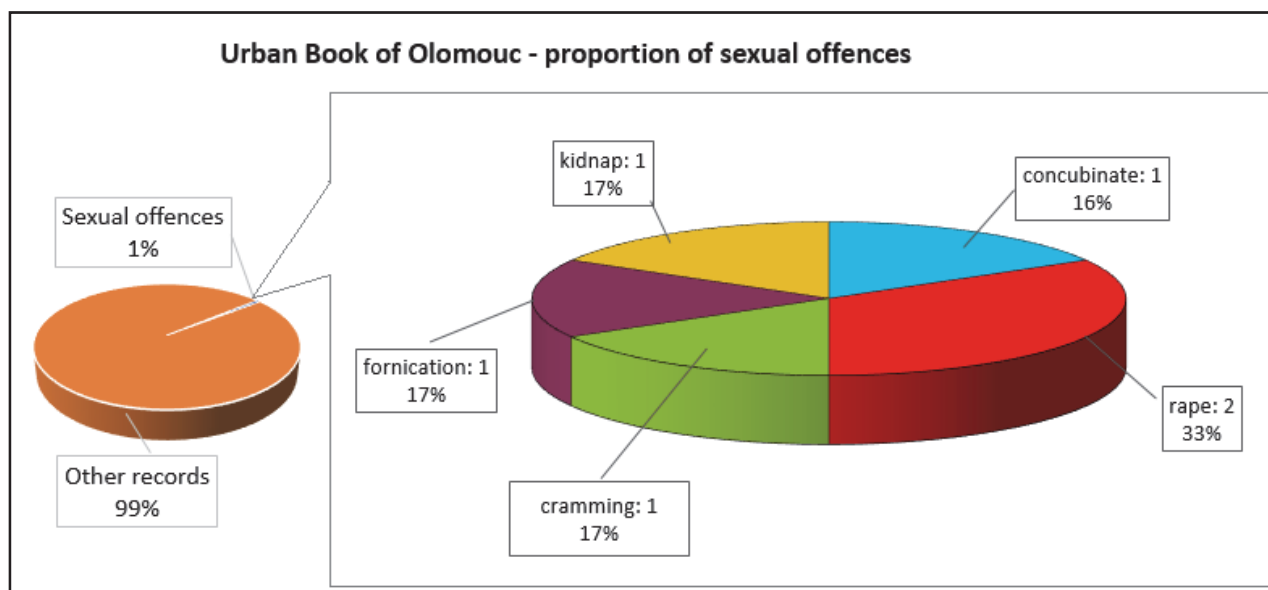
Number of entries about sexual offences: 4

⁹ Edition used: KOCÁNOVÁ, TOMAS, Městská kniha Litoměřic.

¹⁰ Understand the entry number.

¹¹ W = punishment for women; M = punishment for men.

¹² Edition used: SPÁČIL, Nejstarší městská kniha olomoucká.



Law Book of Meissen 1357/8–1387¹³

The law book of the normative type used in Olomouc. It was based on Magdeburg's town law. In some cases, provisions only define a sexual offence in terms of the facts, for other offences they determine a specific punishment.

Criminal offence	Type of record	No.	Date	Punishment
rape	normative	I.13.3	-	-
rape	normative	IV.8.1,3,4,5,6	-	loss of throat by sword
kidnap	normative	IV.8.1, 3,4,6	-	remission
fornication	normative	IV.8.2	-	-
offence of honour (rape of wife)	normative	IV.9.1	-	-
adultery	normative	IV.9.2	-	husband can kill both, otherwise executed
child abuse	normative	IV.9.4	-	loss of throat by sword
fornication	normative	IV.11.6	-	W: burial alive

¹³ Edition used: SPÁČIL, SPÁČILOVÁ, Míšeňská právní kniha.

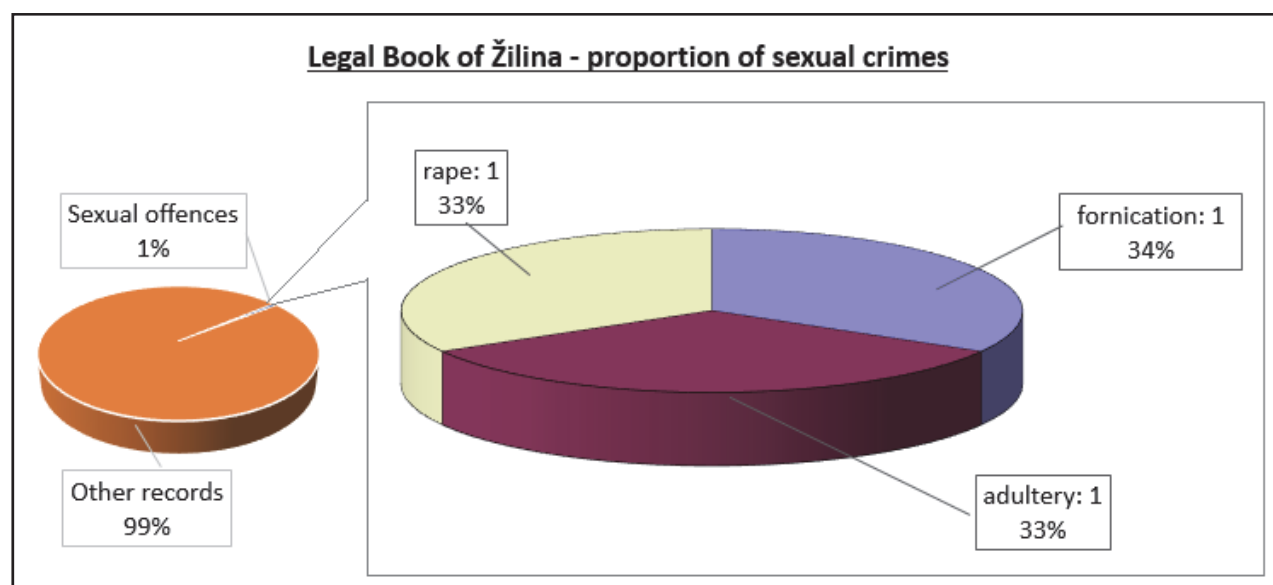
Law Book of Žilina 1378–1561¹⁴

The law book of Žilina is another example of a mixed book; it contains 368 normative provisions from the translation (from the year 1473) of an original version written in the German language (from the year 1378). It originally contained 432 provisions of town and feudatory law. The second part consists of 72 court records. The normative part, as was the case with the Meißen book, came from Magdeburg's family of law.

Criminal offence	Type of record	No.	Date	Punishment
rape	normative	§ 7	-	loss of throat
fornication	normative	§ 352	-	marriage
adultery	normative	§ 352	-	fight
rape	normative	§ 365	-	-
fornication/ adultery	court record	59	13.7.1460	-
rape	court record	59	13.7.1460	-

Total number of entries (court): 72

Number of entries about sexual crimes: 1



¹⁴ Edition used: Rudolf KUCHAR, *Žilinská právní kniha*, and PAPONOVÁ, *Sasko-magdeburské právo na Slovensku*.

Black Book of Kutná Hora 1521–1571¹⁵

The black book contains reports from hearings under torture. They usually indicate the date, name of the investigated person, the facts or actions he/she has committed, the type of hearing and the judgment.

Criminal offence	Type of record	No.	Date	Punishment
rape	court record	3	30.4.1522	loss of throat by sword
adultery	court record	15	22.4.1524	exile from the town
fornication	court record	17	29.7.1524	exile from the town within a radius of four miles
rape etc.	court record	36	23.2.1525	woven onto the wheel
fornication etc.	court record	47	9.2.1526	death by hanging (for murder)
murder of a newborn	court record	54	-	-
murder of a newborn	court record	74	burial alive	burial alive
bigamy	court record	87	16.10.1553	exile from the town, if they came back, loss of throat
fornication etc.	court record	91	13.1.1554	death by hanging (for thefts)
murder of a newborn	court record	97	27.6.1554	burial alive and puncture of the heart by stick
murder of a newborn	court record	101	15.10.1554	burial alive
adultery	court record	107	26.6.1555	exile from the town
murder of a newborn	court record	108	29.7.1555	burial alive and puncture of the heart by stick
abortions	court record	108	29.7.1555	burial alive and puncture of the heart by stick
fornication	court record	121	20.1.1556	exile from the town
rape	court record	123	6.7.1556	loss of throat by sword
adultery	court record	126	18.3.1556	exile from the town, before pillory
bigamy	court record	127	21.6.1556	exile from the town and before whipping at the pillory

¹⁵ Edition used: BISINGEROVÁ, Kutnohorský manuál.

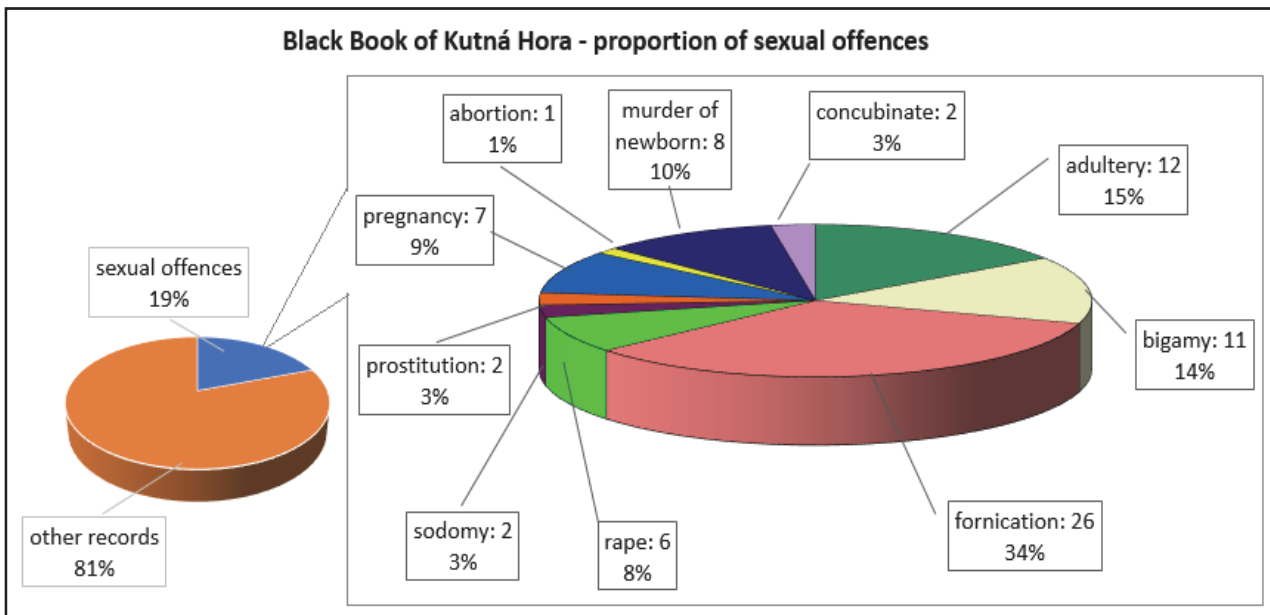
fornication	court record	128	3.6.1556	exile from the town
adultery	court record	131	5.8.1556	exile from the town, if they came back, whipping at the pillory
fornication	court record	132	5.8.1556	exile from the town, if they came back, whipping at the pillory
bigamy	court record	134	23.3.1557	loss of throat by sword
fornication	court record	135	5.7.1557	exile from the town, if they came back, whipping at the pillory and two brands
fornication	court record	143	25.10.1557	exile from the town
fornication	court record	146	29.11.1557	pillory, but finally remission
fornication	court record	147	29.11.1557	exile from the town
fornication	court record	148	29.11.1557	exile from the town
fornication	court record	149	29.11.1557	exile from the town
fornication	court record	156	5.12.1558	exile from the town
murder of a newborn	court record	168	9.6.1559	burial alive and puncture of the heart by stick
concubinage	court record	178	24.6.1560	exile from the town
fornication	court record	179	15.1.1560	exile from the town, if they came back, pillory
fornication	court record	180	29.1.1560	exile from the town, if they came back, pillory
fornication and murder of a newborn	court record	182	9.10.1560	burial alive and puncture of the heart by stick
adultery	court record	183	28.10.1560	whipping at the pillory
fornication	court record	184	8.11.1560	exile from the town, if they came back, whipping at the pillory
fornication	court record	192	21.4.1561	exile from the town
rape etc.	court record	193	28.4.1561	woven onto the wheel (for murder)
pregnancy	court record	195	28.5.1561	exile from the town
pregnancy	court record	196	28.5.1561	exile from the town

murder of a newborn	court record	209	1.2.1563	burial alive and puncture of the heart by stick
pregnancy	court record	214	31.1.1563	whipping at the pillory and exile from the town
pregnancy	court record	216	10.2.1563	whipping at the pillory and exile from the town
bigamy	court record	226	8.9.1563	loss of throat by sword
fornication	court record	227	1559	whipping at the pillory and exile from the town
fornication	court record	232	29.5.1564	exile from the town
bigamy	court record	233	19.6.1564	whipping at the pillory, two brands and exile from the town
bigamy	court record	241	5.9.1564	whipping at the pillory
bigamy	court record	244	13.11.1564	whipping at the pillory and exile from the town
fornication	court record	248	14.3.1565	exile from the town
fornication	court record	254	3.7.1565	exile from the town
bigamy	court record	258	29.10.1565	exile from the town within radius of four miles, otherwise death penalty
prostitution	court record	263	14.1.1566	exile from the town, after she came back, whipping at the pillory
fornication	court record	266	28.11.1565	exile from town
adultery	court record	267	4.2.1566	whipping at the pillory
adultery	court record	268	4.2.1566	whipping at the pillory and exile from the town
adultery	court record	269	4.2.1566	whipping at the pillory and exile from the town
adultery	court record	270	23.1.1566	death by hanging (for thefts)
pregnancy	court record	278	1.4.1566	burial alive and puncture of the heart by stick (plus other crimes)
adultery	court record	293	28.4.1567	death by hanging (for thefts)
rape	court record	293	28.4.1567	see above
walking in women's dress (sodomy)	court record	293	28.4.1567	see above

bigamy	court record	306	11.8.1567	exile from the town within radius of four miles
adultery and bigamy	court record	312	9.1.1568	exile from the town within radius of four miles, otherwise death penalty
sodomy	court record	315	24.5.1568	whipping at the pillory, two brands, exile from the town, otherwise death penalty
prostitution	court record	319	7.7.1568	exile from the town (2 nd time)
fornication etc.	court record	320	13.10.1568	exile from the town within radius of four miles, otherwise death penalty
fornication	court record	323	15.10.1568	exile from the town, otherwise death penalty
bigamy	court record	324	25.10.1568	whipping at the pillory, exile from the town, otherwise death penalty
fornication	court record	334	10.6.1569	exile from the town, bring out to gallows
pregnancy	court record	340	12.9.1569	exile from the town, otherwise death penalty
pregnancy	court record	341	5.10.1569	whipping at the pillory, exile from the town
rape etc.	court record	343	16.11.1569	death – torn with tongs, breaking by a wheel, quartering (for murder etc.)
fornication	court record	358	5.7.1570	loss of throat by sword
adultery	court record	360	2.10.1570	loss of throat by sword
concubinage etc.	court record	372	7.3.1571	death by wheel
murder of a newborn	court record	373	6.4.1571	burial alive and puncture of the heart by stick

Total number of entries: 382

Number of entries about sexual offences: 74



Code of Town and Mining Law of Banská Štiavnica 1572¹⁶

The law book of the mining city Banská Štiavnica consists of two parts. The first one is relevant to town law and contains 41 provisions. The second one deals with mining law and is not very relevant for this topic.

Criminal offence	Type of record	No.	Date	Punishment
rape	Normative	§ 24	-	loss of throat by sword
kidnap	Normative	§ 27	-	loss of throat by sword

Black Book of Velká Bíteš 1556–1636¹⁷

As well as another black book, this one contains hearings of the accused under torture. Entries consists of description of crime, type of questioning and imposed punishment.

Criminal offence	Type of record	No.	Date	Punishment
adultery	court record	15b	31.12.1569	loss of throat by sword
bigamy	court record	15b	31.12.1569	loss of throat by sword
adultery	court record	20b	24.3.1572	death for both

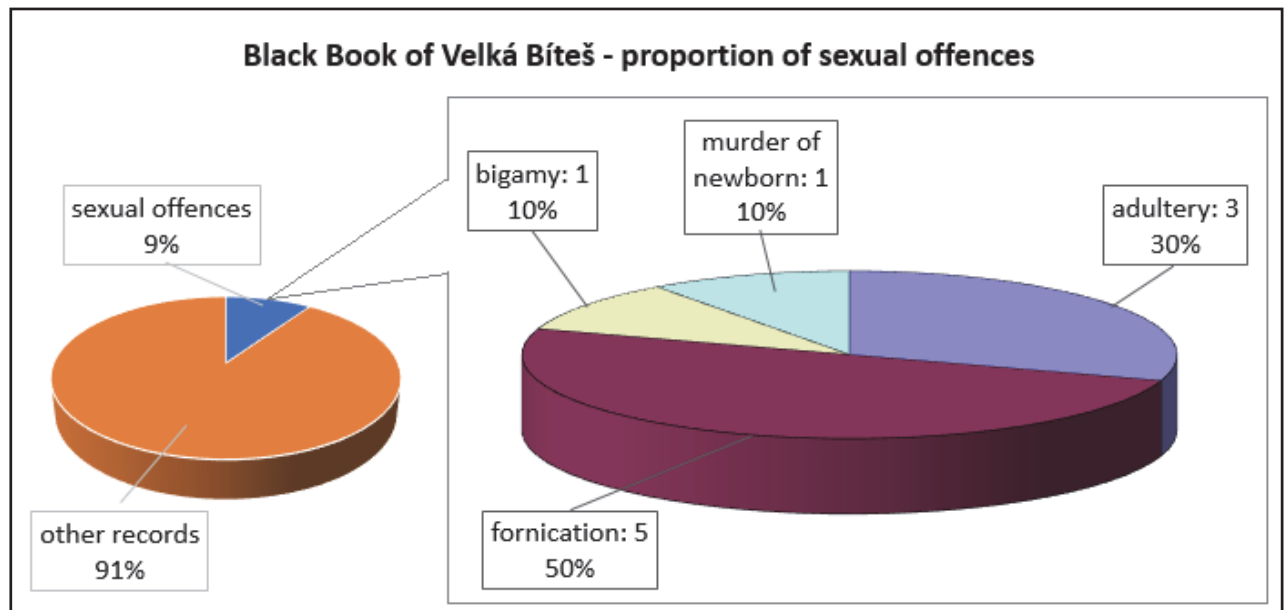
¹⁶ Edition used: VOZÁR, Kódex mestského a banského práva.

¹⁷ Edition used: VERBÍK, ŠTARHA, Smolná kniha velkobítešská.

adultery	court record	21b-22b	29.4. 1574	death
murder of a newborn	court record	28b	1577	death
fornication	court record	44a	28.6.1592	M: loss of throat by sword W: death by drowning
fornication	court record	44a	29.6.1592	M: loss of throat by sword W: whipping and branding
fornication	court record	39a	8.4.1604	death by drowning
fornication	court record	45b	23.10.1605	-
fornication	court record	63a	4.8.1615	-

Total number of entries: 116

Number of entries about sexual offences: 11

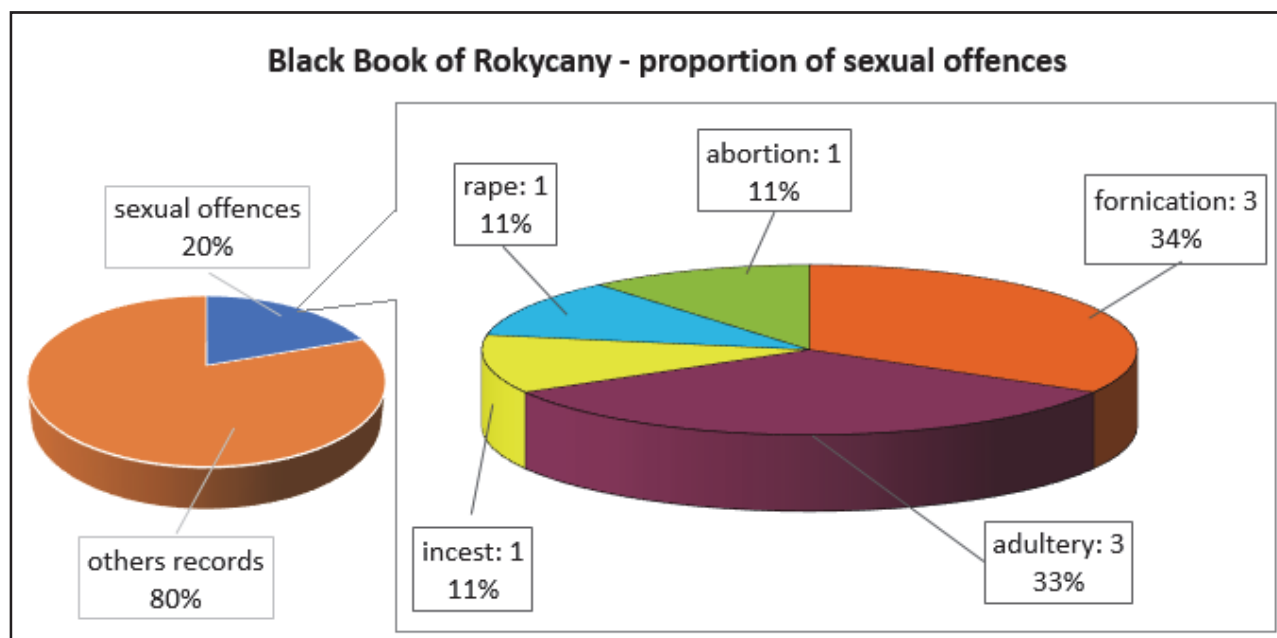


Black Book of Rokycany 1573–1630¹⁸

Criminal offence	Type of record	No.	Date	Punishment
fornication	court record	-	26.2.1590	loss of throat by sword
fornication etc.	court record	-	17.7.1591	woven onto the wheel and burning
adultery etc.	court record	-	23.7.1596	loss of throat by sword
incest etc.	court record	-	28.6.1599	loss of throat by sword
adultery etc.	court record	-	28.6.1599	death by hanging
abortion	court record	-	7.6.1599	whipping and exile
rape	court record	-	15.11.1606	-
adultery	court record	-	20.11.1606	loss of throat by sword
fornication	court record	-	26.11.1612	loss of throat by sword – remission?

Total number of entries: 46

Number of entries about sexual offences: 9



¹⁸ Edition used: CIRONIS, Kniha černá.

Town Laws of the Kingdom of Bohemia and Margraviate of Moravia 1579¹⁹

This law book, also known as Koldín's code, is a codification of town law for Bohemia and slightly later also for Moravia and Silesia. It represents an effectual example of younger legal papers. Some provisions are obligatory, others left the decision on the punishment to the judges in the relevant city court.

Criminal offence	Type of record	No.	Date	Punishment
adultery	Normative	M.XXIX.	-	loss of throat
fornication	Normative	M.XXX.I.	-	whipping and exile from the town
rape	Normative	M.XXX.II.	-	-
rape	Normative	M.XXXI.I.	-	loss of throat by sword
rape of prostitute	Normative	M.XXXI.I.	-	woven onto the wheel
help with rape	Normative	M.XXXI.II.	-	same as main perpetrator
rape	Normative	M.XXXII.-III.	-	-
child abuse	Normative	M.XXXIV.	-	woven onto the wheel or death by sword
rape	Normative	M.XXXVI.	-	marriage or prison
adultery	Normative	M.XXXIX	-	husband or father can kill both
bigamy	Normative	M.XL.	-	M: loss of throat by sword W: burial alive
pregnancy	Normative	M.XLIII.	-	marriage
incest	Normative	N.I.	-	death penalty
soliciting	Normative	N.II.	-	death penalty
murder of a newborn	Normative	N.XXXV.III.	-	-
abortion	Normative	N.XXXIV.	-	-

¹⁹ Edition used: Karel MALÝ, *Práva městská*.

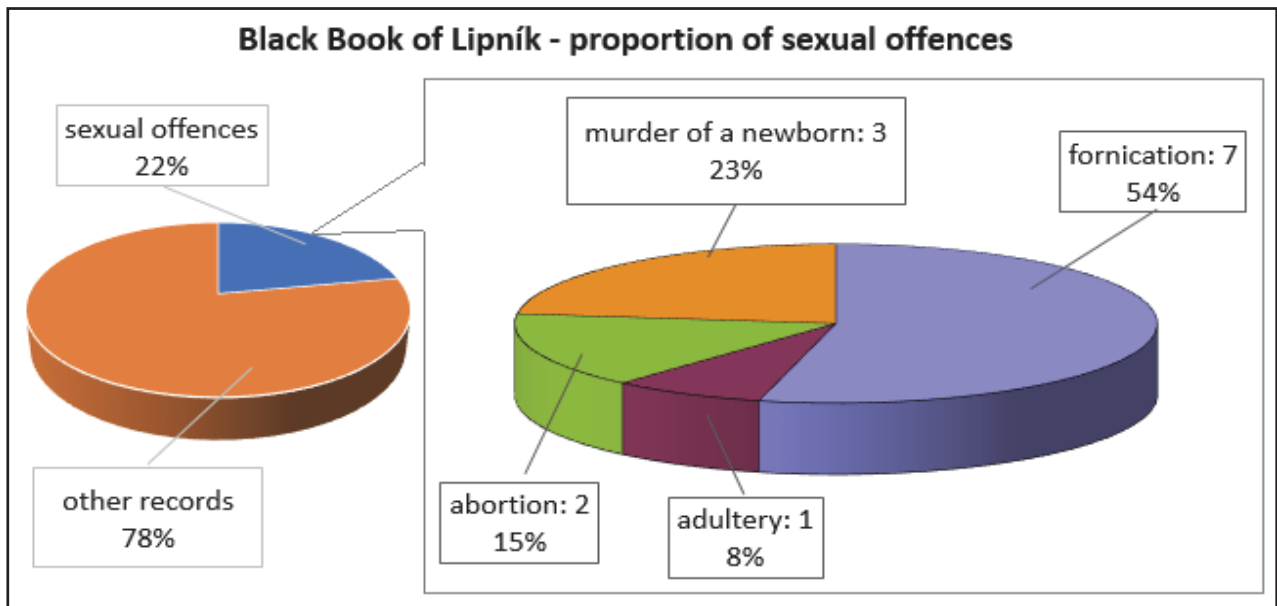
Black Book of Lipník 1594–1627²⁰

Criminal offence	Type of record	No.	Date	Punishment
fornication etc.	court record	8	22.1.1601	loss of throat by sword - remission
fornication	court record	10	16.9.1615	-
murder of a newborn	court record	16	17.5.1620	-
fornication etc.	court record	19	24.1.1612	loss of throat by sword
fornication	court record	20	2.5.1612	death by wheel
fornication	court record	21	9.5.1621	loss of throat by sword
abortion	court record	24	12.2.1615	brand burning, whipping at the pillory
murder of a newborn	court record	25	8.3.1623	-
adultery	court record	33	17.5.1624	loss of throat by sword, changed to burning a brand, whipping by broom and exile from the town
fornication and abortion	court record	37	8.12.1615	death by drowning
fornication and murder of a newborn	court record	45	-	-

Total number of entries: 50

Number of entries about sexual offences: 11

²⁰ Edition used: MARADA, Smolná kniha města Lipníka.

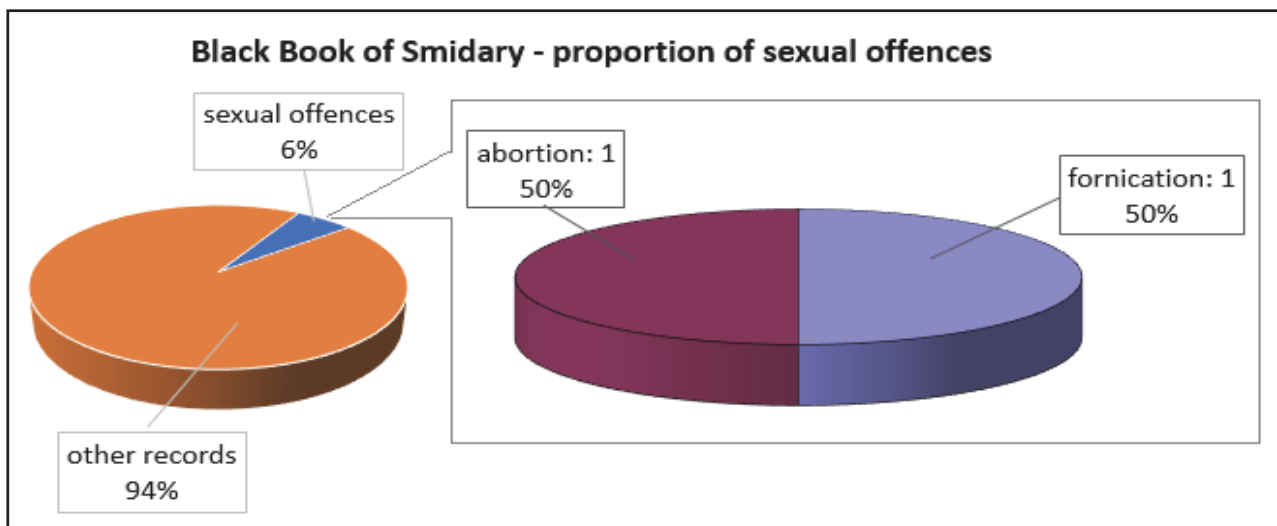


Black Book of Smidary 1631–1769²¹

Criminal offence	Type of record	No.	Date	Punishment
fornication	court record	-	26.7.1636	W: whipping and exile from the town
abortion	court record	-	21.4.1750	set in shackles

Total number of entries: 34

Number of entries about sexual offences: 2



²¹ Edition used: LÁNY, *Knihá černá jinak smolná města Smidar*.

In the end, it is necessary to highlight and summarize some facts. The age of feudalism knew quite many sexual offences, but their range and variety depended on the proportions of the city, its size and focus, which means the number of sexual offences rises significantly in cities where more men are present, for example mining cities. Among the most common moral offences were adultery, fornication and rape, related offences, abortion and murder of a newborn. Moral offences were often committed along with other types of crime, possibly combined with each other, so much more severe punishments were often imposed. In comparing the cities, the observance of uniform procedural principles and similar types of punishment are obvious, but within a single city, penalties in very similar cases are very different. This phenomenon is related to changes in the composition of the court, and perhaps also to the circumstances of each particular case. This means that the principle of justice was expressed, at least to the extent that it was possible in the given period, but not necessarily in an objective manner.

Another aspect that is worth mentioning is the fact that this group of crimes is a latent one and, just as at present, the cases reported and solved were only a fraction of their actual number. It follows that their representation in society in relation to other types of crime was most likely much higher than it appears from the records. Also, the overall spectrum of crimes in the given period that were considered criminal or threats to society is interesting. Some of them are also punishable today, although today the offenders would no longer be subjected to the death penalty or another severe, physical punishment. On the other hand, some, such as homosexuality or fornication and adultery, are no longer perceived as crimes, and it is interesting to follow the development of their understanding in society.

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Abkürzungen:

Siehe das allgemeine Abkürzungsverzeichnis:
[<http://www.rechtsgeschichte.at/files/abk.pdf>]

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