

A detailed historical map of Bucharest, Romania, showing the city's layout in the 18th or 19th century. The map features numerous buildings, churches, and streets, with labels in Latin and Romanian. The title 'Towns between Empires' is overlaid in large white serif font. The background is divided into three horizontal color bands: yellow at the top, red in the middle, and blue at the bottom.

# Towns between Empires

Good Governance and “Police”  
in Case Studies from  
Transylvania, Wallachia, and Moldavia,  
1500s–1800s

*Edited by*  
Mária Pakucs-Willcocks and Julia Derzsi

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# Table of Contents

List of Figures and Tables	9
List of Acronyms	11
Introduction	15
<i>Mária Pakucs-Willcocks and Julia Derzsi</i>	

## Part I. *Respublica*—Political Constructs and Governance

1. Defending the Town's Interest: The Council of the <i>Centumviri</i> and the Administration of Justice in Early Modern Cluj	33
<i>László Pakó</i>	
2. Urban-Rural Relationship in the Light of Political Statutes at the End of the Sixteenth Century	51
<i>Julia Derzsi</i>	
3. The Main Square outside the Town Walls and the Ruling Elites of Alba Iulia at the End of the Sixteenth Century	69
<i>Emőke Gálfi</i>	

## Part II. Urban Elites and Nobility in Market Towns

4. A Salt-Mining Town in Transylvania: The Political Elite and Urban Governance of Dej between 1541 and 1600	91
<i>Anikó Szász</i>	
5. A Gold-Mining Town in Transylvania: The Political Elite of Baia Mare and the Structure of the Local Government in the Second Half of the Sixteenth Century	111
<i>Petra Mátyás-Rausch</i>	
6. <i>Residenza de nobili</i> : Nobility in the Administrative Structures of the Market Town of Caransebeș (Sixteenth-Seventeenth Centuries)	127
<i>Adrian Magina</i>	

### **Part III. Town Books and Town Statutes in Early Modern Transylvania**

7. Representations of the Urban Political Order in a Written Context: The First Protocol Book of Sibiu (1522–1565) 145  
*Mária Pakucs-Willcocks*
8. A Szekler Town in Transylvania: The Statutes and Town Book of Târgu Mureş in the Seventeenth Century 163  
*Árpád-Botond György*

### **Part IV. The Many Faces of the Urban Elites: Identity and Representation**

9. The Saxon Patriciate of Braşov in the Early Modern Period 183  
*Andor Nagy*
10. Medieval Urban Autonomy of Câmpulung Muscel and Its Realignment in the Modern Period 203  
*Ştefan Ionescu-Berechet*

### **Part V. Public Order and Public Safety in Towns**

11. Keeping the City Alive: Managing Public Health Crises in the First Half of the Eighteenth Century in Sibiu 227  
*Oana Sorescu-Iudean*
12. Shaping a Phanariot Town: “Good Order” in Eighteenth-Century Bucharest 247  
*Constanţa Vintilă*
13. The Role of Police in the “Good Governance” of Iaşi from the Seventeenth to the Mid-Nineteenth Century 269  
*Dan Dumitru Iacob*
14. Scientific Expertise as a Tool for Urban Administration: Chemical and Bacteriological Analyses ordered by the Municipality of Bucharest, 1877–1914 289  
*Simion Câlţia*

Glossary of republican political terms in Transylvanian towns in the early modern period	311
Glossary of other historical terms	313
Bibliography	315
Index	331

# 1. Defending the Town's Interest: The Council of the *Centumviri* and the Administration of Justice in Early Modern Cluj<sup>1</sup>

László Pakó

**Abstract:** The study focuses on the role of the Council of the Hundred in the judicial activity of Cluj during the time of the Transylvanian Principality. The utilized primary sources—town protocols and tax registers—diverge from existing scholarship and show that in certain cases, despite the regulations, the Council of the Hundred did supervise judicial cases which involved other officeholders. Moreover, the centumvirate could overrule previous judges with the aim of preserving the privileges that granted free judicial practice to the town and preventing the interference of other municipalities. There was no conflict between the centumviri and the inner council, but rather a cooperation between the two governing bodies in order to conserve the town's self-governance and independent judicial control.

**Keywords:** Council of the Hundred, centumviri, Cluj, inner council, sixteenth century, town autonomy

Cluj, called *Transilvaniae civitas primaria* (“the capital city of Transylvania”) on a well-known engraving by Georg Hoefnagel from 1617, was one of the most influential towns of the Principality of Transylvania. As a royal town

1 This study was supported by the HTMKNP FAEK MTA National Program. A shorter version of the paper was published under the title: “Hatalmi konfliktus vagy testületi összefogás? A kolozsvári százférfiak tanácsa és a városi igazságszolgáltatás a 16. század második felében,” *Erdélyi Múzeum* 72, nos. 3–4 (2010): 73–87.

from 1316, then as a free royal town from nearly a century later (1405), it was an urban settlement, which in political, diplomatic, economic, and cultural terms competed with other important cities of the principality, such as Sibiu, Braşov, and Bistriţa. Based on medieval traditions but influenced by later political, religious, and economic changes, by the second half of the sixteenth century, the town had developed its own system of self-governance and jurisdiction. Apart from the princely authority, Cluj became independent of the influence of any other institution or jurisdiction of the principality. Thus, the community governed its affairs according to its own internal regulations. Having a mixed population of mainly Hungarian and Saxon citizens—equal in number from around the middle of the fifteenth century—all officeholders were elected based on a parity system introduced in 1458 that allowed equal representation for both ethnicities in the town government. The most important governmental and legislative body of the town was the Council of the Hundred (*centumvirátus*, *százférfiak tanácsa*; hereafter, the *centumvirate*), with its members elected equally from the two ethnic groups. The executive and judicial authorities that administered justice and managed the daily life of the city were members of the inner council, elected among the members of the assembly (hereafter, the *centumviri*). The two important offices of head judge (*judex primarius*, *főbíró*) and royal judge (*királybíró*, *judex regius*) were also filled by yearly rotation, meaning that if the first judge was Hungarian, then the royal judge was Saxon, and vice versa. The twelve jurors or sworn citizens (*senatores*, *esküdt polgárok*) of the town, forming the small or inner council, were elected on a similar basis—half of them Hungarians and the other half Saxons.<sup>2</sup>

In this study, I examine the role of the centumvirate in the administration of justice in Cluj in the second half of the sixteenth century, drawing primarily on data from the protocol book of the assembly sessions. Using the example of Cluj, Ágnes Flóra recently compiled a detailed examination of the functioning and jurisdiction of medieval and early modern city councils, both inner and outer councils alike.<sup>3</sup> Therefore, in the following, I will focus solely on the aspects of the topic that concern the centumvirate. According to the provisions of the local urban legislation, legal matters in Cluj, when

2 András Kiss, "Kolozsvár város önkormányzati fejlődése az 1458-as 'unióig' és kiteljesedése az 1568-as királyi ítélettel," *Erdélyi Múzeum* 59, nos. 3–4 (1997): 291–93. The town had two representative bodies: the small or inner council (also called the council of the sworn citizens in the sources) and the large or outer council (i.e., the council of the hundred, the council of the centumviri).

3 Ágnes Flóra, *The Matter of Honour: The Leading Urban Elite in Sixteenth Century Transylvania* (Turnhout: Brepols, 2019), 31–40.





Figure 1.1. Joris Hoefnagel, view of Cluj, print after copper engraving, 1618 (Georg Braun, *Theatri praecipuarum totius mundi urbium liber sextus*, 41, Cologne, 1618).



Figure 1.2. Franz Jaschke, The main square in Cluj, 1823, oleography (Collections of the National Brukenthal Museum, Sibiu, MNBS 2171).

brought to court, were resolved in first instance by the head judge and the royal judge, and in appeal by the sworn citizens. The centumviri had the task of establishing the juridical norms for the administration of justice, but we know of exceptional cases, when the centumvirate became involved in the judicial process, although the town privileges detailing the election and

authority of the assembly do not mention its judicial duties. In this regard, there is a statement from 1568 of the central court of justice of Transylvania, which, while clarifying the conflict between the Hungarian and the Saxon citizens of the town regarding the use of the main church and the town priest, also mentioned the centumvirate when describing the judicial system of Cluj. It emphasized once again that when a case was brought to the judicial court of Cluj, the first instance consisted of the head and the royal judges, and the instance of appeal was the council of the twelve jurors, whence a case had to be taken to the central court of justice of the principality—and not to the centumvirate.<sup>4</sup>

### **The *centumviri* and their role in the election of the judicial officials of the town**

Historical sources offer abundant information about the functioning of the centumvirate as a legislative body, its role in establishing the composition and regulations for the judiciary of Cluj, as well as specifying its members' duties and remuneration. Their exclusive right to elect the head judge and the twelve sworn citizens is known.<sup>5</sup> Their caution in the election of judges and jurors is illustrated by a decision from November 1586: the *centumviri* had decreed that the election of new members of the centumvirate should precede the election of the head judge and jurors by several days in order to give the new members time to reflect on the persons to be elected to the judiciary.<sup>6</sup> This is the reason why the centumviri rarely approved any attempt of an early retirement from office. For example, in June 1590 they complained because the prince of Transylvania had forced the head judge to stay in Alba Iulia for half a year. The centumviri argued that the extended absence of their head judge would not only delay the administration of justice and disrupt the work of the judiciary, it would also damage the reputation

4 Elek Jakab, ed., *Oklevéltár Kolozsvár történetéhez* (Budapest, 1888), vols. 2–3: 88 (doc. XLI).

5 Elek Jakab, ed., *Oklevéltár Kolozsvár története első kötetéhez* (Buda, 1870), 192–93 (doc. CXV), 280–85 (doc. CLXXVII), 379–83 (doc. CCXLII); Jakab, *Oklevéltár* vols. 2–3: 133–37 (doc. LXV). For literature see András Kiss, “Primăria municipiului Cluj-Napoca,” in *Îndrumător în Arhivele Statului: Județul Cluj* (Bucharest: Arhivele Statului, 1985), vol. 2: 61–64; Kiss, “Kolozsvár város,” 293–97; László Blazovich, “A budai jog és Kolozsvár egy 1488-as oklevél alapján,” in *Városok és városlakók*, ed. Ionuț Costea et al. (Cluj-Napoca: Argonaut, 2006), 343–44; Flóra, *The Matter of Honour*, 63–68.

6 Serviciul Județean al Arhivelor Naționale (Romanian National Archives, hereafter SJAN) Cluj, Primăria orașului Cluj (Town Hall of Cluj, hereafter POC), Protocoale de ședință, I/5, 20.

and authority of the judge and endanger the peace of the entire urban community.<sup>7</sup> In April 1578, the head judge and the centumviri resorted to the same arguments when they forbade certain sworn citizens from leaving Transylvania for personal trading purposes, arguing that their departure would impede both the functioning of the city governance and the judiciary.<sup>8</sup>

In the event that the departure of a head judge or a royal judge was unavoidable, the centumviri had to appoint a substitute (*hagyott bíró, substitutus*) to fill their place. In 1652, for instance, a prisoner tried to postpone his trial with the excuse that the judge was ill, but the centumviri rejected his attempt, replying that a substitute judge could oversee the proceedings.<sup>9</sup> In the event that a royal judge were to pass away, the centumviri would decide upon his successor as well. One centumvirate decision, dated June 4, 1602, emphasized that the duties of a deceased royal judge had to be assigned to the next sworn citizen from his ethnicity (i.e., Hungarian or German) in rank. The other jurors were also called upon to support the smooth transition of office and to prevent lapses in the administration of justice.<sup>10</sup>

The centumviri also intervened in cases of disagreement between the head judge and the sworn citizens. In May 1571, they called upon the judge and the jurors to end one such disagreement: the judge was asked to direct the activity of the jurors without giving cause for dispute, while the sworn citizens were reminded to follow the instructions of the head judge unconditionally and to be present when summoned without delay. The following year, at the renewed request of the head judge, the centumviri again warned the sworn citizens and made their departure from the town dependent on the judge's permission. The balancing of the complex relationship between the judge and jurors required continued attention from the centumviri, which is why similar decisions were made in 1575, 1585, and 1592, as well.<sup>11</sup>

The centumviri were also responsible for creating the oath of office for town officials, with special reference to the judicial duties of the head judge, the sworn citizens, and the town notary.<sup>12</sup>

7 SJAN Cluj POC, Protocoale de ședință I/5, 75.

8 SJAN Cluj POC, Protocoale de ședință I/3, 165<sup>v</sup>–166.

9 SJAN Cluj POC, Protocoale de judecată II/19, 71.

10 SJAN Cluj POC, Protocoale de ședință I/5, 207; Sándor Kolosvári and Kelemen Óvári, eds., *Corpus statutorum Hungariae municipalium: A magyar törvényhatóságok jogszabályainak gyűjteménye* (Budapest: Magyar Tudományos Akadémia, 1885), vol. 1: 248–49.

11 SJAN Cluj POC, Protocoale de ședință I/3, 39, 54<sup>v</sup>, 115<sup>v</sup>, 116<sup>v</sup>, 118–119; I/5, 6<sup>v</sup>, 94<sup>v</sup>.

12 SJAN Cluj POC, Protocoale de ședință I/3, 263<sup>v</sup>; Elek Jakab: *Kolozsvár története*, vol. 2 (Budapest: Magyar Királyi Egyetemi Könyvnyomda, 1888), 199; SJAN Cluj POC, Protocoale de ședință I/3, 264<sup>v</sup>; Jakab, *Kolozsvár*, 198.

In certain areas, the duties of the centumviri overlapped with those of the judges and the jurors, such as in the appointment of notaries and procurators (*prokátorok*) and the supervision of their activity. In May 1582, after the town notary left office, the centumviri could not reach a decision among the many suitable candidates; therefore, they asked the head judge and the jurors to choose “the one who seems to be the best and most appropriately versed in this profession.”<sup>13</sup> The position was offered to Gergely Diósi, who remained in office until his death in 1596. Explaining why the centumviri decided to leave the appointment of the town notary to the judge and the jurors, an entry in the protocol book noted: “Since the notary has to attend to the council and the judge all the time, they should choose the person whom they deem worthy and satisfactory.” The centumviri were involved both in the inauguration of the chosen notaries and in the drafting of their instructions as well. In early 1596, for instance, the judge and the jurors appeared in front of the centumviri together with the elected town notary, where they read aloud the instructions for the notary, after which he took the oath and was installed in his office.<sup>14</sup> The centumviri were the ones who intervened in 1570 as well, when the town notary wanted to resign his office, and they firmly requested he carry out his one-year mandate.<sup>15</sup>

For the efficient and unimpeded operation of the judiciary, the centumviri urged the hiring of scribes to assist the town notaries and to fill in if the latter were absent or ill. In certain cases, as at the end of September 1604, they could also request the head judge to suspend the activity of the judiciary so the notary could assist in the preparation of the town’s annual accounts.<sup>16</sup>

The centumviri took on a similar role in the case of procurators employed in the service of the town. These procurators were members of the intelligentsia familiar with the legal system, the laws, and the statutes of the principality and of the town, who were hired usually for a one-year period by the town magistrate. They had to represent the town in trials at different levels of the judicial system of Transylvania, and in trials started *ex officio* at the local court against those who endangered the internal peace of the town.<sup>17</sup> In selecting these procurators, on certain occasions the centumviri entrusted the head judge and the jurors to appoint them, on other occasions they made the choice themselves. There were even cases when they made

13 SJAN Cluj POC, Protocoale de ședință I/3, 253<sup>v</sup>.

14 SJAN Cluj POC, Protocoale de ședință I/5, 139, 139<sup>v</sup>.

15 SJAN Cluj POC, Protocoale de ședință I/3, 4.

16 SJAN Cluj POC, Protocoale de ședință I/5, 158.

17 On more data about the town procurators of Cluj, see: László Pakó, “Prokátorok Kolozsváron a 16. század utolsó évtizedeiben,” *Certamen* I (2013): 251–255.

a joint effort in appointing these town representatives.<sup>18</sup> Regardless of who chose the procurators, the centumviri always monitored their activity.

The same occurred in the case of procurators who did not represent the town itself but rather private individuals before the law. The town statute of 1577, which incorporated regulations about the judicial process as well, was drafted by the judge and the sworn citizens, but the centumviri reviewed it and requested changes in the articles concerning the procurators.<sup>19</sup> Yet again, there were occasions when the centumviri made sole decisions on matters regarding procurators: they forbade local procurators from representing foreigners before the law, ordered them to pay damages if their client suffered a loss through their own fault, or limited the extent of their financial claims.<sup>20</sup>

The centumviri were instrumental in the supervision of the *directores causarum* (the modern-day public prosecutors; hereafter, the directors), the town's legal representatives who, in accordance with their writ, initiated legal proceedings against public offenders, in addition to acquiring and managing, on the town's behalf, the property of townspeople who died without heirs. Thus, the directors played an important role both in the area of public safety and in financial matters on behalf of the city. They were elected from the ranks of the centumviri, who also appointed their advisers and assigned them their duties.<sup>21</sup> The directors were called upon in numerous situations to take action against those accused of fornication, adultery, murder, blasphemy, disturbing the public order, bothering town officials, breaking and entering, smuggling foreign wine into town, defecting to the enemy, and finally all those who, having committed capital crimes, "are not worthy of being in the community of the virtuous."<sup>22</sup> As protectors of the town's assets, the directors were often called upon to deal with those who failed to pay their taxes or other town debts and were constantly encouraged to obtain for the town the property of townsfolk who died without heirs.<sup>23</sup>

The centumviri decided on matters concerning town employees as well, including the executioners and their assistants and the town bailiffs

18 SJAN Cluj POC, Protocoale de ședință I/5, 5<sup>v</sup>, 31, 184<sup>v</sup>.

19 SJAN Cluj POC, Protocoale de ședință I/3, 147; I/5, 243.

20 SJAN Cluj POC, Protocoale de ședință I/3, 8<sup>v</sup>.

21 SJAN Cluj POC, Protocoale de ședință I/5, 158.

22 László Pakó, "A kora újkori kolozsvári jogügyszakgatók perindítási hatásköréről," in *Közösségben közösségért: Tanulmányok Kiss András születésének 100. évfordulójára*, ed. Ágnes Flóra and László Pakó (Cluj-Napoca: Erdélyi Múzeum-Egyesület, 2023), 242–44.

23 Pakó László, "Zur Rechtspflege und Vermögensverwaltung im Siebenbürgen des 16.–17. Jahrhunderts: Fiskaldirektoren im frühneuzeitlichen Klausenburg (1584–1660)," *Ungarn Jahrbuch: Zeitschrift für Interdisziplinäre Hungarologie* 34 (2019): 79–80; Pakó, "A kora újkori," 244–46.

(*poroszlók*). They set their salaries and paid for their clothes, for the construction or renovation of their houses, and even for their firewood. They also gave assistance in personal matters, such as in 1591, when the centumviri paid a ransom to free the executioner's wife and child.<sup>24</sup> They also decided that the servants who carried out court summonses should remain under the authority of the bailiff, and not of the head judge. However, the proceedings would have to be reported to the town council.<sup>25</sup>

## The urban administration of justice and its legal scope

The council of the centumviri, together with the head judge and the sworn citizens, drafted and issued statutes and resolutions concerning the legal procedures for the administration of justice in Cluj. Just to mention the most important ones, the centumviri participated in the writing and issuing of statutes in the following years: 1513, 1537 (with nearly 50 articles), 1577, 1578 (about the punishment of fornicators), 1585 (12 articles), and 1588 (the most detailed code of legal procedures).<sup>26</sup>

Several entries in the protocol book of the centumviri meetings illustrate how long and drawn-out the process of drafting a regulation could be. In early 1584, the centumviri mandated that the “elected leaders” write “proper laws for the town,” emphasizing that as soon as

this fine and useful work was done, to bring it forth to the town [leaders], and at last, when all things are considered, if the booklet of law is clean and approved, we should have it confirmed by His Highness [i.e., prince of Transylvania] to have and abide within our community for all time.<sup>27</sup>

The work on the statute was protracted, as on January 5, 1585, the centumviri asked the head judge to urge the eight individuals entrusted with the work to finalize “the articles of law.” On January 23, the work was still proceeding, as the centumviri had stated that until they were informed about the

24 SJAN Cluj POC, *Protocoale de ședință* I/3, 213; SJAN CJ POC, *Socoteli* 3/V, 14; 3/XVIII, 21, 40; 3/XXII, 53, 56; 6/XVII, 232; 5/I, 9.

25 SJAN Cluj, *Protocoale de ședință* I/5, 8<sup>v</sup>; Kolozsvári and Óvári, *Corpus Statutorum*, I, 206.

26 Kolozsvári and Óvári, *Corpus Statutorum*, I, 186–95, 202–4, 210–31. Elek Jakab, ed., *Oklevéltár Kolozsvár története I. kötetéhez* (Budapest: Magyar Királyi Egyetem Nyomdája, 1870), 379–83 (doc. no. CCXLII). Elek Jakab, eds., *Oklevéltár Kolozsvár története II. és III. kötetéhez* (Budapest: Magyar Királyi Egyetem Nyomdája, 1888), 133–37 (doc. no. LXV); Kiss, “Kolozsvár város,” 294.

27 SJAN Cluj POC, *Protocoale de ședință* I/4, 11.

new and approved articles, the “head judge should refrain from any final decision in lawsuits.”<sup>28</sup> It was at their February 6 session that the centumviri finally got the chance to read through the new articles and to adopt them. They immediately ordered the judge and the council to administer justice according to the new law and to have its provisions observed by all litigants.<sup>29</sup>

There were situations when the judge and the jurors tried to modify the legal procedures without the approval of the centumviri, but these attempts were met with fierce opposition. In a March 1570 decree, the centumviri stated that they had no intention of interfering in the judicial process but nevertheless objected to the judge and jurors enacting a new statute without their consent.<sup>30</sup>

These two cases presented in detail reveal the balance of powers within the town of Cluj, where the judges, the sworn citizens, and the centumviri were all involved in the shaping of judicial activity in the town, while all parties were vigilant in ensuring that their authority was not undermined.

## The centumviri as overseers of judicial activity

In addition to electing the judiciary and contributing to the drafting of statutes and legal procedures, the centumviri also monitored the administration of justice and intervened when necessary. According to article 12 of the 1537 municipal statute, if the centumvirate made a decision the judge and town council had to respect and execute it by all means.<sup>31</sup> Compliance with this regulation was not always a given: in April 1561, for instance, the centumvirate declared that they would no longer respond to the judges’ summons if said judge persisted in refusing to carry out the centumvirate’s decisions.<sup>32</sup>

Several resolutions of the assembly show that the centumviri intervened in questions regarding the administration of justice as well. In one case they requested the head judge to settle a dispute between two townspeople over a house, while in another case they urged the judge to reach a verdict in a trial that had stalled in the evidentiary stage. In yet another case, the centumviri warned the judge to sentence some soldiers serving in the town

28 SJAN Cluj POC, *Protocoloale de ședință* I/5, 2, 3v.

29 It is not clear whether this princely confirmation took place. SJAN Cluj POC, *Protocoloale de ședință* I/5, 5, 5<sup>v</sup>.

30 SJAN Cluj POC, *Protocoloale de ședință* I/3, 7<sup>v</sup>, 8–8<sup>v</sup>.

31 Jakab, *Oklevéltár* I, 381–82 (doc. no. CCXLII); Jakab, *Oklevéltár*, II–III, 135–36 (doc. no. LXV).

32 Jakab, *Kolozsvár története*, 126.

who were fighting and slinging swords at one of the town's gate.<sup>33</sup> They also asked the head judge to sentence an individual who rebelled against the town officials and the town law by shouting: "Damned be whoever works in the vineyard of a centumvir!"<sup>34</sup> When the shepherds of Feleac (a nearby village under the jurisdiction of Cluj) attacked a sworn citizen, it was the centumviri who instructed the head judge to arrest the culprits and to bring them to justice. They wanted to demonstrate that no attack against town officials would be tolerated, especially from a tenant peasant. In a similar case, when head judge Antal Ferenci informed them of the disgrace he had to endure, the centumviri ordered him to appoint a deputy judge in his place and to file a lawsuit against his offender through the town procurators. That same year, the centumviri intervened to protect Cluj officials a third time as well. They admonished the judge and the sworn citizens not to overlook an attack on a bailiff on duty collecting taxes, because "the fact concerns the dignity of our town." On other occasions, the centumviri intervened with the head judge, requiring the trial of a fishermen's wife who had assaulted the market judges and the punishment of a person who had leaked secrets of the council. There were times when, in order to protect the judicial privileges of Cluj, the head judge was asked to prosecute individuals collecting witness evidence without a mandate (*compulsoria*).<sup>35</sup> In 1604, the centumviri stepped in because the prisoners held in the prisons were starving to death due to delays in trials. They instructed the head judge and the council to follow the provisions of the town statutes on legal procedures.<sup>36</sup>

The head judge was often asked to punish troublemakers, drunkards disturbing the peace, mask-wearers, card and dice players, rowdy and loud individuals, or people caught fornicating.<sup>37</sup> The sale of houses or town lots also had to be closely supervised by the head judge. In May 1592, the centumviri decreed that the judge had to summon and punish all townsfolk

33 SJAN Cluj POC, Protocoale de ședință I/3, 24, 136<sup>v</sup>, 67<sup>v</sup>.

34 SJAN Cluj POC, Protocoale de ședință I/1, 61.

35 SJAN Cluj POC, Protocoale de ședință I/3, 173, 173<sup>v</sup>, 175<sup>v</sup>–176, 138, 214<sup>v</sup>, 217<sup>v</sup>.

36 SJAN Cluj POC, Protocoale de ședință I/5, 240, 241.

37 Several decisions of this kind are recorded in the protocol book: SJAN Cluj POC, Protocoale de ședință I/3, 143; I/4, 3, 15, 15<sup>v</sup>; I/5, 2, 3, 6, 21<sup>v</sup>, 22, 31, 35<sup>v</sup>, 49<sup>v</sup>, 61<sup>v</sup>, 63, 64<sup>v</sup>, 84, 88, 105, 106–106<sup>v</sup>, 111<sup>v</sup>, 113<sup>v</sup>, 115, 116, 116<sup>v</sup>, 122<sup>v</sup>, 137<sup>v</sup>–138, 146<sup>v</sup>, 148<sup>v</sup>, 154, 156<sup>v</sup>, 183–183<sup>v</sup>, 248; I/6, 7. From issues arising from disregard of thereof: Jakab, *Kolozsvár története*, 113–14, 187–88; András Kiss, "Farsangolás Kolozsvárt—1582-ben," in *Források és értelmezések*, ed. András Kiss (Bucharest: Kriterion, 1994), 103–9. Gyöngy Kovács Kiss, "A játékos város," in *Megidézett múlt*, ed. Gyöngy Kovács Kiss (Cluj-Napoca: Komp-Press, 2008), 9–26; Gyöngy Kovács Kiss, "Pletyka, becsületsértés, rágalmazás a fejedelemség kori Kolozsváron," in *Megidézett múlt*, ed. Gyöngy Kovács Kiss, 27–41. SJAN Cluj POC, Protocoale de ședință I/1, 13, 161<sup>v</sup>, 249<sup>v</sup>; Jakab, *Kolozsvár története*, 114.



who intended to sell their houses to nobles from the countryside and not to fellow citizens.<sup>38</sup>

The 100 men voiced their disagreement with the activity of the judge and the sworn citizens as well. In February 1578, they declared that the judge and jurors were not only given the power to punish crime, they were also expected to fulfill their obligations to the fullest.<sup>39</sup>

The centumviri had the authority to assign new duties to the judges and sworn citizens. In 1558, they requested them to erect a pillory and wheel to scare off potential offenders,<sup>40</sup> while in 1586, they warned local authorities to be vigilant and not allow the county to extend its authority over the city under the pretext of investigating criminals taking refuge there.<sup>41</sup> They instructed the judges to keep an eye on the procurators,<sup>42</sup> but also warned to them to keep the old rules and not to take money from them.<sup>43</sup> Furthermore, in this respect the centumviri admonished the judges when they charged too much judicial tax from the litigants, arguing that this affected the prestige of the town's authority.<sup>44</sup>

There are cases in which the centumviri vetoed the decisions of the judge and jurors or at least tried to sway them in favor of a more moderate point of view. In May 1572, they did not allow a judge to be represented by a procurator because the centumviri thought that the case required the personal presence and decision of the head judge. A few years later, in 1581, the judge was asked by the centumviri not to stir up new hostilities in retaliation for his grievances.<sup>45</sup>

The centumviri oversaw the activity of the procurators as well, reminding them repeatedly to follow the old statutes of Cluj and not to overcharge their clients. In January 1592, the centumviri admonished the judge and jurors to watch over the procurators because there were many complaints being made against them. In March 1604, the procurators were warned directly not to ask for futile adjournments.<sup>46</sup> Similar attention was given

38 SJAN Cluj POC, *Protocoloale de ședință* I/5, 95; László Pakó, "Városi polgár—vármegyei nemes? Nemesek ingatlanszerzése Kolozsváron a fejedelemség korában," in *A reneszánsz Kolozsvár*, ed. András Kovács and Gyöngy Kovács Kiss (Cluj-Napoca: Erdélyi Múzeum-Egyesület, 2008), 232.

39 SJAN Cluj POC, *Protocoloale de ședință* I/3, 161.

40 SJAN Cluj POC, *Protocoloale de ședință* I/1, 16<sup>v</sup>; Jakab, *Kolozsvár története*, 114.

41 SJAN Cluj POC, *Protocoloale de ședință* I/5, 13<sup>v</sup>.

42 Such were instructions given in 1570, 1580 and 1592. SJAN Cluj POC, *Protocoloale de ședință* I/3, 18, 88, 207; I/5, 89.

43 SJAN Cluj POC, *Protocoloale de ședință* I/3, 6, 8<sup>v</sup>, 18.

44 SJAN Cluj POC, *Protocoloale de ședință* I/3, 29<sup>v</sup>; Jakab, *Kolozsvár története*, 134.

45 SJAN Cluj POC, *Protocoloale de ședință* I/3, 63, 240<sup>v</sup>.

46 SJAN Cluj POC, *Protocoloale de ședință* I/5, 89, 236.

to the bailiffs and the guards, who were disciplined if their behavior was deemed unsatisfactory.<sup>47</sup>

The centumviri also had crucial influence over the administration of justice by imparting advice to the judiciary in unclear cases or by drafting decisions with legal authority in the event of a legal vacuum. In 1570, at the request of the head judge, the centumviri offered counsel that in the event of a person suffering injury, the initiation of proceedings fell under the responsibility of the injured party—and not the city.<sup>48</sup> Due to a lack of applicable law, the centumviri introduced new procedural decisions as well in the case of two individuals sued by the town's procurator for debt.<sup>49</sup> In 1579, the centumvirate, convened at the request of the sworn citizens, and decided to start proceedings against a reappointed but corrupt procurator of the town.<sup>50</sup> If conflict arose from a hasty arrest or prosecution, the judges and the council would turn again to the centumviri for instructions. For example, the centumviri advised one judge not to try to reach an agreement with a wrongfully arrested person because a retrial was anticipated, under which circumstances they were willing to shift the burden of unlawful arrest onto someone else. In many cases, it is likely that the judges and sworn citizens implicated the centumviri so that the responsibility for making uncertain decisions did not fall solely on their own shoulders. The centumviri also stood by the judges and the jurors in cases when they were accused of misconduct even in cases when their decisions were correct. In April 1580, for example, the judge and jurors summoned the centumviri to their side against Gergely Balásfi whose goods had been pledged for unpaid debts and who threatened retaliation at the princely court.<sup>51</sup>

The cases presented so far show that centumviri lived up to the role assigned to them by legal custom: they took part in appointing the judge and

47 SJAN Cluj POC, *Protocoale de ședință* I/4, 4<sup>v</sup>.

48 The case shows that in 1570's criminal trials in Cluj could still only be started by a private person, not *ex officio*. However, the fact that the judge asked for further advice on this matter indicates that in this respect the attitude of the officials was changing. See András Kiss, "Ante Claram Bóci (Egy 1565-beli ismeretlen kolozsvári boszorkánypyer)," in *Más források—más értelmezések*, ed. András Kiss (Târgu Mureș: Mentor, 2003), 301; SJAN Cluj POC, *Protocoale de ședință* I/3, 27<sup>v</sup>.

49 The entry in the protocol book does not offer details on the case: SJAN Cluj POC, *Protocoale de ședință* I/5, 94.

50 SJAN Cluj POC, *Protocoale de ședință* I/3, 184–184<sup>v</sup>.

51 SJAN Cluj POC, *Protocoale de ședință* I/3, 189<sup>v</sup>, 218–18<sup>v</sup>. Balásfi had been litigating with his cousins since 1579 over family charters and possessions, but we cannot ascertain whether the pledged goods from Cluj were connected to the family feud. See Zsolt Bogdándi, "A kolozsvári Balásfiak. Egy deákcsalád felemelkedése a 16. században," *Református Szemle* 6 (2003): 809.

jurors and were actively involved in regulating, supervising, and assisting them in their duties, in drafting legislation, and in ensuring legal unity and continuity.

### The centumviri as conflict mediators

The protocol books of the centumviri record entries for situations when they took on a role outside their statutory authority. In January 1585, the centumviri were presented with the case of head judge Gáspár Herceg, who sold foreign wine in Feleac. Because the village was under the jurisdiction of Cluj, his actions were against the town's ban on importing and selling wine,<sup>52</sup> so the judge had to be punished. Since he was the one who usually administered justice, the case was discussed by the centumviri. The culprit swore that he was not aware that the ban was valid in Feleac as well, but his ignorance was not accepted as a defense, and he was fined double the usual sum on account of his office.<sup>53</sup> The centumviri accepted the task of sentencing in this case, although in a similar situation from 1570 they had decided otherwise. Then a certain citizen had imported wine against the law, but the head judge and council decided that the case concerned the privilege of the town, so it had to be solved by the centumvirate. The centumviri, however, returned the decision to the elected officials, arguing that they were elected to defend the city's liberties.<sup>54</sup> The crucial difference between the two situations was more likely the person of the head judge of Cluj himself.

The more problematic cases for the centumviri were when they had to settle disputes between town officials. In 1588, the centumvirate had several sessions involving the case of György Túri, a sworn citizen and tithe collector, who appropriated a quarter of the tithe donated by Queen Isabella to the town school and hospital. The centumviri tried to force Túri to surrender the money and, at the same time, wanted to remove him from office. They probably even arrested him. However, Túri complained to the queen, who ordered the town of Cluj to come to the court of her personal presence. On the other hand, the centumviri instructed the town delegates to take the matter to the Transylvanian central court of law, i.e., to the Princely

52 László Pakó, "Bor, kocsmá és emberölések a kora újkori Kolozsváron," *Urbs: Magyar Várostörténeti Évkönyv* 16 (2022): 274–76.

53 SJAN Cluj POC, *Protocoloale de ședință* I/5, 4<sup>v</sup>–5.

54 SJAN Cluj POC, *Protocoloale de ședință* I/3, 3<sup>v</sup>.

Table (*tabula*), and not directly to the queen's personal presence, and to let them know that Túri "called the judge a thief and made other unpleasant insults." At the same time, the delegates were instructed to ask the queen to allow the case to continue before the town magistrate because Túri had insulted the head judge.<sup>55</sup> We do not know whether the trial took place in front of the town judge, and if so, who took over the role of adjudicator from the aggrieved judge. It is certain, however, that on April 21, 1561, the king, John II Sigismund, ordered Túri to return the quarter of the tithe to the town judge and jurors of Cluj for its intended purpose.<sup>56</sup> In 1588, Katalin András wanted to summon the head judge of Cluj and two centumviri to the queen's court. The centumvirate intervened and instructed the judge and the sworn citizens that two persons chosen from their ranks should plead with the queen to respect the old judicial privileges and statutes of Cluj. We do not know the outcome of the intercession, nor who judged the case of the accused head judge of Cluj. What is clear, however, is that in this case, too, the centumviri sought to ensure that trials against town officials would not be brought before any other court, even if the defendants were those responsible for administering justice in the town. Furthermore, in a session of the centumviri from the beginning of 1589, they decided that the delegates should urge the queen, in the future, not to allow any cases from Cluj in her court that were taken there in contravention of the town's statutes.<sup>57</sup>

András Ötvös, an active member of the Cluj establishment, having been a member of the centumvirate since 1575 and having been employed in the service of the town in several guises,<sup>58</sup> was suspended in 1587 from the centumvirate because he was a suspect in an attempted murder.<sup>59</sup> The decision, although made in accordance with the 1537 statute of Cluj, had its opponents, but the centumviri did not change their mind even after the parties made peace. The centumviri argued that the compromise made it possible to avoid legal punishment but did not prove Ötvös's innocence.<sup>60</sup> In reaction to the decision, Ötvös sued the centumviri. After a period of uncertainty, the centumviri decidedly rejected the application, stating that

55 SJAN Cluj POC, Protocoale de şedinţă I/1, 21, 22, 23, 52.

56 Jakab, *Oklevéltár II–III*, 67 (doc. no. XXXV).

57 SJAN Cluj POC, Protocoale de şedinţă I/1, 24v, 26v.

58 Pál Binder, *Közös múltunk: Románok, magyarok, németek, délszlávok feudalizmus kori falusi és városi együttéléséről* (Bucharest: Kriterion, 1982), 289; SJAN Cluj POC, Protocoale de şedinţă I/5, 24<sup>v</sup>–25.

59 SJAN Cluj POC, Protocoale de şedinţă I/5, 26<sup>v</sup>; Jakab, ed., *Oklevéltár I*, 380 (doc. no. CCXLII).

60 SJAN Cluj POC, Protocoale de şedinţă I/5, 29<sup>v</sup>; I/3, 178<sup>v</sup>.

neither the laws of the country nor the customary law of Cluj permitted such an action. Moreover, the senior centumviri were not aware of such a case in which “a private person summoned the centumvirate, and as a consequence the entire community, in front of the judge and council.” They explained that the centumviri, the head judge, and the council of the sworn citizens were a common body (*corpus*) in charge of protecting the town liberties together, and whoever was wronged by the *corpus* should “summon them where the laws of the country and the custom of the town summoned the community.” The decision regarding Ötvös was that he was a person who had sinned against the unity of the town and that he should be sued by the town officials. In the end, Ötvös took the entire government of Cluj to the princely court, where in May 1588 the process ended: the prince acknowledged the legitimacy of the decisions of the town officials but nevertheless instructed the head judge to take steps towards allowing Ötvös back into the centumvirate. At present, we do not know whether András Ötvös really proved his innocence before the prince and in the presence of the envoys from Cluj and whether they were forced to reinstate him among the centumviri by princely order.<sup>61</sup>

Presumably encouraged by this decision, Kálmán Nyíró, former head judge, royal judge, and sworn councilor, made an attempt as well to return to the centumvirate in 1588. He had been expelled from the town council in 1582 when it became public knowledge that he had impregnated two servants, as a result of which the council itself initiated legal proceedings and demanded punishment.<sup>62</sup> In 1588, Nyíró argued that his conviction was unlawful and asked for it to be annulled. The centumvirate dealt with the case themselves and examined the verdict but found it justified, so they rejected Nyíró's request.<sup>63</sup> Thus, the centumvirate deliberated over a judicial sentence, something that was not within their purview.

In 1590, the centumviri were confronted with a similar situation. Four sworn councilors requested centumvir Gergely Bornemissza and his wife be punished. According to the charges, the jurors fined them 20 florins for

61 SJAN Cluj POC, Protocoale de ședință I/5, 34<sup>v</sup>, 38<sup>v</sup>–39, 40–40<sup>v</sup>, 41, 41<sup>v</sup>, 42<sup>v</sup>.

62 András Kiss, *Boszorkányok, kuruzslók, szalmakoszorús paráznák* (Cluj-Napoca: Kriterion, 2004), 80–96.

63 They argued that since Nyíró had asked the prince for clemency in 1582, before the sentence was passed, he had effectively admitted his guilt. His exclusion from the town council was therefore considered justified. They were only prepared to agree to his reinstatement to the council if the prince declared that the pardon would restore the guilty party's honor, despite the town's rules. The prince, however, gave an evasive answer. Protocoale de ședință I/5, 46<sup>v</sup>, 48; Kiss, *Boszorkányok*, 36.

illegal wine sales, while in response the wife accused several of the sworn councilors of embezzling fines and engaging in illegal wine sales.<sup>64</sup> The centumviri decided that anyone who addressed the sworn councilors with “shameful speech or words” would be fined without exception. Furthermore, they stated that “if an honorable man mocks and reviles the entire council in a manner of a common man,” then a councilor who was not present at the incident should be placed as judge. Moreover, because the council of jurors was the instance of appeal, it was decided that if there were not sufficient unscathed councilors left to render the judgment on appeal, then a number of centumviri should be appointed with the consent of the prince to administer justice.<sup>65</sup> The centumviri were well aware that their decision contradicted the town statutes; otherwise, they would not have made this solution subject to the approval of the prince, but they tried to solve the predicament on their own, without the involvement of an outside authority. Their indecision would suggest that the situation was unusual for them, and it is plausible that they were more interested in settling the conflict quickly rather than applying their decision. In this regard, there were several attempts to reconcile Gergely Bornemissza and the councilors without recourse to trial, and the centumviri pleaded with the head judge to avoid reference to legal proceedings in this case, especially with the prince. The aggrieved sworn councilors, however, did not give in, so the centumviri declared that they would seek a legal way to enforce their decision, although the request was against the town regulations.<sup>66</sup> The sentence of the centumviri was delayed as they repeatedly postponed the appointment of the right persons to finalize the case.

64 SJAN Cluj POC, Protocoale de ședință I/5, 61–61<sup>v</sup>.

65 The principle of impartiality, referred to above, was not applied in the present case. Protocoale de ședință I/5, 61<sup>r-v</sup>. In the judicial practice of Cluj, we found no traces of the “impartial” courts of the Upper Hungarian League of Towns or of the Union of Market Towns of Western Transdanubia. The examples of Košice, Kőszeg, and other towns show that the right to decide on defamation cases against town councils was entrusted to ad hoc tribunals without executive powers, thus enforcing the principle of impartiality. Article 53 of the Diet of 1659 legalized this practice, stating that “if the whole council is interested, other judges from neighboring towns (...) should be summoned in full number to hear such a case.” See István Bariska, István Bariska, “Bűn és büntetés a pártatlan bíróság és Kőszeg 15–17. századi büntető fórumain” *Győri tanulmányok* 24 (2001): 5–7; István H. Németh, *Várospolitika és gazdaságpolitika a 16–17. századi Magyarországon: A felső-magyarországi városszövetség* (Budapest: Gondolat kiadó, 2004), vol. 2: 199–200. In the case of Cluj, the role of a similar institution could have been played by the court of the University of Saxons, but the growing desire of Cluj to become independent from the union of the Saxon towns in the second half of the sixteenth century was a major obstacle to the operation of such an institution.

66 SJAN Cluj POC, Protocoale de ședință I/5, 61–61<sup>v</sup>; 64<sup>v</sup>; 66–66<sup>v</sup>, 71.

We do not know the outcome of this case, but it is likely that a lengthy procedure followed.

## Conclusions

The cases discussed in this study nuance our understanding of the role of the centumviri in the administration of justice in early modern Cluj. They closely monitored the town's judiciary and officials, and if the situation required it, they intervened decisively in reaching a sentence. In the case of András Ötvös, for example, both the head judge and the sworn citizens acted only with the approval of the centumviri, and it was the centumviri themselves who stopped Ötvös's lawsuit, arguing that it was contrary to the town statutes. The case of Kálmán Nyíró shows that, if they saw the need to do so, the centumvirate also undertook to review previous court sentences. In cases of illegality committed by members of the magistrate, the centumviri initiated judicial action against them directly. Both the case of centumvir Gergely Bornemissza, his wife, and the aggrieved jury citizens and that of the head judge who sold illegal wine show that in order to preserve city privileges, the centumviri also made decisions concerning the administration of justice that did not necessarily fall within their competence. The principle of impartiality was not applied consistently: if in the Ötvös case it was emphasized that the town's judges could not rule when a centumvirate was the defendant, in the Bornemissza case the centumviri no longer refused to preside in a case where the plaintiff was a sworn citizen.

In complicated juridical situations, the centumviri repeatedly turned to the central authority—as acquiring the prince's prior approval both in their decision in the case of András Ötvös and their intervention in the Bornemissza case attest. In 1593 as well, they asked the prince for guidance in the questions of princely pardon and recognition of innocence. However, they received no definite answer in either case. Presumably, the central authority was wary of making a decision that, in addition to interfering with the political order of the city and the balance of power between the town's institutions, had the potential of becoming a precedent for Cluj and for other towns or juridical instances in Transylvania. The fragile balance between the laws of the principality and the privileges of towns and communities could be easily disrupted if the prince favored one party or the other.

The centumviri interfered with the administration of justice in certain legally unclear situations, even if it meant overriding the authority of the

town judge and the sworn citizens. However, this was a preferable solution to the intervention of external elements into the town's judicial system, which could have threatened the town's autonomy in this respect. The centumviri warned the town judiciary on several occasions not to allow the county office to meddle in the town's justice. The delegations sent to the prince in order to preserve the privilege of the town judiciary and the measures taken in the Gergely Bornemissza case served the same purpose. We must therefore rethink the terms of the relationship between the centumviri on the one hand and the town judge and twelve councilors on the other, and we must emphasize that it was not a power struggle between them but rather a collegial alliance with the shared goal of preserving the autonomy of Cluj's urban institutions, including its right to the independent administration of justice.

### About the author

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