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**THE INSTITUTION “VILLAGE AS A COURT” IN THE
CUSTOMARY LAW OF MACEDONIANS**

Abstract: The institution “village as a court” is a topic that has been rarely and insufficiently taken into consideration in Macedonian ethnology and anthropology up to the present moment. My research is based upon few years of data collection in a number of Macedonian regions, that were then cross-checked with the existing data in the ethnographic literature in the country and the Balkans. Data show that in the Macedonian traditional culture the village acted as a keeper of order and as a judge when it came to the sinful trespassing of norms of the folk law and the moral codex of the community.

Key words: folk law, village as a court, sin, punishment, Macedonia.

The first one who emphasized the importance of gathering and examining of folk law at the Balkans was Valtazar Bogishic, who published his “Law customs of the Slavs” in 1866. In addition to the book, “A manual for describing the folk law customs” was published, which Bogishic distributed through a number of South-Slavic countries. The received answers were published in the “Collection of current law customs of South Slavs” in 1874. In the preface of the Collection, Bogishic stated that not only there is no harmony between legal science and the factual social and legal relations, but that they are in total dissonance. The educated lawyers did not show a will for serious examination of folk legal terms, opinions, institutions and customs. Also, they even found that this issue does not deserve any attention. Such a negative situation was unacceptable when one takes into account that there was no other place in Europe where legal material was kept in such a scope. The legal and judiciary institutions did not give any attention to folk law as well. The reason for this, according to Bogishic, was Western scientific science, which was blindly followed by the South Slavic science. Namely, emphasizing the glosatories and the codification, Western science at the time did not take into account the real needs of folk life. A certain light was shed by the school that developed around Grimm, which included in its program the folk law as well. Unfortunately, during this period in Germany there was no discussion dealing with non-written law. This was even more strange when one knows that ethnography was in bloom, and owned rich material for parallel examination of law, Bogishic concluded (Bogišić 1874: VII–LIX).

Later on the situation of marginalizing folk law in academic circles, but also in legislation and court institutions, was noted by Stefan Bopchev from Bulgaria. In 1882 in the Plovdiv journal “Science” he printed a program “On the collection and research of folk legal customs”, as well as materials on Bulgarian customary law. As a result of this program, the author published three volumes in total of the “Collection of Bulgarian legal customs”, as well as “Bulgarian customary judiciary law” and “Bulgarian customary penal law”, both published by the Bulgarian academy of sciences. An extremely rich material on Western Bulgaria was left by Dimitar Marinov in six books from the collection “Living heritage” (Бобчевъ 1927: 9–16).

In Macedonia in 2000 the Macedonian academy of arts and sciences published “Articles on customary law of Macedonians”. A number of these texts build their conclusions upon written sources, while the materials collected directly from the people are used in a lesser degree. The penal law is treated in an article titled “Middle-age customary penal law and the penal law up to the Ilinden period” by Vlado Kambovski (Камбовски 2000: 415–513). In the frames of Macedonian ethnology two works should be noted: “Institution village as a court in traditional culture of Porche” (Светиева 2002: 269–282) and the study “Social culture of Macedonians”, both by Aneta Svetieva (Светиева 1998–2009). Also interesting are parts of the book “The Body” by Ilina Jakimovska (Якимовска 2009).

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My research showed that in the traditional culture of Macedonians the reason for evil is often sought outside the limits of this world. The notion of a demon is an archaic, mythological perception of the reasons of evil. Created in the spatial and time segment between this and the ‘other’ world, demons are a reflection of the negative, impure force that questions the structure, order and regulation of the human world. There is a wide variety of demons, which are believed to cause fatal consequences in regards to health and life of people: vampire, witch, different demons of epidemics and disease, vampires. Evil is perceived as a result of the influence of black magic. The list of its consequences includes sudden death, long-term sickness, sterility of women, impotency of man, death of children, continuous marital disputes and other family disputes that lead to derangement of the house, weak harvest or insufficient milk, and general failure of each individual or family project. The origin of evil is a subject of interest of Macedonian cosmogony legends, with a dualistic world-view. One of them says:

“The devil and God were one. And now we, people that live here in Macedonia and all over the world, let’s suppose that the devil and God made an agreement to create three hundred men in three hours. The devil has

created them, and God blessed them. The arranged time approached, and they managed to create barely hundred of them. Then the devil suggested that some people could be blessed by God, and some of them should be put on a calendar by him. From then on, half of the people are god-like and the other half devilish.” (Јафазановски 2000: 102).

People are defining evil in relation to good, and the good in relation to evil. “Good and evil, they are almost brothers, but one is called evil and the other good”, says a folk proverb. The popular world-view includes certain idealism, trust in the ethically founded human nature and ability to differ between good and evil. What is even more interesting is that the category that belongs to the religious domain - sin - is equaled with the category that belongs to the social domain - offence, which is confirmed by the opinion that “the thing that is shameful is also a sin” (Јакимовска 2004: 92).

And what is a sin? The folk notion of sin includes each activity that infers harm to another person, but also such a behavior that, although does not intend to harm someone, is not in concordance with moral norms of the community. Folk terminology is not familiar with the term “offence” or “crime”. In order to mark a behavior that is contrary to folk law and the moral codex, besides the term ‘sin’ which is dominant, the terminology includes words such as damage, trouble, evil deed or mistake.

It is a sin to infer evil to an honest and just man, and evil inferred as an answer to evil is not considered a sin, but a deserved punishment. One believed that when one behaves in a good way he will be rewarded, while the one that commits evil will suffer and will be punished by God. Those who consider goodness as the highest value die with an easy death, contrary to dishonest and bad people who die suffering, who cannot rest their souls until they confess their sins. There are also contradictory opinions, coming from people to whom life has not been kind, or who witnessed suffering of others. For them, goodness does not promise happy life and easy death.

Sin follows man even after death, so that the soul of a good man goes to heaven, while the soul of the bad person suffers in hell. Sins are measured and atoned in the other world, which is presented by folk religion as a parallel and contrary world, spatially located on a horizontal, but also on a vertical axis. The folk world-view incorporates the belief about the inheritance of sin and its atonement by future generations. Their destiny could be endangered if their ancestors have covered another person’s sin. Each sin of which one is aware should be reported. The one that would not do it, initiated his own misfortune and put into question the happiness of his family.

According to the norms of folk law, each sin was sanctioned with a punishment. The compensation of evil with evil was a basic principle in human relations. Under the influence of Christianity, the folk notion of sin and punishment included the possibility to forgive. This Biblical teaching is expressed mostly through the acceptance of the Christian holiday of Prochka

(Forgiveness day). Even though there were examples when the sins were really forgiven at Prochka (especially of girls who have run away from home), this holiday still did not manage to initiate a more serious change of the folk notion that each evil should be punished. Namely, although the basic goal of Prochka is to focus on God's mercifulness, that enables forgiveness among people as well, people have always felt closer to the idea of God's rage and punishment, that has made a huge impact upon the concept of punishment. This does not mean that there was no hope in God's mercifulness, but it was stronger when one was thinking about his own sins. In expectance that their sins would be forgiven, people would often go to church and pray, leaving a gift for an atonement of the sins. They were less ready to confess and really repent their sins, due to the fear of punishment which is known, in the church writings, as 'epitimy', and consists of fasting, prayer, bowing, giving away to charity and ban on receiving the wholly sacrament.

The sinful deeds listed in folk law and the moral codex of the community were a subject of control of the village, that plays the role of the keeper of order and a judge. One of the basic features of the Macedonian village, until recently, was the exceptionally strong spirit of community, which on one hand guaranteed security and solidarity in difficult circumstances, but on the other side deeply penetrated the most intimate areas of life, taking care that each individual behaves in accordance to the established values and moral norms of the community. The non-written rules of behavior, established through traditional folk law, defined the role and the place of each individual in the society, not leaving much space for individual freedoms and individual choice of possibilities that were subordinated to the moral codex and the interests of the group (family, genus, zadruga, village community). Such position of the individual in the society has influenced the formation of the institution of collective village responsibility for the actions of each member of the village community in relation to the public and family life.

Examples of not respecting the established values and norms of behavior were a topic of discussion of the village gatherings. The village gathering could be attended only by man. Depending on the transgression, the discussion ended with public critic and warning for the transgressor or setting the punishment. These public hearings were presided by the first man in the village, assisted by the village board. One of the most important and often used proof instruments in the "court practice" was the confession, and the statement of an eye-witness of the crime. When there were no other proofs. the guilt/innocence of the suspect was established also on the basis of his preparedness to take a vow that he did not perpetuate the crime of which he is accused. If he did that, then he would be freed from responsibility. Otherwise, his guilt was considered undutiful. In Macedonia there were few kinds of non-verbal vowing: kissing of earth, bread and a cross.

The span of punishments implemented by the village was wide. It included capital punishment, beating, to punishments in goods and money, shaming, contempt, isolation and ostracism from the village and the family. A magic call to the supernatural forces was also common, so that they help the punishment of the criminal. The most frequent type of magical revenge was the cursing, as well as an archaic procedure of burning wolf's arteries. For some of the trespassing, the reaction was limited or there was no reaction at all, as a result of the belief that the sinners will anyway punished by God.

Capital punishment was implemented when it came to incorrigible sinners, due to whom the village had a bad reputation. It was mostly used for horrible murders, and was executed through hanging or shooting. The second type can be found in a story where a father in law slaughtered his daughter in law since she resisted the raping. Another violent father was also shot, since he raped his own daughter. In old times a reasons for implementing the capital punishment could also include burning of a house, magic, theft and especially treason. It could also expected in a case of an unfaithful woman, if her husband eye-witnessed her deed. The opinion of the village in such cases was not unanimous. While some people thought that the punishment was well deserved, others thought that it was too severe. Such punishment can also be implemented in cases of adultery among members of family. The judge, but also the executor of the punishment is the side that was cheated, and the victim is the blood-related person, who has intervened in the marriage of the murderer. The son kills the father, a sister kills a sister, and a brother kills a brother. Ethnographic data show that in the past the girl who had delivered a bastard was dismembered using horses. However, in most cases, she punished herself, killing her own child. Infanticide is as a rule the only possible solution to avoid the negative status that this woman would have if she bears an illegal child. Although seldom, in the past illegitimate children were adopted.

Blood revenge is a specific type of death penalty for killing a close relative in the family and abducting or other type of unacceptable dishonoring of a woman in the house. Albanians in Macedonia practiced it also in cases of a girl-fugitive, who ran away from home to get married. Blood revenge was allowed since it protected the highest values for which there was no other type of protection. Those values, in the traditional system of values in Macedonia and the whole Balkans, were life and honor.

If the thief was caught in flagrante, the owner of the potentially stolen good was allowed to punish him on the spot. Mostly, it meant beating him up. They were also beaten in the village prison, where the thieves who refused or could not pay the theft punishment were put. The beating lasted until a promise was given that the stolen good would be compensated. Thieves were also beaten in the center of the village, in presence of all villagers. Sometimes the beating was so severe that the one that was beaten took a while to recover. Female immorality also deserved beating. A

dishonest bride had to reveal the complicit in the sin. An adulteress would also be beaten. She was beaten by her husband, and if he was away, the beating was a responsibility of the father in law.

If one stole other people's fruits, he would have to pay in goods (for example for one wheat plant the thief would have to return two), but also in cash. A material compensation was also used in substitution of blood revenge. It was paid in goods (wheat, live stock) or in cash and gold. In folk literature there is information that the 'krvnina' was paid in gold, the same weight as the head of the killed person.

The punishment through public humiliation was reserved for thieves, witches and immoral women. There was a so called 'stroll of the thief' through the village with the stolen goods on his body. He was 'decorated' with dirty sheep intestines, dried peppers, watermelons, stolen money from the shop. In some areas he was naked. During the stroll, the thief had to shout the well-known formula: "If this is good for you, then go steal yourself". The villagers were expected to reply with nasty words. Public humiliation was also a punishment for the magicians that 'took' one's own wheat or milk. Their ritual nakedness, necessary for efficient magic, was publicly revealed through a stroll around the village. On that occasion, the magician could be flushed with cold water and get beaten with stones. During the stroll of a dishonest bride through the village, there were few methods of humiliation that were implemented in different combinations, most popular of them all being climbing of the bride on a donkey, her being turned in the opposite direction of 'normal', with the donkey's tail put in her hands or mouth. This type of humiliation was used for the girl who gave birth to an illegitimate child, but upgraded with giving her a bastard in her arms, so that she carries it "as a candle". A dishonest wife that gave birth to a child was also punished with humiliation.

The village, in principle, isolates all perpetrators of sins. The only difference is the level of isolation. As an illustration, the girl who gave birth to a bastard child was not considered as a living thing. Communication with her was minimal; she was addressed only with offensive words. Although to a lesser extent, an adulteress could not communicate in a more meaningful way with other villagers. On the contrary, the village opted to isolate her from its own social activities, keeping the level of communication with her to "good morning". Isolation in the frames of the family happens in marriages between closely blood related persons. The family tries to hide the illegitimate relation, but if it cannot be stopped and it turns official, then the sinners are boycotted. A fugitive girl is also boycotted. In a lighter case, the anger of the father lasted shortly, just after the wedding or the birth of the first child. But sometimes the father continued to be angry for months and years. During this period he would not receive his daughter at home.

Magical revenge is a punishment whose basic *differentia specifica* is that it is based upon an assistance of the supernatural forces when it comes to return of evil. Although this assistance is a key factor for attaining the goal, a concrete activity of the victim is also needed. It is realized through ritual and magical formulae and procedures, through which the powerful “inhabitants” of sacral reality are asked to infer evil to the guilty side. It is firmly believed that their request will be fulfilled. When it is addressed to God, and even more if a church is chosen for the place of the event, the revenge attains the attribute “Godly”, although it basically has a magical character. One of the most frequent forms of such type of revenge is cursing.

One curses for murder, treason, burning of a house, scam, damage, theft. Thus, these are the misbehaviors that could be defined as contemporary crimes. However, the godfather also curses if his position is taken by another person, without his consent. If one takes into account that godfather played a role of mediator between the world of the living and the world of the dead, and that he was expected to help in all crisis situation, than one could assume how much was the disrespect of the godfather condemned. A legitimate curse could be given to a girl who gave birth to a bastard, and thus has humiliated her family. This becomes even a bigger issue if the girl had killed and buried the bastard, since her sin then becomes a source of danger for the whole village. It would either be beaten by hail, or it would be hit by a drought, thus threatening the existence of the whole community. Cursing this girl was justified, and she was thus not able to get married. The source of the right to a curse is the importance and role of marriage in traditional society. One finds excuse even for cursing a fugitive girl, who was obliged to follow the choice of her parents.

Ethnographic literature and filed notes include magical burning of wolf’s arteries, that was used for different types of crimes: sorcery, theft, burning of property, curse. The essence of the procedure is in pronouncing the names of the suspected women standing above the burning arteries. The woman, whose name would be pronounced at the time when an artery would burst, was proclaimed a sinner, and in accordance with the principles of homeopathic magic, she would have the same destiny.

Magic is also used to punish a vampire. If the community establishes that there are possibilities that the dead person turns into a vampire, they put inside him different types of thorns and iron. And if this happens anyway, the vampire is punished with magical ostracism from the village using a bread and wine or through is “killing” by the vampire-exorcist, who is the only one that could see him. Having in mind that according to folk beliefs the biggest chances to turn into a vampire were one the side of a big sinner, the vampire was thus punished not only for his after-life but also for his pre-death sins.

God’s punishment was related to almost all sins. Nobody doubted that it will work: “God can be slow, but he does not forget”. God’s

punishment will sooner or later be felt by the sinner or his descendants. It manifests itself through sickness, misfortune, death, drought, heavy rain, hail or thunder. In this way it threatens the basic existential values of the village (good health, long life, abundance, fertility of women), which as a gift from the sky are a part of God's order. The fear of Gods' punishment has clearly influenced the maintenance of the established values, minimizing the chances of their disrespect. The faith in God's punishment was also a good mechanism for consolation of just and honest people who suffered.

Humiliation was the most severe and the most efficient punishment of the village, which is highly understandable having in mind that honor was one of the most important values in the value system of the patriarchal society. There is a saying: "It is not the point to punish a person, if you don't humiliate him". Man and women were not equally punished for the same crime, and adultery is the best example. Punishments for women were numerous and strict, while an adultery of a man was not punished at all. Old and mentally sick people were also not punished. For the same crime rich people were punished financially, while poor ones with beating of free work. The village did not make a difference in terms of punishment of the executors of the crime and their complicities. For trying to commit a crime there was no punishment, but the one who would not succeed in his attempt has lost the trust of the village. For a repeated crime, that happened again besides the warnings, the perpetrator was chased away from the village. Hopeless cases could also end up on the hanging rope.

The primary goal of the punishment was a revenge for the committed sin. The terminology of the Slavic criminal law suggests this, as the word for revenge was for a long time synonymous with punishment. Due to their fearsome and merciless character, punishments established by the folk court were preventive regarding the potential sinner, minimizing their preparedness to break the values and norms of behavior. The basic function of punishment was to reestablish the order, and in final instance to reaffirm the norms of folk law and the moral codex of the community.

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