

THE EARLY MIDDLE AGES LAW IN MACEDONIA

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1. COMMON LAW SOURCES

As one of the most important legal sources in Macedonia in the early middle ages is the common law. Namely, that is the essential legal source in the Macedonian *Sclavinii* in the 7-th and the 8-th century AD, although according to the opinion of Nikola Sotirovski², it is probable that the Roman-Byzantium Law had proper influence in the legal regulations. Thus the common law remains significant legal source in all the middle ages. For example, Scilica-Kedrin has written that when Macedonia was conquered by Vasilie II, he ordered that “the state will be governed by domestic managers and customs just like when Samuel ruled”.

In fact, there are no written manuscripts of the common law, so in that way, the data that we have refer to the Slavic common law as foundation for legal regulations of the Slavic population in Macedonia in this period, even though the Byzantium sources present certain data about the life style and customs of the Slavic people in time of the inhabitation of the Balkan Peninsula, further more, some of the Byzantium written law sources are adjusted and reflect the Slavic common law, for instance the example of the Agricultural Law.

From these data, significant characteristics can be drawn for certain legal institutions of the common law, but for the others there are no relevant information. However, we will point out several basic characteristics which are common for the Slavonic people common law. Thus, the most common of all people, regarding the common law, is the personal principle of application, which means that, the individual will be prosecuted according to his tribal common law. This principle is in contradiction of the territorial principle of applying the law, which according to this principle, the territory on which the criminal act has been made and is present in the constructional process and the constructed state community.

The other characteristic refers to the legal and labour capacity, where the most significant role in the Slavic common law has been given to the gender. Thus, only the man had full legal capacity to be a party in a dispute. According to Pseudo- Mauritsius, in his materials for the Slavic customs in the first half of the 7-th century AD he wrote that “their women are extremely honest, so to many of them their husband’s death is their own death, because they are willing to die with them, not wanting to be widows”. This is probably because of the bad position of the woman-widow based on the knowledge that she has to follow the destiny of her husband that she belongs to. Regarding to the legal and working capacity it is significant the legal

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² History of the state and the law of the Yugoslavian people, Skopje, 1980, page 552

position of the foreigners as well as the institution of Slavs in the Slavic law.

Referring to the legal capacity of the foreigners we have only one information given by Pseudo- Mavericks, according to him “the Slavs treat them very kindly and willingly, transferring them where ever necessary, and if the foreigner is hurt in some way, by the host negligence, it is custom that the host will revenge the foreigner”. Despite the other, we can see that in the first half of the 7-th century AD, the hostile of the tribal community and people, as consequence of the development of the trade and artisanship, as well as the contacts and communication between the people was transformed into acceptance of the foreigners. Kajlec³ thinks that those were accepted into gender community as well as in “legal community”.

Referring to the institution of Slavs, Pseudo- Mavericks wrote “those who were captured are not being kept as slaves all the time, as the other people do, but giving them time to decide whether they want to go back in their country with some kind of ransom, or they will stay there as free among friends”. We can conclude that the Slavic in the first half of the 7-th century AD were familiar with the institution of Slavs, where the Slavs position was defined with the low level of development of the labour resources. Also, the establishment of Slavic is mentioned and in the agricultural law in the second half of the 7-th century and the law to prosecute people, the 9-th century, the legal aspects that were applied in Macedonia, which reflect the social relations among Slavs in the periods concerned. Also, the Byzantine sources writing about the military campaigns of Samuel in 10-century speak for taking over of Larissa⁴ with the Slavic population of the city with all the families Samuel moved inside the "Bulgaria" and introduced military lists as troops, using them as allies against the Romei. Accordingly, sources of Macedonia in the period of the early Middle century mention the establishment of Slavic, which can assume that while the influence under common law was the subject of property law with a series of restrictions, over time more and more approaching the status the object of law, though, the process of feudalism here affect the transformation of social structure and polarization of the two main layers: the free population and dependent peasants.

The next feature of the practice Kajlec called principle of collectivism⁵. Basically this means that individual, is meaningful only as a member of certain blood-related community-family or genus that is both economic and legal unit. In particular this principle has long remained in the area of the real right in the legal regime of ownership over certain types of real estate. Upper hand does not mean that over time are not separated by gender or tribe, significant individuals-by power and property, as a result of the blood-related community-family ties.

As of Macedonia during the first half of the 9-th century mention tribal names of individual Sklavinii, which means it is still strong relevant blood-ties.

³ 985 or 986 AD

⁴ Cit. page 66-67

⁵ Cit. page 66-67

However, as characteristic of the practice occurs and its agricultural character, therefore, the general population engaged in agriculture, with less artisanship or trade. In addition to this we claim and agricultural law from the second half of the 8-th century, which in the history of law called Slavic law, reflecting relations in the rural municipality in the Slavic period concerned.

2. THE WRITTEN LAW

a) Macedonia under the Byzantium authority

Besides the common law which as I said above, was the unwritten law in Macedonia under the rule of Byzantium are applied and more sources of Byzantine law, which insisted on the Byzantine state, trying to fit inhabited Slavs in its state-legal system. Itself the Byzantine law was fundamentally Roman law, custom processes and feudal Christianization of Byzantine society. The sources of written law that apply in Macedonia in the Middle Ages include the following legal regulations:

The Ekloga - is legally a monument which is based on Justinian codification of Byzantine common law. Taken in the middle of the 8-th century and contains provisions in the area of family, heredity, contract, process and criminal law. Later translated into Slavonic. Otherwise, in Byzantium were widely used until the 70s of the 9-th century, when Vasilie II has condemned for its iconoclastic origin as "cancellation of the good law."⁶ However, that in its Slavic translation remained very popular and widely applied source of law among the Slavs to the XIV century.

Speaking of the Slavic translation of the Ekloga we must conclude certain deviations from the Byzantine text, which are the result of the degree of development of social relations among the Slavic, and consequently the development of legal traditions. Thus, in the Slavic translation of the Byzantine Eclogues is omitted clause 12, which governs the enfiteuza, i.e., long-term lease of real estate, and Articles 6 and 10 of clause 14, which regulates the manner of questioning of witnesses in civil and criminal offences. The first and the second was found, as I said above the level of development of social relations among the Slavic in the period concerned, especially the second non-differentiation of civil and criminal legal process in the Slavic traditions.

Law to prosecute people ⁷- or *Zakon sudnij ljudem (ZSL)* is a Slavic section of the Ekloga made in 9-th century. In connection with its occurrence in historiography are many different opinions. Thus, one of most known theory of Morav-Panonian origin of the ZSL, under which a ZSL is translation of parts of Eklogata composed in the period when Cyril and Methodius were in their mission in Moravian Slavs. Thereby, according to a story Methodius is the author of the

⁶ Veto of the civil and criminal process in the Slavic legal customs.

⁷ Димитри Оболенски, Византиски комонвелт – Источна Европа 500 – 1453, Скопје, 2002. стр. 322.

ZSL, while according to others it is translated and assembled by his brother Cyril.

Another understanding is that, ZSL has Bulgarian origin, i.e. that ZSL as Slavic translation of part of the Byzantine Eclogues occurred in the Bulgarian state in the IX century, i.e. during the existence of the First Bulgarian Empire.

Finally, the third story whose author is our historian of Russian descent, Troicki, starts from the position that ZSL as Slavic translation of parts of the Ekloga, the decrees of the Byzantine emperor Constantine V against the Gentiles, and the canons of the Bible Vasilie Great, was composed of methods during the 30-ies of the 9-th century when it was Byzantine archon, situated in the Strimon archonty, in today's Strumica, when it was written in a Slavic language with the Greek alphabet, for compiling the Slavic alphabet the same text, in Moravia, be written with the new alphabet. This understanding also called theory of Macedonian origin of the ZSL.⁸

Otherwise, in the historiography is the most accepted opinion of Moravian origin of ZSL, so Dimitri Obolenski considered ZSL had Moravian characteristics and assembled by Constantine and his students for the purpose of his mission among the Slavic in Central Europe.⁹

As the contents of ZSL provisions are part of the literal translation of the Byzantine Eclogues, most of the processing the Ekloga, while some can be found in the original. Otherwise most of the provisions relating to criminal law: first, are replaced with heavy penalties on crime crippling (cutting nose or blinding), with civil punishments given in the Ekloga, and secondly, despite the secular penalties prescribed to predict and church penalties such as lengthy posts and public repentance.

Referring to the application, ZSL was widespread in medieval and Byzantine Macedonia under Bulgarian rule, in Samuel's state, and probably much later starting from the position of Vasilie II, already quoted earlier, that "to manage the affairs of their own Administrators and practices as it was the time of Samuel. "Also, ZSL has been widely applied in medieval Bulgaria and Russia, where was adopted until 1280 year and where it becomes part of the Nomocanon used the Russian Church and which are retained until today.¹⁰ Anyway, all manuscripts of ZSL, everything is kept coming from Russia.

Legal analysis - ZSL is casuistic legal text that regulates certain specific cases of certain legal areas without the intention to fully resolve the legal problems of the respective areas in a systematic way, with other words ... it is still a work of originally legal knowledge, which is still exploring, and it moves from a particular case and which through arrangement of individual cases is searching for itself¹¹.

As above, changes made most of the provisions of ZSL are in the area of criminal law; the ZSL has not resolved common problems and concepts of criminal law matter, but only certain specific cases.

⁸ See Н. Сотировски, cit. book .page . 555.

⁹ Цит. Дело стр.322

¹⁰ See same page 323

¹¹ Ганев Венелин, Закон ъ соудный людъмь, София, 1959. стр. 113

An exception is the arrangement of the question of the degree of guilt or ZSL distinguish between premeditation and neglect and their mutual relations and relations between rough and ordinary negligence or lack of guilt over a random event or *vis major*. Thus, these issues are dealt with Chapter 17 of the ZSL, which governs cases of firing the houses in town or village and firing of foreign fields and vineyards. According to the rules of this chapter, who, because of hostility or robbery fired houses in the town or village is punishable by death, the legislator in this case stems from the existence of premeditation in pursuit of work. In the case if someone wants to burn thorns or ends of their field and if the fire spreads on alien farm or vineyard, if it did because of ignorance or impetuosity, ZSL, given the absence of negligence and premeditation requires just compensation to the injured side. Also, the ZSL provides case of firing a foreign field or vineyard on the windy day if the perpetrator was not cautious thinking that the fire will not spread or the idleness and could prevent that, starting from different degrees of negligence, ordinary and rough, ZSL has prescribed as a punishment of indemnify and physical punishment of the offender. In case of *vis major* (storms, thunders) as a result of what came to firing the field or vineyard to the neighbour, and took the offender is necessary to prevent this storm and started unexpectedly ZSL does not provide a penalty taking into account the absence of fault the side of the perpetrator.

The text of the ZSL provides several types of crimes, thereby, as mentioned above, the legal regulations concerning certain specific cases, without being defined in different types of crimes without intent to give a full criminal legal text.¹² Otherwise anticipated offences can be classified into the following categories: religious offences, offences against public morality; transgressions against social security, offences against the right of asylum of the church; offence against the judiciary, the destruction of foreign property, theft of specific items such as: theft weapons or horse during the war, theft of a herd, theft of clothing and other objects from the tomb, stealing items from the church altar, or the rest of the church; offences against the person, and appropriation of another's slave.

Religious offences are regulated in Chapter 1 and Chapter 23 of the ZSL. In Chapter 1 as one offence provided the exercise of pagan sacrifices and swearing. In this, as perpetrators of this crime can occur peasants and lords of the village; however, provides punishment of everybody, that is, the collective responsibility of all villagers in the cases if any of them perform these actions.

Chapter 23 is regulated as a crime cancellation of Christianity. In this, as perpetrators may occur only soldiers.

Transgressions against public morality have more text in the ZSL and protect them with the norms of Christian morality and the church institution of monogamy marriage. Here the maximum in Chapter 4 is provided as a transgression of infidelity of a married man with a slave. Thereby, here not only protects the institution of marriage but also is sanctioned and order dichotomy of medieval society. A similar transgression provides Chapter 6, which prohibits the liaison of man with a foreign slave. This not only violates the ZSL

¹² Per example murder is not declared by the rules of ZSL.

church morality but power and ownership of the master of the woman slave. Chapter 7 provides a criminal offence in liaison nun, an act which is contrary to church canons, although for the nun is not prescribed any punishment. As a fourth offence, ZSL has provided spiritual marriage between relatives. Thus, with a Chapter 8 and Chapter 9 prohibits marriage between the mother of baptised male child and godfather, and between his godfather and the baptised female child. Also, Chapter 9 as a transgression prescribed a relationship between man and married woman. In the latter case, as said above, protecting the institution of marriage. Chapter 10 is prescribed as offence the seduction of a girl without the consent of her parents. Here is the protection of church-religious understanding of a honour of the girl, the important element is the willingness of parents to testify about the position and place and dependent role of unmarried woman. In the next chapters 10, 11, 12 and 13 state offences that are related to protection of honour of the girl (according to Church and religious norms) and her integrity. Chapter 11 also provides the rape of a girl in third place, where there is none to help; Chapter 12 provides the seduction of a girl less than 20 years and rape of a girl betrothed to a man, and chapter 13 provides the seduction of a girl betrothed to a man. Chapter 14 prohibits incest or marriage between blood relatives, while Chapter 15 prohibits polygamy and protects the monogamy marriage.

Transgressions against the social security provided for in Chapter 16 and 17 of the ZSL. Chapter 16 provides as criminal offence the arson of foreign forest or cutting of trees from it. In Chapter 17 provided more varieties of firing where, as mentioned beforehand is made exponentiation of wines from premeditation, rough negligence, ordinary negligence or lack of guilt over a random event or *vis major*. Thus, provided the following cases: The ashes of the houses in town, village or hostility held by or for robbery; ashes of a foreign field or vineyard or impetuosity from ignorance or from imprudence or idleness, or if the event has occurred because of unexpected or unpredictable event.

Offence against the right of asylum of the church is prescribed in Chapter 18, in which case the predicted effect when anyone tries to assist a runaway person from the Church.

Offence against the judiciary is provided in Chapter 19 of the ZSL. It is deliberately settling of Justice of the damaged person without an address to the competent national authorities and to wait for their decision and conduct of it.

Transgressions which consist in the destruction of another's property provided in chapter 25 of which are regulated cases of detention of foreign livestock and its destruction with (unclear word pp. 62) or other way.

Transgressions of robbery are provided in several chapters of the ZSL. Thus, in Chapter 26 is regulated the issue of theft of weapons or horse in time of war. In the next chapter (27) is regulated the issue of the behaviour of the master in case of theft by his slave. In chapter 28, however, provided the case of drainage of the alien herd, which is provide different penalties in case of re - the second and third time - execution of this crime. Chapter 29 incriminates theft of the dead in the grave, while Chapter 30 provides for the theft of the altar,

as well as theft from other parts of the church and the different disciplines.

Transgressions against the person and her personal status shall be prescribed by Chapter 31, which provides for the theft of a free man and his enslavement.

Finally Chapter 32 provides the **offence of the appropriation of another's slave**, which can not be returned. Given that in this case the penalty fee is another such slave or return of counter value, which means no penalty, this action fact, can hardly be considered a criminal offence.

As for penalties ZSL provides a series of different types of penalties that can be grouped into two groups: the secular law fines and penalties under church law. Both these groups of sentences to ZSL provides alternatives for certain crimes, it is often the case, and their cumulative laying down. ZSL provides the following types of penalties: capital punishment, which includes the burning of the offender or his cutting with sword; crippling punishment which consists mainly in cutting the nose; punishment beatings, punishment of eviction; financial punishment or in nature; sale of sentence the defendant to him personally or with his entire estate, fine separation of husbands and the penalty of losing the status of free man, or transferred in slavery. These are all types of secular punishments which lays down the ZSL. As for the penalties under church law shall prescribe punishment ZSL post in the specified time period, depending on the weight of the work done. There we should mention that the prescription punishments church law, ZSL is different from the Byzantine eclogue in which none of the place is not prescribed church - religious punishment.

Besides the provisions of criminal - legal ZSL field contains legal provisions and in the area of process law. Thus, primarily in chapter 2 is contained a very important process - the legal principle that prohibits the governor of the area and the referee to receive allegations "without a witness, i.e. to consider the matter" without a lot of witnesses, as well as the obligation for the spies and the plaintiffs and their claims to be proved with witnesses under oath. Here we do, in fact, a step forward in establishing the material truth in reviewing the court works, and many probably want to overcome its self-aprowal as the highest proof tool in medieval law in general and the ways of his extortion. This requirement is repeated in the head 7a) and 33 head of ZSL.

In chapter 7 a) a witness as a proof means they pay more attention to the issue of regulating the number of witnesses at the trial by separate parts to be considered proven the claim request. First it directs the prince of the area and the judge in any dispute to make "reasonable versatile with attention and patience and not to condemn without witnesses. Witnesses must be under ZSL, truthful, god wiling, reputable and without hostility, anger, hatred, nor discuss or dispute the wisdom of which are express. For the witnesses can not be taken those who were proven to lie and represent God's law, those who lead profligate lives and those who are not able to judge. Otherwise the number of witnesses should be eleven or more, with the exception of minor disputes in which they may be from seven to three witnesses. Provisions of Chapter 7 a) are amended in Chapter 20 and Chapter

22nd Chapter 20 provides that witnesses not be parents to children and vice versa, as well as preventing or discharged for his master. In Chapter 22, however, prohibit the taking of testimony Mon heard, even if witnesses occur County.

Military law is established in Chapter 3 of the ZSL, which regulates only the division of military loot. What is interesting is that this chapter shall receive information concerning the military organization whose head stands the prince, then Duke, then the areas under them and finally come villain ordinary soldiers.

Part of the ZSL provisions concerning the regulation of the matter of private law, where as in former case regulation is casuistic and regulate only certain legal issues in this area. So, here are regulated following issues: the question of the liberation of slavery dealt with by Chapter 21, the question of liability in case of lease of a horse affected in Chapter 24, the question of responsibility of the owner of a slave who steals, concerned in Chapter 27, the question of responsibility of the one who allures or hides alien slave, concerned in Chapter 32, and issues of marital and family law, set out in Chapter 33rd.

As said above, Chapter 21 regulates the issue of release of the prisoner - a slave. According to the ZSL has provided the opportunity to receive the slave his freedom by paying the amount attributed to him or by the contracting amount. Chapter 21 requires for the conclusion of the contract the presence of witnesses and determines the price of three gold coins for the year. Here, then, provides cost as an important element of the contract and form of contract and the request for compulsory attendance of witnesses.

Chapter 24 regulates the issue of owner indemnification in the contract for the hire of a horse. Where the damage (injury or if the horse died) came by chance or due to *vis major*, ZSL requires just compensation for damages occurred. Chapter 27, however, offers an alternative opportunity to master the slave that steals or to keep, and the injured party to compensate his damage, or to sell himself into slavery. There from, as well as other heads of ZSL clearly shows the position of the slaves in medieval Macedonia as an object of law. In this regard it is especially interesting in Chapter 32, which regulated appropriation of alien slave, where, with inability to return it provides the return of another such slave or his equivalent of the master.

Chapter 33 regulates the question of the nature of the marital relationship, the reasons for the divorce of marriage, and divorce proceedings. In accordance with the Church and the Christian understanding of marriage as "created by God" ZSL first principle declares its inextricability and then still allow the divorce of marriage as the husband, and by women for the following reasons: adultery, if spouses catch conspiracy against his / her life, "if you understand more poorly against the other, but tells him if sick of leprosy". Also, a woman, apart from these reasons can be split from her husband and if one of them contract a bad disease. The procedure provides ZSL attendance and examination of witnesses by the judges.

Agriculture Law (Nomos Georgikos) - this law comes from the second half of the 8-th century agricultural-regulating legal relations in the countryside and the criminal law contains provisions that correspond to the village occasions. Also, this law protects and codify the free rural municipality as tax unit which slows the process

of its decay, which in turn slows the process of feudalization in Byzantium. The law also called "Slavic law" because it reflects Slavic common law. Otherwise, this Act does not apply only in Macedonia but also all the Slavs in the Balkans only in the early Middle Ages, but as a result of Slavic transcript of the Agricultural Law of 13-th and 14-century, and the Ekloga and Agriculture law applied in the classical feudalism.¹³

Byzantine ecclesiastical law - the Christianization of the Macedonian Slavs in the 8-th and 9-century, were received and Byzantine nomo canons or sources of religious and secular law, including: Nomo canons by John Scholastic and Nomo canon of 14 titles.

Nomo canon by John Scholastic¹⁴ - was born in the middle of the 6-th century. Thus, in his capacity as Patriarch of Constantinople issued two collections of law including: the one collected all generally recognized church canons, while the second collected provisions of Justinian novels for various church issues. At the beginning of the 7-th century they were collected in a collection under the name Nomo canon. This Nomo canon found wide application in the regulation of various issues of religious and secular law which Methodius has translated from the Old Church Slavonic.

Nomo canon of 14 titles - was created in the second half of 7-th century, while deemed entered into force in the second half of the 8-th century. He is also known as Nomo canon of Patriarch Fotie, the Ecumenical Patriarch who has worked and fulfilled in the end of 9-th century. Constantinople to the great church gathering held in 920 was declared obligatory in the Christian church.

b) Macedonia under Bulgarian authority

In Macedonia under Bulgarian rule, despite the Slavic common law were applied all those written sources that represented the reception of Byzantine law, as the Bulgarian feudal law was very underdeveloped. However, there will be answers to mention Pope Nicholas I in 106 questions that you immediately after the conversion of the Bulgarians was set to Prince Boris in 866 year and Krum laws since the 10-th century, which sources of law must be applied and Macedonia under Bulgarian rule.

As the Krum laws, the original text is not known, but for us they testify Byzantine chronicler Swidas of the 10-century. According to him, "Krum called all Bulgarians and ordered them to issue the following laws:

If someone accuses someone, words can not be taken into account, before being retained and investigated and if it is shown that cursed and lied - to be killed. No one is allowed to supply food to the thief that they will dare to do it, right to property is taken away, and the thief to be cut legs. Krum also ordered to pull out all vineyards.

¹³ Според Димитър Ангелов, История на средовековната Българска държава и право, София, 2000, стр. 160.

¹⁴ John Scholastic was a lawyer at the beginning, after he became prezviter in Antiochia and at last patriarch in Constantinople.

He commanded every beggar to give him a little, but enough for you, which will not act so to be deprived of property."¹⁵

c) The right of the state of Samuel

In Samuel's state were applied as Slavic common law, and all those Byzantine sources of written law to aforementioned that were translated into Old Slavic language. From the time of Samuel's state are not preserved other sources of law such as statutes that Samuel probably since he had a royal office has published to the divided feudal lords or the church and monasteries.

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¹⁵ See N. Sotirovski, cit. book page 560