

**ЧУЖДЕСТРАНЕН ОПИТ/ FOREIGN EXPERIENCE****DISTINCTION BETWEEN *DOLUS* AND *CULPA* WITH REFERENCE TO ARSON IN THE ZAKON SUDNYJ LJUDEM, THE VINODOL LAW AND THE STATUTE OF SENJ**

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Abstract: The difference between intent (*dolus*) and negligence (*culpa*) was rarely emphasized in codified medieval laws and regulations. When compared to the legal statements related to intent, negligence was mentioned even more rarely. However, there are some laws that distinguished between the two concepts in terms of some specific crimes, such as arson. This paper draws attention to three medieval Slavic legal documents – the Zakon Sudnyj LJudem (ZSLJ), the Vinodol Law and the Statute of Senj. They are compared with reference to regulations regarding arson, with the focus being on arson as a crime committed intentionally or out of negligence. The ZSLJ as the oldest known Slavic law in the world shows some similarities with other medieval Slavic legal codes, especially in the field of criminal law, since most of the ZSLJ's articles are related to criminal law. On the other hand, the Vinodol Law is the oldest preserved Croatian law and it is among the oldest Slavic codes in the world. It was written in 1288 in the Croatian Glagolitic script and in the Croatian Chakavian dialect. The third document – the Statute of Senj – regulated legal matters in the Croatian littoral town of Senj. It was written in 1388 – exactly a century after the Vinodol Law was proclaimed.

When comparing the Vinodol Law and the Statute of Senj with the Zakon Sudnyj LJudem, there are clear differences and similarities, particularly in the field of criminal law. Within the framework of criminal offenses, the act of arson is important for making a distinction between intent and negligence. While the ZSLJ regulates different levels of guilt, the Vinodol Law makes no difference between *dolus* and *culpa*. On the other hand, the Statute of Senj strictly refers to negligence as a punishable crime. Even though the ZSLJ is almost half a millennium older than the Statute of Senj and around 400 years older than the Vinodol Law, this paper proves that the ZSLJ defines the guilt and the punishment for arson much better than the other two laws.

Keywords: arson, Zakon Sudnyj LJudem, Vinodol Law, Statute of Senj, Bulgaria, Croatia.

I. INTRODUCTION

Distinction between intent (*dolus*) and negligence (*culpa*) was rarely emphasised in codified medieval laws and regulations of the time. Negligence as a sort of crime was even more rarely mentioned than negligence, and when it was mentioned, it was referring only to a limited number of crimes. However, there are some laws that defined those differences regarding some specific crimes, one of such crime was arson. This paper

presents a comparison between three old medieval Slavic legal documents, namely Zakon sudnyj ljudem, Vinodol Law and Statute of Senj, with reference to the crime of arson being committed intentionally or as a result of negligence.

Zakon sudnyj ljudem

Zakon sudnyj ljudem (abbreviation used further in the text: ZSLJ) is the oldest and also the first Slavic legal document written in the Slavic language.¹ It is not preserved in the original

¹ Ganev, V. Zakon sudnyj ljudem. Sofia, 1959, p. 23–25

manuscript, but rather from the transcripts inside the Russian manuscript books called nomocanons that represent a mix of ecclesiastical and civil law collections. The text of ZSLJ contained in the Novgorod nomocanon from 1280, as well as the text incorporated in the Ustyug nomocanon from most likely the end of the 13th century are considered to be the oldest documents and the closest to the original content of ZSLJ.

Articles of ZSLJ, especially those that were not taken from the Byzantine legal collection of Ecloga², the eight-century code of the Isurian emperors³, are very important to legal historians. Out of the thirty-two articles, only three articles do not have their role models in Byzantine Ecloga. Ten articles are literal translations of the analogous Ecloga articles and nineteen articles are taken from Ecloga with modifications, meaning that as many as twenty-two ZSLJ articles are a result of legislator's creative work.

Therefore, ZSLJ provides a rich material for deeper analysis to be performed both from legal and historical point of view. Such analysis provides an insight into the way of social thinking and doing more than eleven and a half centuries ago, at the time when the original text of ZSLJ appeared. In the wider social context, the study of ZSLJ contributes to the illumination of emergence of the first written law in the Slavic world in general.

Vinodol Law

The Vinodol Law is one of the oldest Slavic codes in the world and one of the most important legal and cultural documents of Croatian people. It was compiled by a commission of 42 members on 6th of January 1288 in Novi (today the city of Novi Vinodolski) on the Croatian Adriatic coast. The document is based on ancient customs of "old and tested laws" that local people lived by.

The Law is also considered as one of the most important documents of medieval Europe.⁴

The 16th century manuscript of the Vinodol Law was written in the cursive Glagolitic, while the original document from 1288, just like the first two rows of the copy, was written with angular Glagolitic alphabet.⁵ Both of those versions of the original Glagolitic script were used exclusively in Croatia up to the 19th century. Unlike the rest of Croatian medieval legal documents of that time, the Vinodol Law is perceived as a testament to the old Croatian and Slavic law. The archaic Slavic law is obviously standing out in some parts, as well as in the style of the Law.

The Vinodol Law is important to legal and historical researchers, because it provides a valuable insight into the Croatian past and offers an extensive source of information about the everyday life of ordinary Croatian people. Its compilers did not bother much to write down the Law's provisions in an especially solemn or formal style. The Vinodol Law deals exclusively with the usual, daily problems of simple commoners living at that time.

Statute of Senj

The Statute of Senj dating from 1388 represents the oldest legal codification of the town of Senj. It includes 130 articles and an annex of 38 articles referring to the Senj nobility privileges (130-168). The statute is written in Latin on a parchment. Originally, it did not have a title, but the title "*Statutum Segniae*" was added in a subsequent manuscript at the bottom of the first odd page. In total, the Statute contains 168 articles, however, only a certain number of these articles date from the year 1388, and the rest were added later. Lujo Margetić, a famous Croatian legal historian, performed a research into the origin of the Statute of Senj to determine that the first 68 articles dated from 1388, the articles 69 to 130 dated from 1390 to 1393, and the articles 131 to 168 could have been passed at the end of 1402 or shortly after.⁶

² Ecloga is a compilation of Byzantine law issued in 726 by Emperor Leo III the Isaurian in his name and that of his son Constantine. It is considered the most important Byzantine legal work following the 6th century Justinian Code. Ecloga was considered to be an extremely good manual for case law and state administration. **Nikolić, D.** *Zakon sudnji ljudem*, Niš, 2016, p. 13.

³ **Ganev, V.** *Op. cit.*, p. 58–81.

⁴ **Margetić, Lujo:** *O nekim novijim rezultatima proučavanja Vinodolskog zakona*, Uvodni referat za znanstveni skup, Novi Vinodolski, 1978, p. 5.

⁵ **Galović, Tomislav.** *Vinodolski zakon – 725 godina poslije in 725 godina Vinodolskog zakonika – 725 godina suzbijanja korupcije u Hrvatskoj*, Zagreb, 2013, p. 12.

⁶ **Milović, Đorđe.** *Kazneno pravo senjskog statuta iz godine 1388*. in *Senjski zbornik* 34, Senj, 2007, p. 197.

The original of this Statute was kept in the Archives of the City of Senj until World War II, when it disappeared in the turmoil of war. Fortunately, its text has been preserved because it was published in 1854 by Ivan Mažuranić.⁷ There are two versions of the Statute text, one being written in Latin and the other in Croatian, yet Croatian text of the Statute of Senj as a transcription from 1701 is considered in this paper. This text was most likely prepared for practical use at court or in some similar occasions.

At first glance, the Statute of Senj gives an impression of disorder, yet the efforts of the compilers to collect certain materials in one place are evident. The most common way of presenting the order of articles in the Statute is: 1-17 Rights of nobles and citizens, 18-22 On municipal authorities, 23-26 On real estate, 27-42 Procedure, 43-68 Criminal law, 69-130 Miscellaneous.⁸

II. DISCUSSION

If comparing the mentioned laws only superficially, it can be stated that they are not very similar, since there is a great time gap in the occurrence of the laws. *Zakon sudnyj ljudem* is by far the oldest law among the three compared laws, originating from the 9th century, while the Vinodol Law is dated from 1288 and Statute of Senj from 1388. Provisions of those laws are also different, especially since all three legal monuments are made for specific purposes. However, when looking closer into the provisions of the laws, there are many similarities detected. These laws are connected not only by their Slavic origin, but also by their criminal law parts regulating different types of crimes. In this paper, the crime of arson regulated by the three laws will be interpreted more closely. The crime of arson was dedicated significant attention in those legal texts, and the interesting fact is that some of the laws were making a distinction between *dolus* and *culpa* in starting of a fire, according to which the punishments were determined as well.

There are two articles of ZSLJ that deal with arson:

If anyone sets fire to another's woods or (lit. and) chops down his trees, he is doubly guilty (i.e. must pay twice their value).

If anyone sets fire to dwellings on account of certain enmities or in order to rob property, if [the fire is set] in town, let him be burned by fire, or if [the fire is set] in a rural settlement or village, let him be executed by the sword. But in accordance with canon law he shall be given a fast of 12 years because he is an enemy. If anyone, wishing to burn off stubble or thorns in his own field, starts a fire, and that fire, having spread, burns another's field or vineyard, he shall be brought to trial and questioned, and if he set this fire through inexperience or thoughtlessness, let him make good the other's losses by fire, or if he set the fire on a windy day and did not take care, saying that the fire would not spread, or [if he] was lazy, or could not [control it, let him be held responsible for the losses]. But if he has taken all precautions and [then] a storm comes up suddenly and because of this the fire spreads beyond [his land], he shall not be blamed. If someone's dwelling catches fire from [lightning in] a storm and something from his dwelling starts burning and the fire spreads and so sets fire to the dwellings of his immediate neighbors, because the fire happened suddenly, that person shall not be blamed.⁹

The Vinodol Law mentions arson in the article 62:

And furthermore, if someone should set a fire in a house or in a warehouse or in a stable, for the first arson he is to be sentenced by the court to a fine of 100 libras and he is to pay damages to the person against whom he committed the crime or if he has no money with which to pay let him be sentenced to corporeal punishment. If he commits this crime again he is to be sentenced to death. If the arson was committed by a man or by some people and criminal cannot be caught, a wergild is paid for every arson in the manner which is mentioned above regarding the wergild.¹⁰

⁷ Mažuranić, Ivan. *Statutum Segniae* in *Arkiv za povjestnicu jugoslavesku I*, Zagreb, 1854, p. 155–169

⁸ Margetić, Lujo. *Senjski statut iz 1388*. in *Senjski zbornik 34*, Senj, 2007, p. 7–8.

⁹ Dewey, H. W.; Kleimola, A. M. *Zakon sudnyj ljudem* (Court law for the people), Michigan Slavic Materials, Ann Arbor, 1977, p. 37–39.

¹⁰ Margetić, Lujo. *Vinodolski zakon*, Rijeka - Novi Vinodolski, 1989, p. 67.

The third compared document, the Statute of Senj, mentions arson in the article 89 of the Croatian version (article 90 of the Latin version):

*They further decided that anyone who, through negligence, allowed a fire to break out in the house of his residence so that it could be seen from the outside, was to be punished with 6 libras.*¹¹

The above-stated articles from all three laws are interesting for several reasons. In ZSLJ, arson was analysed in details, so that there are clear differences made between levels of guilt for causing fire, which was not the case in other ZSLJ articles. There is also the institute of unaccountability, i.e. *vis maior*, which is quite unexpected and stated only in ZSLJ. The Vinodol Law, being a very modern law at the time of its compilation, stated neither any distinction between a planned arson and an accidental one, nor did it mention any level of guilt.

However, penalty provisions in the ZSLJ area are bit confusing, since there is also a canon law penalty for arson and robbery, while it is clear that the penalty for intentional start of fire is death. The Vinodol Law is a bit milder regarding the punishment for arson. According to the Vinodol Law, the punishment for a culprit committing arson was a very high fine, yet the death penalty was sentenced only in case the same culprit repeated the same crime.¹²

The Statute of Senj did not make distinction between intentional and accidental starting of a fire. It determined a crime of arson that is committed only out of negligence, so that the punishment (or better to say a fine) was expressed in the monetary value of 6 libras, which was not very high if compared to a very high fine of 100 libras determined by the Vinodol Law.¹³

The most interesting provision in the Vinodol Law regarding arson is that of a *weregild*

(*vražba*). A *weregild* is an old European legal institution defined by a value that is placed on every man and graded according to person's rank, used as a base of the compensation for murder or some other physical injury (or some other serious crime) against that person. It was assessed from the guilty party, payable as restitution to the victim's family to free the culprit from further obligations or punishments.¹⁴ The institute of *weregild* was an important compensation mechanism in early Germanic states. Over time, payment of *weregild* was replaced with other forms of punishments, mainly with capital punishment, which was introduced as a result of Christianization, starting around the 9th century. By the 12th century, it was almost entirely replaced as a practice throughout the Holy Roman Empire.¹⁵ However, that was still not the case in the 13th century Croatian law, which indicates that the traditional customary law was indeed practiced throughout the Vinodol region.

III. CONCLUSION

As discussed in this paper, compilers of the medieval Slavic laws were well aware of differences between *dolus* and *culpa* when creating those laws, so they decided to make a clear distinction between those concepts especially referring to the crime of arson. Since starting a fire was (and still is) an essential human need, the law makers realised that it could not be taken for granted when some big fire happened in some village or town. In *Zakon sudnyj ljudem*, there is a clear distinction made between the levels of guilt, since that Law recognised that the crime of arson needed to be determined as the crime done intentionally or accidentally before accusing and sentencing a guilty party. Since ZSLJ is also mentioning spreading of a fire caused by a storm (i.e. *vis maior*) as reason for exclusion of

¹¹ In Latin version, penalty of 6 libras is not mentioned (Item sententiauerunt, quod quicumque sua in mala custodia permiserit ignem accendi in domo habitationis sue, ita quod appareat de extra, cadat ad penam librarum ...), while in the Croatian version it is (Veće šenteciaše, da ki godar bi sv[o]jim zlim čuvanjem užgal oganj u svojoj kući tako da bi se zvana ukazal, pada u penu libar 6.). **Margetić, Lujo.** Senjski statut iz 1388. in Senjski zbornik 34, Senj, 2007, P. 58, 72, 94.

¹² A practice which is still common in some Common Law countries. The culprit would get the maximum punishment if he committed the same felony three times.

¹³ The medieval monetary system is based on the ratio 1 libra (pound) = 20 soldas = 240 denars (therefore, 1 solad = 12 denars).

¹⁴ **Elster, Jon.** Closing the Books: Transitional Justice in Historical Perspective, New York, 2004, p. 166

¹⁵ **Fosberry, John.** Criminal Justice through the Ages, Rothenburg, 1993, p. 99–101.

accountability or guilt, the compilers of ZSLJ understood the force of nature and inability of a man to fight against fire.

In the Vinodol Law, there is no explicit distinction between *dolus* and *culpa*, yet the law-makers were making a distinction whether it was the first time a culprit was convicted of arson, or he already committed the same crime before. By defining such distinction in recommitting the same offence, an arsonist would not be able to escape punishment of a death sentence. However, if the crime of arson was committed out of negligence, the culprit had to pay the fine for starting a fire, or, in case of not having enough money, the sentence would refer to corporeal punishment.

In the Statute of Croatian littoral town of Senj, only the crime of arson out of negligence is mentioned, and the guilty person was to pay a fine of (only) 6 libras. Since the Statute of Senj is only mentioning negligence, but not the intent, it can be easily concluded that the penalty for intentional starting of a fire is a capital punishment. The reasons why death penalty was mentioned in Statute of Senj and ZSLJ only for a single crime is that the customary law was used for well-known crimes. Customary law is not a written law, since everybody knew how to deal with that without written rules.

To conclude with, the crime of arson in all three laws was not defined as simple as some other crimes, since all three laws considered the punishment according to the level of guilt, in a way people were understanding the notion of guilt at the times the laws were written. These similar-

ties in the laws proved that people were considering the crime of arson and the punishment fit for that crime in a strict manner, making it obvious that all three laws were connected, either through similar legal systems of Bulgarian and Croatian ancestors or through common Slavic heritage.

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