

THE SUBSTANTIVE AND PROCEDURAL CRIMINAL LAW IN THE MEDIEVAL BOSNIAN STATE

ORTA ÇAĞ BOSNA CEZA HUKUKUNDA USUL VE ESAS

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Abstract

Medieval Bosnia is an interesting historical and legal phenomenon. Starting from its state organization, then through the legal order, and it represents one of the most inexhaustible topics of academic work. A particularly interesting part of medieval Bosnian law is procedural, but also criminal law, about which, admittedly, little is known, but this does not represent an obstacle in the work of legal and historical authors. Based on concise sources, the author will try to show the development of criminal law and explain the procedure, and the way of judging within the borders of the Bosnian medieval state. The paper will also present the organization of the judiciary and jurisdiction.

Key Words: Judiciary, Court Proceedings, State Diet, Oath, Criminal Law, Penal Code.

Özet

Ortaçağ Bosna'sı ilginç tarihsel ve hukuksal bir fenomendir. Devlet örgütlenmesinden başlayıp, akabinde hukuk düzeninden devam ederse; akademik çalışmanın en tükenmez konularından birini temsil ettiğini görürüz. Ortaçağ Bosna hukukunun özellikle ilginç bir kısmı usule ilişkindir olandır; aynı zamanda hakkında çok az şey bilinen ceza hukuku da bu kategoride sayılabilir. Ancak bu, hukuk ve tarih yazarlarının çalışmalarında bir engel teşkil etmez. Yazar, özlü kaynaklara dayanarak, ceza hukukunun gelişimini göstermeye ve Bosna Ortaçağ devletinin sınırları içinde usul hukukunu ve yargılama şeklini açıklamaya çalışacaktır. Bildiri ayrıca yargı teşkilatını ve yargı yetkisini de resmedecektir.

Anahtar Kelimeler: Yargı, Mahkeme İşlemleri, Devlet Diyeti, Yemin, Ceza Hukuku, Ceza Kanunu

Introduction

The most important function of every state is the protective one. Every state must rely on the solid foundations of a system that protects its citizens. It is so today, but it could be said that it was so in the past. In the past, to survive, the state had to maintain order and peace with its apparatus of physical coercion. But before a sentence is imposed for an unlawful act, it is necessary to establish the responsibility of the perpetrator. When that question is at stake, we come to the issues of the organization of the judiciary and the court process. Bosnian medieval law was very specific because it was not based on written norms adopted by the state government, but on customary law and international agreements with neighbouring countries. In addition to the specifics of Bosnian medieval law, we must also point out the specifics of the state. In this regard, special attention must be paid to the basic characteristics of the Bosnian medieval state and Bosnian medieval law. After that, we can dedicate ourselves to understanding substantive and procedural criminal law.

1. General View of the State and Law of Bosnia Before 1463

1.2. Bosnian State

In the era of developed feudalism, most Yugoslav countries lived under the double political and cultural influence. Byzantine influence significantly prevailed in the eastern parts of the Balkans, while the influence of the Western world had absolute dominance in the western part of the Balkan Peninsula. The typical feudal social order was not known to the coastal cities in which the commodity-money economy dominated, and in the Middle Ages, it experienced a new rise. In the interior areas, agricultural production predominated, although mining and trade developed in the later period, as well as the creation of new cities. Depending on the predominant influence under which it developed, feudalism took the appropriate form. The Western European version of feudalism penetrated the western parts, while the Byzantine form developed in the east. In the long-term development, certain peculiarities of the feudal system appeared, which were rarely represented outside our area. Such specific features were manifested both in law and in the state system (Jevtić, Popović, 2003, s. 14).

The country of Bosnia was first mentioned in the 10th century. Originally, this term encompassed the land around the upper reaches of the Bosna River. In the east, Bosnia spread to Olovo, in the north to Vranduk, and in the west it included Bugojno, in the southwest Prozor, while its border in the south and southeast stretched north of the Neretva River, leaving Zahumlje Konjic and Travunija Foča (Jevtić, Popović, 1996, s. 24). In the 12th century, Bosnia spread to the areas of Usora (the country around the lower course of Bosnia) and Soli (the territory around today's Tuzla), Donji Kraji (Bosnian Krajina), the areas between Ključ and Jajce, Završje, the area around today's Glamoč, Livno and Tomislavgrad, the former

Pagania, the territory between the rivers Cetina and Neretva, and Zahumlje (Lukas, 1942, s. 63-64). Later in its history, Bosnia would expand significantly further west and east, encompassing the entire territory of Herzegovina (which would later be a separate political-territorial unit).

Sources tell us that power in Bosnia changed frequently during the 12th century. At the beginning of the 12th century, Bosnia was ruled by a Hungarian king, on whose behalf the Bosnian ban spoke. Later in the same century, Bosnia fell under the rule of Constantinople. However, with the collapse of the Byzantine offensive, power in Bosnia found itself in the hands of the local nobleman Ban Kulin, who managed to win its independence. The period of crisis was overcome during the government of Ban Stjepan II Kotromanić (1322-1353). His nephew Tvrtko I (1353-1391) was remembered as the greatest medieval Bosnian ruler, who elevated his country to the rank of a kingdom in 1377. During his rule, Stjepan Tvrtko I conquered parts of Serbia, Dalmatia and southern Croatia, and the territory of the Bosnian state was enormously enlarged. Towards the end of his reign, Stjepan Tvrtko I Kotromanić held the title of King of Bosnia, Serbia, Primorje, Hum, Donji Kraji, Zapadnijeh Strana, Usora and Podrinje (Ćorović, 2018, s. 226-227). Given the fact that no ruler has managed to stay in power for so long; Ban Stjepan II and King Stjepan Tvrtko I Kotromanić were exceptions with their long rule. After Tvrtko's death, the crown remained in the Kotromanić family, but she often changed the head on which she stood. Bosnian rulers were brought to power and removed by nobles (nobles on State Diet), and it can rightly be said that Bosnia represented a kind of elective, electoral monarchy. At the beginning of the 14th century, Bosnia was in disarray, primarily due to the weakened central government, but also due to the excessive strengthening of the nobility. The last Bosnian king, Stjepan Tomašević, tried to consolidate the Bosnian medieval state, but these attempts failed. In 1463, the Kingdom of Bosnia collapsed and lost its independence (Malcolm, 1996, s. 73-77).

2.2. Bosnian Law

Bosnian medieval law, like most legal systems in the era of developed feudalism, did not rely on the systematics of the right to branches, to which we resort today. It is very difficult for today's lawyer to transfer to the world of medieval law, contemporary jurist simply cannot understand what the lawmakers thought of that era, so he introduces the modern categories and terms for the legal institutions of the Middle Ages. But this kind of treatment cannot be completely avoided. From the sources available, again, we can conclude that Bosnian law of that time could be divided into certain branches. We can observe the existence of status law, then we can talk about property law. We can talk about the existence of family law, hereditary law and criminal law, but not about procedural law, which will be talked about quite generally, due to the lack of sufficiently generous sources. Unfortunately, the sources of medieval

Bosnian law are poor and in some cases considered by some authors to be one-sided. There is not a single preserved collection of laws from the period of the medieval Bosnian state. We have no evidence of the existence of written general legal norms. These are some of the reasons why we find the sources of Bosnian law in charters and international treaties (Janković, Mirković, 1997, s. 65).

Most of the aristocratic charters have been preserved.¹ There are few preserved manorial charters, and the data they give us are quite limited. According to their content, Bosnian aristocratic charters could be divided into ancient, religious and international treaties. While in ancient charters the gift is given or confirmed, by religious charters the ruler gives faith to the nobles, as his vassals, that he will not do them any harm if they do not do so, or that he will not listen to slander against them, or that he will not take away anything from them...

Like all medieval rulers, Bosnian bans and kings concluded international treaties with other states or cities on behalf of their country. Based on the available sources, it can be rightly said that Bosnia concluded the largest number of concluded international agreements with Dubrovnik (Ragusa) (Krkljuš, Šarkić, 1998, s. 55-57), but there are also two preserved agreements with Split (Janković, Mirković, 1997, s. 66).

2. Development of Substantive Criminal Law

According to the available sources, we can make a certain differentiation of what would belong to the field of substantive criminal law. The general notion of a criminal offence would correspond to the Bosnian medieval notion of *krivina*, which is found in the contract of Ban Matej Ninoslav with Dubrovnik from 1240, where stated „if any of my servants or my men commit a crime“ (*ako netko od moih kmeti ili moih ljudne čine vi krivinu*) (Petrić, 1968. S- 121-122). We see the same name in the letter of the Lord of Trebinje Ljubiša Bogdančić to the people of Dubrovnik from 1413 and may attest to the prolonged use of this term. *Krivina* signified an unlawful act in the most general way. It is opposite in meaning to the notion of *pravina* („by law“, „by right“) which means conduct in accordance with the law. Thus, the already mentioned contract of Matej Ninoslav states the following: „and those crimes are not committed between us, and if it is committed, that he is rightly corrected“² (Jevtić, Popović, 2003, s. 24).

The most typical criminal offence of medieval Bosnian society was feudalna nevjera, which would correspond to treason. The ruler could only accuse the nobleman of treason before the Bosnian State Diet (the diet of all nobles). This tells us about the power of the Bosnian nobility over the feudal monarch.³ It was difficult for the ruler to deprive his

¹ Due to the character of the Bosnian Church, we do not have church sources, and there are no city charters.

² *I da se nikoja pravina među ne čini, da ta krivina s pravom ispravi.*

³ An important organ of the central government, in addition to the ruler himself, in medieval Bosnia was the state parliament (in Bosnia, the name *stanak* was most often used). All members of the high,

unfaithful vassal of feudal possessions, let alone punish him in any other way,⁴ so it can be said that punishing nobles for treason depended on the political relationship between the ruler on the one hand and the aristocratic Council on the other.

Data on murder and punishment for this crime in medieval Bosnia are not numerous. We do not know whether there was „blood revenge“ in the earliest period. On the other hand, the derived and relatively incomplete evidence tells us about the existence of a certain composition. The crime of murder was considered not only an attack on the life and body of an individual but also an attack on the community to which the victim belonged. Sources tell us that Herzegovinians in the 15th century had a similar understanding. When, in 1447, Radoslav Ivanović from Trebinje sued the murderers of his brother before the Dubrovnik court, the source states: “He went to court for himself and for his brothers and for all his brotherhood”.⁵ Moreover, the prosecutor stated on that occasion that he had agreed with one of the killers, Jakša Radetić, what we see in the following section: „And we agreed with Jakša, and he pays his fourth part, and I also want these three to pay me what is on their backs“.⁶ We believed that this system of private seeking justice in court is linked to the weakness of the state itself to combat crime. What can still be seen is that there is a certain kind of material compensation for taking a life. According to another source from Herzegovina, the nobleman from Trebinje, Ljubiša Bogdančić, wrote to the Dubrovnik government and stated the following in his letter: Yes, my Lords, your grace should be repaired the peasant brothers to be killed.⁷ He stated that he wanted the Dubrovnik court to try Bosnian peasants so that they would not kill each

middle and lower nobility had the right to participate in the assembly (it is believed that, in practice, only the most prominent nobles came to the assembly - archdukes, dukes, princes, and that the lower nobility was not interested in conducting state policy, except when decisions were made on the most important issues, hence the question of the crown). The State Diet was convened and chaired by the ruler (ban, and later the king). His wife often came with the ruler, and sources mention that his sons also participated in the work of the Diet. Members of the Church did not take part in the work of the council, but it is known that their influence on the nobility was extremely great. The most important issues of the internal and foreign policy of the Bosnian state were discussed and resolved at the parliament (election and coronation of rulers, gift and confiscation of noble estates, alienation of state territory, determined foreign policy of the country). Since Bosnia became a kingdom, rulers have been elected and overthrown in State Diet (in this regard, we believe that the medieval Bosnian state was an electoral monarchy). The coronation of the ruler could take place only in the presence of the nobility at the council. The ruler could not donate property to the nobility alone, but only with the consent of the Diet. The Diet also oversaw the possible confiscation of property from other nobles. It was similar with the alienation of state territory. The ruler could not alienate a part of the Kingdom of Bosnia without the prior permission of the State Diet, the decision on war and peace was entrusted to the Diet, and all interstate agreements that the ruler would conclude, the Diet had to confirm (here we even see indications of parliamentarism) (Markešić, 2003, s. 93-94).

⁴ Sources tell us that during some wars some nobles refused to participate, but even maintained close relations with the enemy, which, for example, happened in 1403 when King Stjepan Ostoja went to war with Ragusa, Duke Hrvoje Vukčić continued to maintain friendly relations with the enemy of his sizar. It is interesting that the opposite cases were known to happen. That the vassal is at war with a foreign power and that the king remains in favor of her (which happened in 1433 when Duke Radoslav Pavlović fought against Ragusa, and King Stjepan Tvrtko II remained their friend) (Janković, 1980, s. 54, 61; Janković et al., 1967, s. 109, 118-119).

⁵ ... izide on na sud za se i za svoje bratiju i za sve svoje bratstvo.

⁶ I s Jakšom se načinismo i plati mi svoj četvrti dio, a ja hoću da mi i ova tri plate ščo na nih stoji.

⁷ Da gospodo, bolje je da vaša milost opravi nego da se seljaci drugovi stavše izabijo.

other. Thus, few sources can suggest to us that blood feuds were not resorted to as was the case in the surrounding states.

The criminal offence of theft was also called by that name – *krađa* („theft“), although as in the surrounding countries there was also the name *tatba*. Unfortunately, reports of this crime in the sources are not too frequent either. What the sanction for this act was and whether, in addition to returning the stolen item, they paid anything else, cannot be determined with certainty. The only remaining source on this issue is the contract of Ban Stjepan I Kotromanić with Ragusa from 1332, where the theft is punishable by six oxen.

3. Procedural Criminal Law, Courts and Organization of the Judiciary

3.1. Organization of the Courts

The main characteristics in the organization of the judiciary of medieval Bosnia, with neighbouring countries, were that in feudal Bosnia where we do not see the existence of special, permanent state courts, i.e. courts set by the central state government, as well as the fact that Bosnian nobles were judged by aristocratic colleges. In part of the feudal states the nobles were judged directly by the head of state, the nobility in Bosnia enjoyed the privilege of resolving infidelity (betrayal) and other crimes committed by them only by members of their aristocratic class, either on pause or in special class courts, or on the other hand, to be judged by the Bosnian Church. Several charters state that the ban, that is, the king, will not take any action against the lord unless his guilt is first „review“ (*ogleda*) by twelve or fourteen nobles who were sworn witnesses in each aristocratic charter (Imamović, 2003, s. 102). A remarkable example of this court institution is found in the charter issued jointly in 1353 by Ban Tvrtko I and his father, Prince Vladislav, to Prince Vlatko Vukosavić. This charter explicitly states that Tvrtko I and his father „gave their lordly confidence“ (*dali viru svoju gospodsku*) and swore with „twelve good Bosnians“ (*dvanaest dobrih Bošnjana*) to Prince Vlatko, „that his trust cannot be removed until proven guilty“. Several other charters also stipulate that the court of the Bosnian Church, that is, its *djed* (literally „grandfather“, but it refers to the head of the Church of Bosnia) and its *strojnik*'s (bishops), will issue a verdict. Before the collapse of the Bosnian state, vicars and friars entered the aristocratic court (Solovjev, 1949, s. 98-99; Truhelka, 1901, s. 175-177; Ibrahimović, 2015, s. 148-158).

As the basic form of courts in Bosnia, we see aristocratic or „patrimonial court“, as they existed in most European feudal states. Every lord, based on his judicial immunity, had the right to judge dependent people from his estate. It is assumed that the reason for this is the fact that the Middle Ages did not know the idea of the division of power. The judiciary was in the hands of the feudal lords, and the „administration of justice“ was only one of the attributes of their administrative power. Managing a feudal estate without punishing the offenders was practically unthinkable

(Jevtić, Popović, 2003, s. 26). In modern law, the application of a sanction to an individual must be preceded by an act of the judiciary. In feudal times, administrative and judicial power lay in the hands of the lords. The lord would judge by sitting in a lofty place, called a kameni stolac („stone chair“), from which he would follow the debate, and then „distribute justice“, that is, pronounce judgments. Several such chairs were found, the most famous being in Kosor na Buni near Blagaj (the capital city of Duke Stjepan Kosača), then in Donja Bukovica on the Neretva river near Konjic. On that chair is engraved a sentence that reads: „This is a table of Pavlović Ivan“ (Si je stol Pavlovića Ivana) and in Klek near Prozor which belonged to King Stjepan Tvrtko I Kotromanić (Janković et al., 1964, s. 122). The place where this chair was popularly called banov stol („Ban’s table“) or kraljev stolac („King’s chair“) (Imamović, 2003, s. 102). In addition to these, many of these material sources have been found throughout today's Bosnia and Herzegovina, which tell us about Bosnia's past.

As an exception, we can see the court of the miners Saxons. The Saxons in Bosnia at that time represented a special legal category of the population and also enjoyed the right to have their court called the curia Teutonicorum (Kovačević-Kojić, 2007, s. 120). We know from sparse sources that the curia Teutonicorum was sitting in Fojnica and was composed of citizens - purgars, and it is explicitly mentioned in the source from 1373, where it is stated that it judged the dispute between Niklo Sasinović and Hranko Dobretić (Dinić, 2007, s. 10).

3.2. Judicial proceeding

Data on the trial, that is, on the court proceedings, are few and fragmented. What can be said is that the principle of actor sequitur forum rei applied in determining the territorial jurisdiction in disputes between Bosnians and Dubrovnik (Ragusa) citizens, actor sequitur forum rei principle applied. This principle was foreseen by the treaties of Matej Ninoslav with Dubrovnik and confirmed by the treaties of Ban Stjepan II Kotromanić with the people of Dubrovnik in 1332 (Klaić, 1989, s. 145; Ibrahimović, 1996, s. 59). The mentioned charter says that if a citizen of Dubrovnik has any justice against a Bosnian, to summon him before Bosnian Ban, and if a Bosnian speaks against a citizen of Dubrovnik, to summon him before the Lord of Dubrovnik.⁸ This contract also regulates the principles of court proceedings, as well as the means of proof. Of the evidence in medieval Bosnia, the oath was most commonly used.

The idea of a multi-stage trial in Bosnia at that time was not known. Moreover, we have no data on the appeal, nor the judicial hierarchy. From the numerous charters that testify to the legal life of medieval Bosnia, we see that the feudal infidelity is judged by the nobles at a State Diet. In addition to the court of the ruler, we also know the ruler's court, which is

⁸ ... ima koju pravdu na Bošnjanima, da ga pozove pred gospodina bana, a ako li govori Bošnjanim na Dubrovčanina, da ga pozove pred Dubrovačkog kneza.

mentioned in several treaties between Bosnia and Dubrovnik (for example, those from 1234, 1240, 1249, and 1332).

In the agreements between the Bosnian and Dubrovnik heads of state, the plaintiff's court appears as the competent court for disputes between Dubrovnik and Bosnian citizens. Interestingly, the Dubrovnik Statute provided for a different way of resolving disputes between Dubrovnik citizens and foreigners. The statutory provisions provided for a special, mixed court, called a break. This mixed court, as provided by the Statute (Book III, Articles 51 and 52 of the Statute of the City of Dubrovnik from 1272), ruled on mixed litigation. The composition of this court is addressed in a verdict delivered on the murder of a certain Radič Ivanović, which says: „and we took 12 Dubrovnik peasants and 12 Bosnian peasants and two bailiffs, one from Dubrovnik, Ilija Radoslalić, and the other from Bosnia, Tomko Bogosalić, and we took two sessions in Dubrovnik“.⁹ Therefore, this mixed court had a total of 26 members, of which 12 were from Dubrovnik and 12 from Bosnia and one pristav (bailiff) from both sides.

If, on the other hand, the citizens of Dubrovnik had any dispute among themselves on Bosnian territory, that dispute would not fall within the jurisdiction of the Bosnian judiciary. The treaty signed between the Bosnian and Dubrovnik authorities in 1332 guaranteed the citizens of Dubrovnik just immunity (the treaty states: „If a citizen of Dubrovnik has a quarrel with another in Bosnia, Bosnian Lord should not to interfere“).¹⁰ Dubrovnik settlements on Bosnian territory had their judges. Thus, the citizens of Dubrovnik themselves had their consuls in Bosnia who resolved their mutual disputes arising from trade and other affairs and relations in Bosnia (Ibrahimović, 1996, s. 58; Imamović, 2003, s. 103). If such disputes occur between Bosnians and Dubrovnik citizens and based on the contract of Matej Ninoslav from 1235, 1240 and 1249, the court of the Bosnian ban defendant was competent. Thus, if a Bosnian sues a citizen of Dubrovnik, the Dubrovnik court has jurisdiction, while if a citizen of Dubrovnik sues a Bosnian, the Bosnian court has jurisdiction (Imamović, 2003, s. 103).

Unfortunately, we do not have enough data to talk about the judiciary in Bosnian cities. But fragmented sources state that there were independent courts in the cities that judged in councils, in addition to the prince appointed by the ruler. Saxons and other inhabitants of Bosnian towns were tried by a prince appointed by the ruler and considered a representative of the central administrative and judicial authorities. In addition to the prince, there was a city council (Curia Purgarorum) in the cities, composed of twelve members who were called purgars. In addition to the administrative power, the council also exercised judicial power.

⁹ ... i uzemos među se 12 dubrovačkih kmeti a 12 bošnjansceh kmeti i dva pristava, jedan dubrovački Ilija Radoslalić, a drugi bošnjani Tomko Bogosalić i vodismo u Dubrovnik u dva stanka.

¹⁰ Ako ima svadu Dubrovčanin z drugom svojem u Bosne, gospodin ban da ne ima pečali.

Not much is known about the court proceedings. It emerges from the existing evidence that was most often proved by witnesses or sukletvenici (accomplices, they are also called rotnici, porotnici (jurors) and pomagači u zaklinjanju (literally „helpers in oathing“) The second option, it seems, was from the Dubrovnik-Bosnian treaty of 1332, but also the Dubrovnik court acts, we see that the litigant had to bring with him a certain number of accomplices, who, in turn, would confirm her allegation with a joint oath. The available sources mention that the party is obliged to take the samošesto – „oath on the sixth“ (or samosedmo – „oath on the seventh“). That is what the mentioned international agreement envisages. This means that, in addition to the party itself, five other co-oath members must take the oath. If the party does not bring the specified number of co-defendants, or if he does not swear by himself, he automatically loses the dispute.

The term svada is used for a dispute, and to conduct a dispute would be said, imati svadu or preti se (literally „have sue“). We do not know, both from the point of view of the evidentiary procedure and in terms of jurisdiction, whether criminal proceedings are distinguished from civil proceedings.

A significant institution in the court proceedings of medieval Bosnia was the right of asylum (ius asyllum), i.e. a refuge for political culprits. The right of asylum was highly developed in Bosnia and was very often used in the turbulent Bosnian times, political turmoil and conflicts among aristocrats (Imamović, 2003, s. 104). In international agreements with Dubrovnik, the rulers secured for themselves (but also for members of their families) the right of asylum in that city of Dubrovnik. Thus, among others, King Stjepan Tvrtko II secured for himself the right of asylum in Dubrovnik in 1387, and the treaty states: „if such a time happens that he, Lord King, would have to or wanted to come to the city of Dubrovnik, if he had the will and could, stop and rest in the city of Dubrovnik at any time, fearlessly“¹¹ (Novaković, 1912, s. 207). The people of Dubrovnik gave the right of asylum in their city, in principle, to the Bosnian nobles. In 1406, the people of Dubravka wrote to the Grand Duke Sandalj Hranić, among others says: „anyone fleeing from the Bosnian nobility and its Lords can enter the city and stand there by law“¹² (Pucić, 1858, s. 80). Also of great importance was the fact that the Bosnian Church also had the right to asylum. In Church's houses (hiže) they could find refuge politically, but probably also other culprits. On one occasion in 1404, the people of Dubrovnik wrote to King Stjepan Ostoja that one of his political opponents and rivals, Duke Radišić, was in the middle of Bosnia in a Pataren house where he ate King's bread (kraljev kruh). They wrote that he was free based on asylum enjoyed by the patarens, as the believers of

¹¹ ... ako se sluči takvo vrijeme da bi on, gospodin kralj morao ili hotel doći u grad Dubrovnik, da je voljaj da može, stati i prebiti se u gradu Dubrovniku svodobno, bezbojazno, bezzabavno.

¹² ... da vsa kto bježi pred Bosnom ili pred inem gospodinom u grad more priti i tu stojati slobodno po zakonu.

the Bosnian Church were called by the people of Dubrovnik (Truhelka, 1901, s. 179).

3.3. Sentences Imposed by Bosnian Courts

Sources that would give us an appropriate answer to the question of sentences imposed by Bosnian courts are scarce and insufficiently clear. It is believed that property fines were imposed (either in cash or in-kind). In addition to the property, the death penalty is also mentioned. The death penalty was imposed only for the most serious crime of infidelity, that is, treason. Interestingly, it was alternatively determined with a property punishment (decision of the State Diet). It was rarely imposed only as of the only punishment. This is presented to us in the gift charter of King Stjepan Tvrtko Kotromanić to Duke Hrvoje Vukčić Horvatinić from 1380, in which it stated: „if anyone betrays us ... to pay with his life or treasure if the State Diet condemns him“.¹³ In 1434, Hrvoje Vukčić's nephew Juraj, in one of his wallets, foresaw the death penalty for treason as the only one (Ritter von Miklosich, 1858, s. 378).

Unlike the death penalty, the property penalty was very often applied. For the crime of murder, the *vražda* (penalty, fine) was 500 perpers (as in medieval Serbia). Although in neighbouring countries the crimes of theft and robbery were punished severely, in Bosnia the punishment was relatively mild. According to the contract of Ban Stjepan Kotromanić with the people of Dubrovnik from 1332, that it amounted to six oxen (in addition to the obligatory compensation for damage) and was paid to the Bosnian ruler (Krklijuš, 2004, s. 129-130).

Conclusion

The Bosnian medieval society that created the Bosnian state and law has its charms, but it is extremely difficult for them to claim anything. The reason for this is the lack of reliable sources in general. Criminal law is certainly a significant part of the legal tradition of every country. There are two characteristics of Bosnian medieval criminal law. The first is that a very small number of criminal offences were punished by the state, and the second is that, relatively similarly to Roman private law, the injured party or the injured party's family instituted court proceedings to obtain material compensation for the injustice committed. From the known criminal offences, we could, based on available sources, see criminal offences against life and body integrity (murder) and property (theft).

Medieval Bosnian courts were familiar with neither written laws nor penal institutions, which was a specific feature of the entire Bosnian legal system. They performed their function according to customary law. These courts met on a case-by-case basis, and a party was required to appear in court, if it did not do so within a specified time, the judgment would be rendered in the absence of that party. It was not possible to

¹³ ... ako li bi tko od njih koju neviru nam učinio ... da plaća on koi sgreši, glavom svojom ali blagom, u štoga Bosna sudi.

appeal the verdict, as medieval Bosnian law most likely did not recognize the institute of appeal. The highest court was the ban's, that is, the king's court, and according to their administrative and judicial immunity, each lord "distributed justice" on his estate.

Jurors who were called *dobri ljudi* („good people“) also played an important role. The trial was conducted in the open air. The judge (ban, that is, the king or lord) would sit in one lofty place, that is, on a special „stone chair“. Disputes that would be conducted before the courts varied, from private to criminal. The fines were monetary, with the losing party having to pay court costs to the landlord or ban/king.

This compensation was called an *osud*, and the amount depended on the severity of the sentence. The evidentiary procedure is not completely clear until the end. The most common way was by taking the oath of the defendant with the accomplices (several other persons who would confirm his story), and the oath would usually end with the words: *Bogom i svojom dušom se kunem da su mi iskazi istiniti* (I swear to God and my soul that my statements are true). The Bosnian nobility had certain privileges regarding the judiciary. They could be tried only by those of the same rank, that is, they were tried by a collegial body called *stanak*. One of the particularly interesting institutions of Bosnian medieval law is the institution of asylum, that is, the right of asylum (*ius asylum*). The right to asylum was recognized by the Dubrovnik (Ragusa), which provided refuge to many landowners and Bosnian citizens in turbulent Bosnian times. The penalty system was relatively lenient. Most often, a property sentence was imposed (sometimes in cash, more often in nature), in rare cases, the death penalty (only for the criminal offence of treason). Therefore, medieval Bosnian law is an interesting and not fully explored area. The most likely reason for this is the lack of sources that would complete the story of life in the medieval Bosnian state.

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