

## TREASON AND CRIMES AGAINST THE EMPEROR AND THE STATE IN THE BYZANTINE JURIDICAL COMPILATIONS

**SUMMARY:** 1. The Isaurian ‘selection’. - 2. The Macedonian compilations. - 3. The late juridical compilations. - 4. Byzantine law as evolution and vulgarization of Roman law.

Criminal law is a distinguishing element of Byzantine law<sup>1</sup>. The historiography has largely underlined its harshness, because of the considerable presence of physical mutilations and punishments within it<sup>2</sup>.

If these punishments are considered to be very severe, on the other hand it must be remarked that in several cases they were utilized to substitute the death penalty provided by the Justinian legislation. Indeed, a strong oriental influence for the presence of the infliction of corporal punishments and mutilations cannot be de-

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<sup>1</sup> On Byzantine criminal law in the *Ekloge*: N.SP. ΤΡΟΪΑΝΟΣ, *Ὁ ποινάλιος τοῦ ἐκλοζαδίου. Συμβολὴ εἰς τὴν ἱστορίαν τῆς ἐξελίξεως τοῦ ποινικοῦ δικαίου ἀπὸ τοῦ Corpus iuris civilis μέχρι τῶν Βασιλικῶν*, Forschungen zur byzantinischen Rechtsgeschichte, 6, Frankfurt-am-Main 1980.

<sup>2</sup> E. CORTESE, *Le grandi linee della storia giuridica medievale*, Roma 2002, 172-173.

nied<sup>3</sup>, but criminal repression was generally mitigated in comparison with the *Digest*, although in Byzantine law the death penalty was still extensively imposed<sup>4</sup>. In this sense, the authors of the *Ekloge* underlined this philanthropic turn in the proem<sup>5</sup>, considering it a mitigation of Roman law<sup>6</sup>, of which the Byzantine legislation must be considered the evolution. It is well known that in the Byzantine compilations redacted in the 8<sup>th</sup> and 9<sup>th</sup> century, a special title deals with penal law, regulating the different aspects of criminal repression. If in the *Ekloge*, the 17<sup>th</sup> title was composed of 54 chapters, both in the *Prochiron* and the *Eisagoge*, the number was augmented: the 39<sup>th</sup> title of the *Prochiron* contained 86 chapters, whereas the number was extended to 93 chapters in the 40<sup>th</sup> chapter of the *Eisagoge*. In all three juridical compilations, the title about penal law

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<sup>3</sup> B. SINOGOWITZ, *Studien zum Strafrecht der Ekloge*, Πραγματεῖαι τῆς Ἀκαδημίας Ἀθηνῶν, 21, Athens 1956, 16 ff.

<sup>4</sup> *Ibidem*, 37-39.

<sup>5</sup> “ἐπιδιόρθωσις εἰς τὸ φιλανθρωπότερον”.

<sup>6</sup> On Roman criminal law: TH. MOMMSEN, *Römisches Strafrecht*, Leipzig, 1889; U. BRASIELLO, *La repressione penale in diritto romano*, Napoli, 1937; B. SANTALUCIA, *Diritto e processo penale nell'antica Roma*, Milano, 1989; B. SANTALUCIA, *Studi di diritto penale romano*, Roma, 1994; L. GAROFALO, *Piccoli scritti di diritto penale romano*, Pavia, 2009; T.R. ROBINSON, *Treason in Roman law*, *Georgetown Law Journal*, 8 (1919-1920), 14-31; C.P. SHERMAN, *The Modernness of Roman Military Law*, Boston, 1944; C.W. CHILTON, *The Roman Law of Treason under the Early Principate*, in *Journal of Roman Studies*, 45, 1944, 73-81; R.A. BAUMAN, *The Crimen Maiestatis in the Roman Republic and Augustan Principate*, Johannesburg, 1967.

doesn't have any systematic order, with the result that the arrangement is extremely irregular.

The article focuses on the contents of the official juridical compilations redacted in the 8<sup>th</sup> and 9<sup>th</sup> century - thus *Eklōge*, *Prochiron* (and *Eisagoge*) and the *Basilika*<sup>7</sup>, regarding treason, conspiracy against the emperor and against the state, desertion, relations and cooperation with the enemy, giving information, furnishing materials and arms and giving instructions in the art of ship-building. The texts concerned were extracted from the *summae*, the paraphrases and the commentaries on the four parts of the *Corpus iuris*, written by the *antecessores* in Greek language between the second half of the 6<sup>th</sup> and 7<sup>th</sup> century<sup>8</sup>. First of all, the Isauric *Eklōge* which was promulgated by the imperial authority in 741. Only in the second half of the 9<sup>th</sup> century the *Eklōge* was considered as a corrupted Roman law, because it had been enacted and utilised during the reign of the iconoclast dynasty, and for that reason it was replaced with the Macedonian “purification of the ancient law”, which claimed to be a coming back to the

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<sup>7</sup> In order to facilitate the reading, the German translation of the *Eklōge*, contained in L. Burgmann's edition, will be provided in footnotes, as well as the Latin translation of the *Prochiron* made by K.E. Zachariae von Lingenthal. See: L. BURGMANN, *Ecloga. Das Gesetzbuch Leons III. und Konstantinos' V.*, Forschungen zur byzantinischen Rechtsgeschichte, X, Frankfurt am Main, 1983; K.E. ZACHARIAE VON LINGENTHAL, *Ὁ Πρόχειρος Νόμος. Imperatorum Basilii, Constantini et Leonis Prochiron*, Heidelbergae, 1837.

<sup>8</sup> N. VAN DER WAL / J.H.A. LOKIN, *Historiae iuris graeco-romani delineatio*, Groningen, 1985, 38 ff.

pure Justinian law. In the practice it has to be considered an evolution of Roman law, especially after the orientalisation of penal law, which took place in the 7<sup>th</sup> and 8<sup>th</sup> century.

For desertion, treason and joining the enemy, no references will be made to the *Nomos stratiotikos* which is generally considered a private compilation, preserved in discordant versions<sup>9</sup>, with considerable differences between them<sup>10</sup>. Probably redacted in the 8<sup>th</sup> century, the *Nomos stratiotikos* was a code which regulated military life and discipline, composed of excerpts from the *Digest* and the *Codex*, whose text was successively expanded first with excerpts “from *Rufus* and from the *Tactica*”<sup>11</sup> and later with excerpts extracted from the *Ekloge*, from the *Prochiron* and the *Eisagogoge*, and from the *Basilika*<sup>12</sup>. Because of these reasons, the *lex militaris* will not be considered in the following pages, but on the other hand, the article focuses on the 14<sup>th</sup> century’s juridical compilations and on the transplantation of Byzantine law in Serbia, where Greek-Roman law became enforced, through the inclusion of the Serbian

<sup>9</sup> N. VAN DER WAL / J.H.A. LOKIN, *Historiae*, cit., 73-75.

<sup>10</sup> The best edition of the *Nomos stratiotikos* can be considered Ashburners’ edition: W. ASHBURNER, ‘The Byzantine Mutiny Act’, *Journal of Hellenic Studies*, 46 (1926), 80–109. This edition was included in: *Ius Graeco-Romanum*, J. ZEPOS - P. ZEPOS, (ed), Athens 1931 (Aalen 1962), v. 2, 63-103. This volume includes a second edition: E. KORZENSZKY, *Leges poenales militares e codice Laurentiano LXXV*, 6, Budapest, 1931.

<sup>11</sup> “ἐκ τοῦ ρούφου καὶ τῶν τακτικῶν”.

<sup>12</sup> W. ASHBURNER, *The Byzantine Mutiny*, cit., 82.

version of the *Syntagma of Blastares* in the tripartite codification enacted by Stephan Dušan in 1349: the Byzantine concepts of high treason and crimes against the state and the emperor, became part of an official legislation, in the first half of the 14<sup>th</sup> century, which is generally considered the last flourishing period of Byzantine legal history<sup>13</sup>.

If this article can only give a short introduction to the juridical sources and their contents, on the other hand it could be a useful starting point to develop further research on a subject, which still remains quite obscure and underinvestigated.

### 1. *The Isaurian ‘selection’*

Following the chronological order, we first have to consider the juridical contents of the *Eκλογε*, the Isaurian compilation which defined itself as a “selection of the laws” from the legislation of Justinian the Great, promulgated in 741<sup>14</sup>. In the 17<sup>th</sup> title Ποινάλιος τῶν ἐγκληματικῶν κεφαλαίων, only two chapters are related to the criminal matters previously mentioned, thus the conspiracy against the emperor or the state, and the desertion<sup>15</sup>.

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<sup>13</sup> N. VAN DER WAL / J. H. A. LOKIN, *Historiae*, cit., 116-119.

<sup>14</sup> “Ἐκλογή τῶν νόμων [...] ἀπὸ τῶν Ἰνστιτούτων, τῶν Δηγέστων, τοῦ Κώδικος, τῶν νεαρῶν τοῦ μεγάλου Ἰουστινιανοῦ διατάξεων”.

<sup>15</sup> N.SP. ΤΡΟΙΑΝΟΣ, *Ὁ ποινάλιος*, cit., 10-12.

E. 17.3: Ὁ κατὰ βασιλέως φατριάζων ἢ βουλευόμενος ἢ συνωμοσίας κατ' αὐτοῦ ἢ τῆς πολιτείας τῶν χριστιανῶν ποιῶν τὸν μὲν τοιοῦτον ἤρμοξε κατὰ τὴν ὥραν θανατοῦσθαι ὡς τὴν τοῦ παντὸς κατάλυσιν μελετήσαντα. ἀλλ' ἵνα μὴ τινες καὶ ἐχθρωδῶς πολλάκις διακειμένοι πρὸς τινὰς ἀκρίτως φονεύσωσιν ἀπολογία ἐσχάτως προσφέροντες, ὡς κατὰ τῆς βασιλείας ἐλάλησεν, δέον τὸν τοιοῦτον κατὰ τὸν τόπον ὑπὸ στερεὰν παραφυλακὴν γίνεσθαι καὶ τὰ περὶ αὐτοῦ τῷ βασιλεῖ ἀναφέρεσθαι καὶ καθὼς λοιπὸν αὐτὸς ἀνακρινεῖ καὶ βουλεύεται ποιεῖν<sup>16</sup>.

This chapter provided the supreme penalty for conspiracy against the emperor (*καθόσιωσις*)<sup>17</sup> and for conspiracy against “the state of the Christians” (“τῆς πολιτείας τῶν χριστιανῶν”). The aim of the law was to preserve the imperial throne and the state from any internal attack and from any attempt at subversion. The conspirator against the state or the *salus* of

<sup>16</sup> «Wer gegen den Kaiser konspiriert oder Anschläge plant oder reine Verschwörung gegen den Staat der Christen unternimmt, dem gebührte es zwar, unverzüglich zu sterben, da er auf die Vernichtung des Ganzen sann. Damit aber nicht Leute, die vielleicht mit anderen verfeindet sind, diese ohne Verfahren töten und später zur Verteidigung vorbringen: “Er hat gegen den Kaiser geredet”, muß ein solcher auf der Stelle unter strenge Bewachung genommen und der ihn betreffende Sachverhalt an der Kaiser berichtet werden; und weiter muß man so verfahren, wie dieser selbst untersuchen und beschließen wird», in: L. BURGMANN, *Ecloga*, cit., X, 226.

<sup>17</sup> Nov. 95.5.1.

the emperor was accused of planning the destruction of “the order of reality” (“τὴν τοῦ παντὸς κατάλυσιν μελετήσαντα”) and was condemned to the death penalty.

The assumption of the throne by the *basileus* was decided by God’s will and he was considered the vicar of God, his representative on earth: this concept also favoured the reintroduction of dynastic succession under the Isaurians, after a period characterised by the predominance of a military element (695-717)<sup>18</sup>. The legislation itself was no longer decided by the emperor but derived from the will of God, who was the lawgiver, the creator of law and justice and the depositary of imperial legality. By losing the role of ultimate source of the law and becoming an instrument of God, the emperor acquired at the same time “a semi-divine status”<sup>19</sup>: the *Eklōge* is the first juridical text enunciating this change<sup>20</sup>.

Considering these elements, it can be understood why the crime didn’t have only a secular dimension but also an extra worldly one, and for that reason conspiracy was also considered a violation against God’s will, which had to be repressed with the harshest punishments, inasmuch

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<sup>18</sup> A. PERTUSI, *Il pensiero politico e sociale bizantino dalla fine del secolo VI al secolo XIII*, in A. Carile, (ed.), *Storia delle idee politiche economiche e sociali*, Torino, 1983, 689-93.

<sup>19</sup> J.H.A. LOKIN, *Law and legislation in the Law Books*, in A. E. LAIOU AND D. SIMON, (ed), *Law and society in Byzantium: Ninth-Twelfth Centuries*, Washington D.C., 1994, 72.

<sup>20</sup> *Ibidem*, 77.

as the culprit was accused of planning the destruction of all (“ὡς τὴν τοῦ παντὸς κατάλυσον μελετήσαντα”). The confiscation of the culprit’s goods was not provided in the *Eckloge* and was only reintroduced in the following century, in the Macedonian juridical compilations, according to Justinianic law. In the second part, the chapter tried to prevent the abuse of the duty to kill a conspirator, by ordering an enquiry if someone accused of fomenting a conspiracy was killed. The results of the enquiry were judged by the emperor in person, who decided on the basis of the reports of his inspectors, if the killer was culpable of homicide or acted in accordance with the law, preserving the safety of the emperor, the state and the order decided by God.

Chapter 53 dealt with the crime of the *proditio*, providing the death penalty for the “αὐτόμολοι”<sup>21</sup>.

E. 17.53: *Οἱ αὐτόμολοι ἤτοι εἰς τοὺς πολεμίους προστρέχοντες ζῖφει τιμωρεῖσθωσαν*<sup>22</sup>.

This chapter was related to military desertion, but probably also to the civilians who abandoned the Christian state in order to join the enemy in

<sup>21</sup> N.SP. ΤΡΟΪΑΝΟΣ, *Ὁ ποινάλιος*, cit., 21-23.

<sup>22</sup> “*Deserteure, d. h. diejenigen, die zum Feind überlaufen, sollen mit dem Schwert bestraft werden*”. L. BURGMANN, *Eckloga*, cit., 243.



time of war<sup>23</sup>. This text was explicit in providing for the supreme penalty with the sword (“ζίφει τιμωρείσθωσαν”). Nevertheless, it cannot be excluded that the same punishment was also imposed in time of peace, for people who abandoned the imperial territory.

In Byzantine thought, the Byzantine Empire was the only Christian-orthodox state in the whole *oikoumene*: other populations were considered to be pagan or heretical, who had to be converted to the true faith. Consequently, abandoning the imperial army or territory to join the enemy was considered treasonable, in time of war or in time of peace, both for soldiers and for civilians<sup>24</sup>. These two chapters of the *Eklloge* were extracted from the *Corpus iuris civilis* and if the juridical contents were based on Roman law<sup>25</sup>, on the other hand, a strong reduction of the texts was made, with the result that they simply regulated the basic aspects of conspiracy, desertion and treason.

## 2. *The Macedonian compilations*

The last part of the 9<sup>th</sup> century was the epoch of the coming back to the Justinianic legislation, or at least it was supposed to be. The imperial

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<sup>23</sup> D. 48.4.2.

<sup>24</sup> D. 49.15.19.8.

<sup>25</sup> D. 48.4.1.1.

power made an immense effort for the purification of those laws corrupted by the Iconoclast rulers, but the purification was not complete at all, and several aspects remained contaminated by the Iconoclastic legislation. For instance, if in civil law the *potestas* on children of both parents was abolished and the *potestas* of the father reintroduced, the penal law remained more corrupted, especially in the two short Macedonian compilations<sup>26</sup>.

As mentioned before, the 39<sup>th</sup> title of the *Prochiron* and the 40<sup>th</sup> title of the *Eisagoge*, both introduced by the rubric *Περὶ ποινῶν* (*De poenis*), regulated several aspects of the criminal law, such as homicide, rape, heresies, theft, arson etc, etc... The crimes of treason, desertion, cooperation with the enemy and revealing military secrets and plans, were more extensively regulated in comparison with the *Ekloge*. The texts of the *Prochiron* and the *Eisagoge* are very similar, with only a few minor differences between them, which cannot be considered relevant in the juridical analysis, and because of this similarity, they can be analysed together.

In both compilations, the first chapter (Proch. 39.1 / Eisag. 40.1) dealt with encouraging the enemy into bringing war against the Byzantine state (“Ὁ ἐρεθίζων τοὺς πολεμίους”) and with favour-

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<sup>26</sup> K.E. ZACHARIAE VON LINGENTHAL, *Geschichte des griechisch-römischen Rechts*, Berlin, 1895 (repr. Aalen 1955), 109-113.

ing the joining of the enemy (“*παραδιδούς πολεμίους ῥωμαίους*”).

Proch. 39.1: *Ὁ ἐρεθίζων τοὺς πολεμίους ἢ παραδιδούς πολεμίους ῥωμαίους κεφαλικῶς κολάζεται*<sup>27 28</sup>.

Both crimes were punished with the death penalty: in Byzantine law the term *κεφαλικῶς* indicated the supreme penalty and it could not be considered to be the loss of status, that is to say the *capitis deminutio*, provided in Roman law.

Proch. 39.3 (Eisag. 40.3) authorised the killing of the soldiers who abandoned the imperial divisions, thereby joining the enemy:

Proch. 39.3: *Τοὺς ἐκ τῶν ῥωμαϊκῶν πρὸς τοὺς πολεμίους ἀποφεύγοντας ὡς πολεμίους ἔξεστιν ἀκινδύνως φονεῦειν*<sup>29 30</sup>.

Those among the Romans (“*ἐκ τῶν ῥωμαϊκῶν*”)<sup>31</sup>, who ran away (*Τοὺς [...]* *ἀποφεύγοντας*) to join the enemies

<sup>27</sup> Proch. 39.1: “*Qui hostes proritat, aut hostibus romanos prodit, capitaliter punitur*”.

<sup>28</sup> See also Eisag. 40.1.

<sup>29</sup> Proch. 39.3: “*Qui ex romanis ad hostes transfugiunt, eos ut hostes cuique sine periculo occidere licet*”.

<sup>30</sup> See also Eisag. 40.3.

<sup>31</sup> The term *μέρος* was also used to indicate a division of the army. W. TREATGOLD, *Byzantium and Its Army 284-1081*, Stanford 1995, 93-98.

(“πολεμίους”), could be killed without any juridical consequences (“ἀκινδύνως”). Furthermore, deserters and traitors were considered to be at the same level as the enemy that they joined:

Proch. 39.19: *Οἱ πολέμοιοι καὶ οἱ πρὸς αὐτοὺς ἀτομολοῦντες ζῖφει τιμωρεῖσθωσαν*<sup>32 33</sup>.

Proch. 39.19 (Eisag. 40.22) was connected with Proch 39.3 (Eisag. 40.3): the deserters who joined the enemy (“πρὸς αὐτοὺς ἀτομολοῦντες”)<sup>34</sup> could have been killed “like the enemies” (“ὡς πολεμίους”) without any juridical consequences, and the death penalty with the sword was inflicted. These chapters had been extracted and translated from the 8<sup>th</sup> title of the 48<sup>th</sup> book of the *Digest*, *Ad legem Iuliam maiestatis*, and from D. 49.15, *De re militari*: they were related to every citizen and soldier in the territory of the Eastern Roman Empire and as a consequence of that, every civilian was punished for treason like a soldier, without any distinction being made from those men serving in the army<sup>35</sup>.

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<sup>32</sup> Proch. 39.19: “*Hostes, quique ad eos transfugiunt, gladio feriuntor*”.

<sup>33</sup> See also Eisag. 40.22.

<sup>34</sup> The death penalty with the sword was also provided in E. 17.3.

<sup>35</sup> The legislation was probably connected with the administrative and military system of the *themata*, which was adopted since the 7<sup>th</sup> century and reached its height in the 9<sup>th</sup> and 10<sup>th</sup> century, when the Macedonian legislation was promulgated.

Selling arms or furnishing materials to forge or fabricate them was also repressed by means of the death penalty:

Proch. 39.9: *Μηδεὶς πιπρασκέτω βαρβάροις ὄπλα εἰργασμένα ἢ ἀνέργαστα ἢ σίδηρον, ἐπεὶ κεφαλικῶς τιμωρεῖται*<sup>36 37</sup>.

The text was based on D. 39.4.11 pr.<sup>38</sup>, C. 4.41.2 pr. and C. 4.41.2.1<sup>39</sup>. In the *Prochiron* and in the *Eisagoge*, the term “barbarians” was used<sup>40</sup> to indicate the populations to whom materials and weapons were sold, and was literally translated according to the use made in the texts of the *Corpus iuris civilis*. In the 9<sup>th</sup> century, however, the context was different and the word was probably used in relation to any enemy or any population outside the territory of the Byzantine Empire, certainly to indicate the people not belonging to the Orthodox faith. According to the text of the *Digest* and of the *Codex*, the juridical expression indicating the *poena capitis* was translated as “κεφαλικῶς τιμωρεῖται.

Proch. 39.38 / Eisag. 40.40<sup>41</sup> dealt with the crime of giving instruction in the art of ship

<sup>36</sup> Proch. 39.9: “*Nemo barbaris arma facta vel infecta aut ferrum vendat, quandoquidem capite punitur*”.

<sup>37</sup> See also: Eisag. 40.11.

<sup>38</sup> D. 39.4.11.

<sup>39</sup> C. 4.41.2.1.

<sup>40</sup> “βαρβάροις”.

<sup>41</sup> See also: B. 60.51.40.

building. The text was extracted from C. 9.47.25<sup>42</sup> and provided the death penalty for someone who instructed the “barbarians” in building ships:

Proch. 39.38: Ὁ διδάσκων τοὺς βαρβάρους ναῶς κατασκευάζειν, κεφαλικῇ τιμωρία ὑπόκειται<sup>43 44</sup>.

Selling or revealing naval technology to the enemy was harshly repressed with the infliction of the *supplicium capitale* for the culprit (“κεφαλικῇ τιμωρία ὑπόκειται”). Also in this chapter, the term “barbarians”<sup>45</sup> was used to translate the term of the *Codex*, with the general meaning of people living outside the Christian empire, or enemies. The ones who deserted and revealed military plans or information to the enemy were condemned to be hanged at stake or burned:

Proch. 39.17: Οἱ πρὸς τοὺς πολεμίους αὐτομολοῦντες καὶ τὰς ἡμετέρας βουλὰς ἐπαγγέλλοντες εἰς φοῦρκαν ἀναρτῶνται ἢ καίονται<sup>46 47</sup>.

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<sup>42</sup> C. 9.47.25.

<sup>43</sup> Proch. 39.38: “*Qui barbaros docet conficere naves, capitali poenae subiacet*”.

<sup>44</sup> See also Eisag. 40.40.

<sup>45</sup> “τοὺς βαρβάρους”.

<sup>46</sup> Proch. 39.17: “*Qui ad hostes transfugiunt et consilia nostra deferunt, in furcam tolluntur aut crematur*”.

<sup>47</sup> See also Eisag. 40.20.

In this case, the death penalty was not inflicted with the sword, but through particular methods, such as hanging or burning, probably because of the gravity of this crime, which was considered a serious menace to the safety of the state and its armies. Both in the *Prochiron* and in the *Eisagoge*, only one chapter was related *stricto sensu* to the *crimen maiestatis*, repressing the conspiracy against the safety of the emperor (“σωτηρίας τοῦ βασιλέως”):

Proch. 39.10: Ὁ κατὰ τῆς σωτηρίας τοῦ βασιλέως μελετήσας, φονεύεται καὶ δημεύεται<sup>48</sup>  
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If in Roman law the *crimen maiestatis*, intended like any conspiracy or attack to the person of the emperor, had a broad scope, both in the *Prochiron* and in the *Eisagoge*, the law concerning this crime was even shorter than the one of the *Eklloge*. The *salus* of the *basileus* was not equalised to the *salus* of the state, but the crime was obviously repressed through the death penalty and according to Roman law, the culprit was also subjected to accessory sanction of the confiscation of his goods (“δημεύεται”).

With the *Ἀνακάθαρσις τῶν παλαιῶν νόμων* and the return to the true law of Justinian, the

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<sup>48</sup> Proch. 39.10: “*Qui contra principis salutem quid meditatur, confiscatus morte punitur*”.

<sup>49</sup> See also Eisag. 40.12.

laws about treason, desertion and conspiracy against the emperor were reincorporated in the 36<sup>th</sup> title of the 60<sup>th</sup> book of the *Basilika*, rubricated as *Νόμος Ἰουλίου ἀρμόζων κατὰ τῶν ἐπιβούλων*. If the majority of the chapters was included in B. 60.36, being their texts based on D. 48.4.1-11 and C. 9.8.1-5, it must be remarked that some chapters were included in different titles or books. The text dealing with the killing of deserters and traitors who joined the enemy was incorporated in B. 60.39.3, rubricated as *Νόμος Κορνέλιος περὶ φονευτῶν, καὶ φαρμακῶν, καὶ μαθηματικῶν, καὶ ὁμοίων*, according to the *Digest's* collocation<sup>50</sup>.

Proch 39.38 / Eisag. 40.40, on how to give instruction in the art of ship building was included in B. 60.51.62<sup>51 52</sup>.

The law about selling weapons, materials or iron to the enemy, was not included in the 60<sup>th</sup> book, but in the first title of the 19<sup>th</sup> book of the *Basilika* (B. 19.1.87), which dealt with contracts of buying and selling and the agreements between the *emptor* and *venditor*. The supreme penalty was provided for the culprit (“κεφαλικῇ ὑποκείσθω

<sup>50</sup> B. 60.39.3: “Ὁπουδῆποτε τοὺς αὐτομόλους εὐρισκομένους ἔξεστιν ὡς πολεμίους φονεῖν”. See also: D. 48.8.3.6 - Proch. 39.3 - Eisag. 40.3.

<sup>51</sup> Rubricated as *Περὶ ποινῶν*.

<sup>52</sup> B. 60.51.62: “Ὁ τοὺς βαρβάρους ναῦς κατασκευάζειν διδάσκων κεφαλικῇ τιμωρία ὑπόκειται” (“*Qui barbaros docuerit extruere naves, capitali poena tenetur*”). See also: C. 9.47.25 - Proch 39.38 - Eisag. 40.40.



τιμωρία”), together with the accessory penalty of *bonorum publicatio* (“δήμευσις”), according to the text of the *Digest*<sup>53</sup>.

Not all of the excerpts of the *Prochiron* and the *Eisagoge* were included in the *Basilika*, because the aim of the authors of the *anakatharsis ton palaion nomon* was to return to the original Justinianic legislation, but in spite of the attempt to purify the law which had been corrupted by the Iconoclastic legislators, several texts extracted from the two Macedonian compilations, deviating from the *Corpus iuris civilis*, found a place in the *Basilika*<sup>54</sup>.

### 3. The late juridical compilations

The chapters above mentioned were included in the *Hexabiblos* of Armenopoulos and in Blastares’ *Syntagma*, which were not official juridical compilations with the force of law, but which can be considered very relevant in Byzantine legal history, not only for their juridical contents, but also because of their diffusion and use in the Ottoman Empire after the collapse of the Eastern Roman Empire, as well as in different countries

<sup>53</sup> B. 19.1.87: “Μηδεὶς βαρβάρους προφάσει πρεσβείας παραγενομένοις ὄπλα πιπρασκέτω ἢ εἰργασμένα ἢ ἀνέργαστα, μηδὲ σίδερον ὄλωσ. ὁ δὲ παρὰ ταῦτα ποιήσας τι δημεύεσθω, καὶ κεφαλικῆ ὑποκείσθω τιμωρία” (“*Nemo barbaris sub specie legationis venientibus arma vendat vel facta vel infecta, neque ferrum omnino. Qui contra ea aliquid fecerit, eius bona publicantor, et ipse capitali supplicio subiicitor*”). See: C. 4.41.2 - Proch. 39.10 - Eisag. 40.11.

<sup>54</sup> Proch. 39.35,43-44, 66,70.

of Eastern Europe, such as Romania, Russia, Bulgaria, but also in Georgia.

According to byzantine tradition, the last book of the *Hexabiblos* of Konstantinos Armenopoulos contained penal law. The 8<sup>th</sup> title of the 6<sup>th</sup> book (Arm. 6.8.1-3,5-6) grouped these crimes under the rubric *Περὶ αὐτομολῶν καὶ ἀνδραποδιστῶν*, including the chapters extracted from Proch. 39.3,17,19,1,38,22<sup>55</sup>, which were joined with an excerpt from the *Synopsis Basilicorum* 60.1.36 (about the *plagiarii*)<sup>56</sup>. One text on the insult against the emperor and another one about the conspiracy against his person (extracted from Proch. 39.10), together with a chapter on exciting the sedition of soldiers (B. 57.1.9) were included in the 14<sup>th</sup> title of the last book (Arm. 6.14.1-2, 6)<sup>57</sup>, *Περὶ διαφορῶν ποινῶν*<sup>58</sup>.

More relevant is the inclusion in the *Σύνταγμα κατὰ στοιχεῖον*<sup>59</sup> of Matthew Blastares, a nomokanon alphabetically arranged, redacted like a juridical encyclopedia in 1334-1335: the laws regulating a specific subject were included in a chapter (*κεφάλαιον*), which was introduced by a

<sup>55</sup> Proch. 39.3,17,19,1,38,22 - Arm. 6.8.1-3, 5-6 (about the *plagiarii*: Arm. 6.8.7 - Bas. 60.1.36).

<sup>56</sup> As mentioned, this last chapter dealt with selling free men as slaves (*plagium*), providing the beating and the cutting of the hair together with the cutting of the hand for the *plagiarius*.

<sup>57</sup> Arm. 6.14.2 - Proch. 39.10; Arm. 6.14.6 - B. 57.1.9.

<sup>58</sup> The title *Περὶ διαφορῶν ποινῶν* regulates several different aspects of penal law.

<sup>59</sup> G. A. RHALLES - M. POTLES (ed.), *Σύνταγμα τῶν θεῶν καὶ ἱερῶν κανόνων*, v. 6, Athens, 1859 (repr. Athens 1966).

rubric<sup>60</sup>. The rubrics of the *Syntagma* give a systematic classification and definition for the juridical contents, which are more practical for the consultation and understandable. The texts about people who joined the enemy are grouped in the chapter Π - ΠΑ' *Περὶ προδοτῶν* (*De proditoribus*), composed of the texts of Proch. 39.1 / Eisag. 40.1, Proch. 39.3 / Eisag. 40.3, Proch. 39.10 / Eisag. 40.12, and Proch. 39.17 / Eisag. 40.20.

Between the text of Proch. 39.1 / Eisag. 40.1 and Proch. 39.3 / Eisag. 40.3, Blastares included an excerpt which is not possible to find, either in the *Eisagoge*, or in the *Prochiron*, or in the *Basilika*. This chapter approximated to the status of enemy people helping *latrones* in pursuing their activities<sup>61</sup>, providing a harsher penalty (“*μᾶλλον κολάζονται*”) as a consequence of the fact that these activities were considered more dangerous (“*χαλεπωτέρα*”) than an open conflict:

ΚΑ' *Περὶ προδοτῶν*: [...] *Ὅτι δὲ κατὰ χέρσιν ἢ θάλασσαν τοῖς ληστεύουσι συλλητεύσαντες, τῶν φανερῶν πολεμίων μᾶλλον κολάζονται, ὅσω*

<sup>60</sup> The text of every chapter was composed by canon law, followed by civil law, introduced by the terms *νόμος, νόμοι, νόμοι πολιτικοί*. P. ANGELINI, *Estratti di diritto giustiniano nel Σύνταγμα κατὰ στοιχεῖον di Matteo Blastares*, Tijdschrift voor Rechtsgeschiedenis, 81 (2013), v. 1, 131 – 143.

<sup>61</sup> *Κ-ΚΓ' Περὶ κλοπῆς (De furto)* contained also laws about the *latrones (Περὶ ληστῶν)*. Their activities were generally repressed with the death penalty. In this sense it must be remarked that giving help to them was equalized to the *proditio*. See: J. P. MIGNE (ed.), *Patrologia graeca*, Paris 1863, v. 144, col. 1375.

καὶ τοῦ φανεροῦ πολέμου ἢ ἀφανῆς ἐπιβουλῇ χαλεπωτέρα καθέστηκε [...]<sup>62</sup>.

Furthermore, sacrilege was equalised to the crime of *lèse majesté* in the chapter *I-A' Περὶ ἱερῶν σκευῶν καὶ ἱεροσυλίας*<sup>63</sup> and, according to the chapter *B-Z' Ὅτι βασιλέα ὑβρίζειν οὐ δεῖ, laesa maiestas* was repressed through the death penalty with the sword, as for the crime of conspiracy:

B-Z' Ὅτι βασιλέα ὑβρίζειν οὐ δεῖ: [...] Ὁ καθοσίωσιν πλημμελῶν, ἥτοι φατριάζων κατὰ βασιλέως ζίφει τιμωρείσθω [...]<sup>64 65</sup>.

This chapter was based on the text of Proch. 39.10 / Eisag. 40.12, but Blastares included the crime of conspiracy (*καθοσίωσις*), which was approximated to that of *lèse-majesté*. The confiscation of goods was not directly provided in this chapter, contrary to the contents of the *Prochiron* and the *Eisagoge*<sup>66</sup>, but at the end of the chapter,

<sup>62</sup> For the translation see: J. P. MIGNE (ed), *Patrologia graeca*, vol. 145, coll. 123, 126: “*Qui vero in desertis locis, aut propter mare latronibus opitulantur, quam hostes aperti eo gravius puniuntur, quo clandestinae insidiae plus periculi ferunt quam apertum bellum*”.

<sup>63</sup> *Σύνταγμα τῶν θεῶν καὶ ἱερῶν κανόνων*, cit., 307.

<sup>64</sup> *Ibidem*, 125.

<sup>65</sup> PG 144, op. cit., col. 1114: “*Qui laesae majestatis vel coniurationis reus est, gladio puniatur*”.

<sup>66</sup> The *publicatio bonorum* was provided in B. 60.36.19.

the author referred to the contents of *Π-ΠΙΑ'*, which provided the *bonorum publicatio*<sup>67</sup>.

People conspiring against the state were also subjected to the *lex maiestatis* (“τῷ τῆς καθοσιώσεως ὑποκειται ἐγκλήματι”), like people furnishing help to the enemy with arms, troops, materials, money or in any other way, and people delivering some stronghold to the enemy<sup>68</sup>:

Σ-ΙΑ' Περὶ τῶν συνωμοσίας, ἢ φατρίας, ἢ στάσεις ποιούντων: [...] Ὁ συνωμοσίαν κατὰ τῆς πολιτείας παρασκευάσα γενέσται [...] ἢ παρασκευάσας αὐτὸν βοήθηθῆναι πλήθει [...] τῷ τῆς καθοσιώσεως ὑποκειται ἐγκλήματι [...] <sup>69</sup> <sup>70</sup>.

In 1349, a few years later than the redaction of the *Syntagma alphabeticum*, its Serbian abridged version was incorporated in the tripartite codification enacted by Stephan Dušan and became law in force in the Serb-byzantine Empire, which had been founded three years before<sup>71</sup>. The *Syntagma* was integrally translated into the Slavic language between 1348 and 1349, and later reduced,

<sup>67</sup> “Ζήτει καὶ τὸ κα' κεφάλαιον τοῦ Π στοιχείου”.

<sup>68</sup> See D. 48.4.3.

<sup>69</sup> *Σύνταγμα τῶν θεῶν καὶ ἱερῶν κανόνων*, cit., 450.

<sup>70</sup> *PG 145*, op. cit., col. 131: “*Qui conjurationis adversus rempublicam auctor existiterit [...] aut eos adjuvari copiis [...] lege majestatis tenetur*”.

<sup>71</sup> About the tripartite codification of Stephan Dušan, see: A. SOLOVJEV, *Istorija slovenskih prava/Zakonodavstvo Stefana Dušana cara Srba i Grka*, Beograd, 1998.

erasing the majority of canon law, and preserving the νόμοι πολιτικοί (царскици закони). The crimes of treason, desertion, cooperation and sharing intelligence with the enemy, unknown to the Slav populations, were introduced in the Serbian juridical system (which had previously been based on customary law) and repressed according to Greek-roman law's discipline<sup>72</sup>.

The chapter *B-Z* 'Ὅτι βασιλέα ὑβρίζειν οὐ δεῖ was included in the chapter .КФ. Ико цароу не подобает досадити<sup>73</sup>, while the chapter .КЗ. О прѣдательехъ И невѣрницѣхъ was composed of the texts of *Π-ΚΑ* 'Περὶ προδοτῶν and *Σ-ΙΑ* 'Περὶ τῶν συνωμοσίας, ἢ φατρίας, ἢ στάσεις ποιούντων<sup>74</sup>.

In some cases, the texts were adapted to the Serbian context:

### .КЗ. О прѣдательехъ И невѣрницѣхъ

“Иже отъ православныхъ къ ратникомъ отбѣгшихъ тако же и ратники лѣте естъ

<sup>72</sup> See: P. ANGELINI, *Il Codice di Dušan 1349-1354. Legislazione Greco-Romana e amministrazione dell'impero Serbo-Bizantino*, Roma 2014. On the reception of Byzantine criminal law in the *Code of Dušan*: P. ANGELINI, *L'influenza del diritto criminale bizantino nel Codice di Dušan 1349-1354*, *Byzantina Symmeikta*, 21 (2011), 217-253.

<sup>73</sup> *Abridged syntagma .КФ.* (Palimpsest of Studenica). V. MOŠIN, *Vlastareva sintagma i Dušanov zakonik u Studeničkom "Otačniku"*, 'Starine', 42 (1949), 64.

<sup>74</sup> *Abridged syntagma .КЗ.* . *Ibidem*, 65.

### БЕЗБѢДНѢ ОУБИВАТИ”<sup>75 76</sup>.

The latter is the translation of the chapter extracted from Proch 39.3 (Eisag. 40.3) and included by Blastares in the integral version<sup>77</sup>. The words “ἐκ τῶν ῥωμαϊκῶν” (“from the Romans”) were translated into the Serbian language as “ОТЪ ПРАВОСЛАВНЫХЪ” (“from the Orthodox people”), in order to adapt the text to the exigencies of the Serbo-byzantine Empire, whose population was composed by the Serbian ethnic element and by the Greek ethnic one, which tended to reside in the southern provinces. The Byzantines generally referred to themselves with the term *Romans* (*Ῥωμαῖοι*), which was also preserved in the Byzantine juridical compilations, and as a consequence of that, it was necessary to change the text, to include the Slavic part of the population living in the northern part of the empire<sup>78</sup>. It must be remarked that the crime of **НЕВѢРА** (treason) was introduced in the Serbo-byzantine empire, and the chapters of the *Code of Dušan 1349-1354* were closely connected with the definition and the general discipline provided in the

<sup>75</sup> *Ividem*, 64.

<sup>76</sup> Π-ΚΑ' Περὶ προδοτῶν: Τοὺς ἐκ τῶν ῥωμαϊκῶν τοὺς πολεμίους ἀποφεύγοντας ὡς πολεμίους ἔξεστιν ἀκινδύνως φονεῦειν.

<sup>77</sup> Proch 39.3 - Eisag. 40.3 - *Syntagma of Blastares Π-ΚΑ' - Abridged Syntagma .КЗ.*

<sup>78</sup> The term *Orthodox believers* was also used in the other texts included in the *Abridged syntagma*, instead of the term *Romans*.

*Abridged syntagma*<sup>79</sup>, which gave the strength of law to Byzantine law in Serbia.

#### *4. Byzantine law as evolution and vulgarization of Roman law*

If in Roman law the majority of these crimes was generally grouped under the *Lex iulia maiestatis*, in the Byzantine compilations, they were divided into different chapters and so it is not possible to group them under the concept of *crimen maiestatis*. Penal matters were no longer tied to procedure, and in this sense Byzantine law seems to be differently configured, much more based on the concept of crime itself.

Furthermore, both in the *Prochiron* and the *Eisagoge*, only one chapter dealt directly with the *crimen maiestatis* (Proch. 39.13 / Eisag. 40.12), that is the conspiracy against the emperor, as well as in the *Ekloge* (§ 17.3), but in the latter the conspiracy against the *salus* of the emperor was assimilated to the conspiracy against the safety of the

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<sup>79</sup> See: *Code of Dušan 1349-1354*, § 52, rubricated as **Ⲙ неврѣ** (About treason). Treason was exclusively under the jurisdiction of the emperor, together with homicide and rape, § 192: “За при работѣ. За неврѣ и за кровь и за разьбон владичьскы да ндоу прѣд цара” (“For three things, for treason, for blood, and for rape, of a noblewoman, let them come before the Tsar”). For the English translation, see: M. BURR, *The code of Stefan Dušan Tsar and Autocrator of the Serbs and Greek, The Slavonic and East European Review*, 28 (1949), v. 70, 198-217; *The Slavonic and East European Review*, 28 (1950), v. 71, 516-539.



state. In the *Basilika* the chapters were regrouped, according to Roman law, in the *Νόμος Ιουλίου ἀρμόζων κατὰ τῶν ἐπιβούλων*, which was based on the *Lex Iulia de maiestate*.

If we tried to show how Byzantine criminal law about treason and crimes against the state and emperor is connected with the *Corpus iuris civilis*, whose has to be considered an evolution, it must also be considered a deviation from Roman criminal law, as well as a vulgarisation, because of the massive infliction of the physical mutilations and punishments. The fact that in a large number of cases, especially for the above-mentioned crimes, the supreme penalty was provided instead of the confiscation of goods could be a supporting element for the historiographic theories which consider Byzantine law to represent a decline of postclassical Roman law. On the other hand, it should not be forgotten that, the supreme penalty more often stipulated by the legislation of Justinian was replaced by physical punishments and mutilations, thereby making Greek-Roman law a mitigation.

These still obscure matters, like treason, crimes against the emperor and the state, should be more deeply investigated by the scholars who intend to approach these aspects of Greek-roman criminal legislation, and shed light on how it was applied in the practice in the Eastern-Roman Empire.

## ABSTRACT

The article focuses on Byzantine criminal law, in particular on treason and crimes against the emperor and the state, desertion, relations and cooperation with the enemy, giving information, furnishing materials and arms and giving instructions in the art of ship-building.

In the 6<sup>th</sup> century the four parts of the *Corpus iuris civilis* were translated into Greek language and Roman law and included in the Byzantine juridical compilations, which were redacted between the 8<sup>th</sup> and 9<sup>th</sup> century, thus the *Ekloge*, *Prochiron*, *Basilika* and the *Eisagoge*.

Byzantine law must be considered the evolution of Roman law: in particular, penal law was vulgarised through the introduction of physical mutilations and punishments, and through the massive infliction of the death penalty. The crimes against the *basileus* and the state were considered a crime against the will of God, so they had to be repressed in the harshest way, through the imposition of the *poena capitis*.

Byzantine law was received among the Slav populations: in particular in Serbia, where the above mentioned crimes were included in the legislation of Stephan Dušan, who founded the Serbo-Greek Empire in the 14<sup>th</sup> century. In that way Greek–Roman law, translated into Serbian language, obtained the strength of law, in the last

part of the Middle Age. The article is an introductory study on the sources and on the juridical contents of a still underinvestigated subject.

Keywords: treason, crimes against state and emperor, Greek-Roman law, reception Serbia.

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