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ZAMENJAVA VLOG "ZLOČINCA" IN "ŽRTVE" V PRIMERU SODNIH ZMOT ZARADI NAČRTNEGA
ZATIRANJA SLOVENŠČINE KOT URADNEGA JEZIKA NA SODIŠČIH

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IZVLEČEK

Boj za uveljavitev slovenskega jezika v javnem življenju in uradih je imel v Habsburški monarhiji – tudi ko govorimo o uveljavitvi slovenščine kot sodnega jezika – le delen, vsekakor pa po deželah zelo različen uspeh. Kljub ustreznim vladnim odlokom je sodno uradovanje ostalo prepuščeno posameznim predstojnikom sodišč oz. kadrovske politiki pravosodnega ministrstva. Tako so bile v začetku 20. stoletja razmere za Slovence glede pravice do uporabe slovenščine pred sodiščem kolikor toliko znosne le na Kranjskem.

Težave so pestile predvsem preproste slovenske male ljudi, ki so se zaradi neznanja nemščine na sodiščih počutili nemočne. Prišlo je do mnogih sodnih zmot, ko se je na koncu izkazalo, da je domnevni zločinec oz. storilec kaznivega dejanja pravzaprav žrtev.

Ključne besede: pravna zgodovina, Habsburška monarhija, ustava, Slovenci, pravice, sodni jezik, sodne zmote

SCAMBIO TRA "REO" E "VITTIMA" NEL CASO DI MALINTESI GIUDIZIARI PROVOCATI DALLA
PIANIFICATA OPPRESSIONE DELLO SLOVENO QUALE LINGUA UFFICIALE NEI TRIBUNALI

RIASSUNTO

Nell'ambito della monarchia asburgica, la lotta per l'affermazione della lingua slovena nella vita e negli uffici pubblici - anche quando si trattava del suo impiego in campo giudiziario – ebbe un successo soltanto parziale, e comunque molto diverso nelle varie province. Nonostante i decreti governativi, l'uso della lingua nei tribunali fu lasciato alla volontà dei loro responsabili, o meglio alla politica dei quadri del Ministero alla giustizia. Di conseguenza, agli inizi del '900, la situazione circa il diritto degli sloveni all'uso dello sloveno nei tribunali era più o meno apprezzabile soltanto nella Carniola.

Soprattutto la gente comune incontrava gravi difficoltà: non sapeva parlare il tedesco e in tribunale era impotente. Ci furono molti malintesi giudiziari, casi in cui alla fine si scoprì che il presunto reo, cioè l'autore del reato, era invece la vittima.

Parole chiave: storia del diritto, monarchia asburgica, costituzione, sloveni, diritti, lingua del processo, errori giudiziari

THE EXCHANGE OF THE ROLES OF "CRIMINAL" AND "VICTIM" IN THE MISCARRIAGES OF
JUSTICE DUE TO THE PLANNED OPPRESSION OF THE SLOVENE LANGUAGE AS OF AN OFFICIAL
COURT LANGUAGE

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SUMMARY

Under the Habsburg monarchy, the struggle for affirmation of the Slovene language in public life as well as in offices met – even when speaking of its affirmation as an official court language – only with partial, although in various provinces very different, success. From the very beginning of our constitutional life, numerous demands were made to introduce Slovene as a court language in all provinces and places where the Slovenes constituted a large part of the population. Still, it is true that the Government was issuing, at the very beginning of the Constitution period, various orders as well as sending circular letters based on the stipulations of the general legal order from 1856. The latter stipulated that it was necessary, "if at all possible", to question the Slovene plaintiffs and defendants in their language and that at least the essential parts of the court minutes and the oath-taking ceremony should be written/spoken in Slovene. Later on, during Taaffe's period, these demands were further defined and the decrees issued by Minister Pražak concretised. In spite of all these and subsequent

principled governmental decrees, court administration was left to the judgment of individual court principals or to the personnel policy of the Ministry of Justice. In the early 20th century, the conditions for the Slovenes regarding their right to use or listen to their own language in court were to a certain extent bearable only in Carniola. The most striking cases of injustices were recorded in Lower Styria and particularly in Carinthia, even in the judicial districts with predominant Slovene population.

Considering the fact that the affirmation of the right to use Slovene language (on the basis of Article 19 of the Constitution) was an eminent national-political issue, these complexities meant, in everyday practice, much more. An encounter between two competitive middle-class elites actually flared up, fighting for well paid administrative positions and profitable barrister licences. Most dissatisfied were the nationally conscious Slovene judicial officials, who were totally overlooked when waiting for promotion. The solicitors who defended their clients in Slovene were, on top of it all, explicitly unpopular with German-conscious judges (who predominated in courts), which was the reason why people preferred German barristers when looking for legal aid.

*In much greater trouble than Slovene officials and barristers were ordinary Slovene people who were completely powerless due to the bare fact that they did not speak German. The stubborn insistence in appointing mainly German judges and officials in Slovene provinces led – apart from the fact that German language was in turn used in all courts – to numerous miscarriages of justice. Ordinary people were most often accused of perjury, and there were several cases in which people were tried for fraud, insulting the Emperor, infanticide, etc. These victims of the disregard of Article 19 of the Constitution gave, as defendants or witnesses, false statements simply because they did not understand German (in which, of course, the trial was taking place), while the interpreters were unsuitable or at times even malicious. On the basis of the appeals made in 1892 and 1902 in the journal *Slovenski pravnik* (Slovene Lawyer) to publish "the errors made as a result of the judges not understanding the language", some modest quotations have been preserved. In all stated and many other cases it eventually turned out that the alleged criminal or perpetrator of a penal act was in fact a victim, for there had been no criminal offence at all; in such cases we can speak of victims with no real, i.e., classical, crime. A crime in fact was committed, although committed by the state system, which strikingly violated Article 19 of the Constitution.*

Key words: history of law, Habsburg monarchy, constitution, the Slovenes, rights, legal language, miscarriages of justice