Trivent Publishing
Available online at http://trivent-publishing.eu/
Voyages and Travel Accounts in Historiography and Literature, vol. 2
DOI: 10.22618/TP.HMWR.2020VTA2.289.010

The Judiciary of the Principality of Serbia in Foreign Travel Memoirs (1825–1865)

Uroš Stanković[1]

I. Introduction

In the nineteenth century, Serbia was an exotic destination attracting many travelers from various countries. The travelers gathered information on many aspects of the Serbian society, including the justice system of the young principality. Although the large number of foreigners who travelled around Serbia documented the Serbian judiciary, there is currently no scientific paper has been dedicated to this topic. Therefore, this paper gathers the information on Serbian judiciary as presented by the nineteenth century travel writers. Taking into account that the history of the Serbian judiciary of the time can be divided in two periods (from 1825 to 1838; and from 1838 to 1865), this paper will be divided in two sections.

II. From the Instruction issued to District Courts (1825) to the Turkish Constitution (1838)

The first legal act regulating the organization, jurisdiction, and hierarchy of the courts in the Principality of Serbia was introduced in 1825 under the name of *Instruction Issued to District Courts* (Nastavlenija izdata magistratima). The Instruction stipulated that the first-instance court in civil matters should depend on the residence of the litigants. Should they come from the same village, the village prefect (*kmet*) was to adjudicate the litigation in first instance. In case of parties living in different villages, the county prefect (*knežinski knez*) served as a first-instance court. The county prefect was also second-instance court for lawsuits adjudicated by the kmet in the first instance. The judgments of the county prefects were subject to appeal to nahia courts. If a party was discontent with the

[1] Department of History of State and Law, Faculty of Law, University of Novi Sad, Serbia.

judgment ruled, they could appeal to the National Court (*Sud narodni*), which also served as a first-instance court for important and dubious litigations. In criminal matters, the nahia courts had the jurisdiction to adjudicate crimes punishable with less than 50 cane strokes, whereas the National Court had the competence to judge offences for which harsher punishments were deemed.[2]

A prominent Serbian intellectual from Austria – the writer and dramatist Joakim Vujić (1772–1847), states that the kmet served as the first-instance court, whereas another Serbian literate from the Habsburg Monarchy, Georgije Magarašević (1793–1830), claimed that village prefects were the court of first instance in "important cases." The letter of the law, presented in the introductory paragraph of this section, completely contradicts Magarašević's statement and partially corroborates Vujić's claim. The renowned playwright somewhat contradictorily presents the kmet's subject-matter jurisdiction. At one point of his travel memoir, the author claims that the kmet figured as judicial authority in civil lawsuits exclusively; nonetheless, when referring to the village prefect's jurisdiction in particular Vujić quotes petty thefts and violence as the offences within the kmet's competence. The Instruction is silent about the kmet's role in criminal cases; nevertheless, Vujić's assertion contradicts Vuk Karadžić's note that the village prefect had the authority to punish "particularly restless people and vagabonds going from cauldron to cauldron" with up to 25 cane strokes. In 1829, an instruction to county and nahia prefects explicitly prescribed that kmets would be authorized to punish offenders with maximum 25 batons. In terms of civil matters, the kmet was competent in disputes regarding inheritance, the division of property, estate borders and debts, as Vujić highlights.[3] According to the same author, the chief kmet fulfilled his judicial duty along with two other subordinate kmets, forming a village court. This statement matches the recordings made by Vujić's bitter enemy Vuk Karadžić. Regarding the instance before which the village court's verdicts were appealable, Vujić's lines are confusing.

[2] See T. Živanović, *Zakonski izvori krivičnog prava Srbije i istorijski razvoj njegov i njenog krivičnog pravosuđa od 1804. do 1865* [Legal sources of criminal law of Serbia and its historical development and the development of its criminal justice from 1804 to 1865] (Beograd: Srpska akademija nauka i umetnosti, 1967), 61–62.

[3] J. Vujić, *Putešestvije po Serbiji* [Travel around Serbia] II (Beograd: Srpska književna zadruga, 1902), 188.

Namely, the travel writer says that the judgments of kmets were appealed to the nahia prefect, but then next instance judicial body would be the nahia prefect again! Such incongruence is undoubtedly an error on the author's part and it may be assumed that the word "county" should have stood instead of "nahia" in the first case. A version amended in this fashion appears in Magarašević's work and it is partly sustainable.[4]

The readers should be thankful to Vujić for his depiction of the proceedings before the county prefect. The author recounts that Toma Vučić Perišić, the county prefect of Gruža, warned two opposing parties before the trial that the losing litigant would be obliged to pay 100 groschens and undergo 50 cane strokes. The prefect explained to Vujić that the warning had actually been an indirect way to make the parties reconcile.[5]

According to Vujić's claim, nahia prefects were third-instance courts. The reference to nahia prefects as judges was indeed made in the Instruction, but it is somewhat unclear. To be more specific, the article 4 of the above-mentioned regulation says that the nahia courts would have jurisdiction over lawsuits between parties coming from different counties or even different nahias whether or not they brought their dispute before the nahia prefect previously. Based on this formulation, one may draw the conclusion that nahia prefects were facultative first-instance tribunals for litigants living in different counties or nahias.[6]

Vujić stated it had been up to the parties to bring their witnesses to the nahia prefect. The prefect, says the travel writer, tended to reconcile litigants with no duress. His judgments were subject to appeal before the nahia court.[7]

The notorious Austro-Hungarian archaeologist and traveler Felix Kanitz (1829–1904) claims that the "prefect" (*načelnik*) was the first instance court to try for grave crimes, yet does not specify which prefect

[4] V. Karadžić, *Miloš Obrenović, knjaz Serbiji; Ili građa za srpsku istoriju našega vremena* [Miloš Obrenović, the Prince of Serbia; Or the Material for the Serbian History of Our Time] (Budim: Štamparija kralj. Univers. Peštanskoga, 1828); J. Vujić, *Putešestvije* II, 191, 202, 203; B. Peruničić, *Beogradski sud 1819–1839* [Belgrade Court 1819–1839] (Beograd: Istorijski arhiv Beograda, 1964), 38; D. O. pl. Pirh, *Putovanje po Srbiji u godini 1829* [Travel around Serbia in the year 1829], Đ. Magarašević, *Putovanje po Srbiji u 1827. godini* [Travel around Serbia in the year 1827] (Beograd: Prosveta, 1983), 286.

[5] J. Vujić, *Putešetvije* II, 190–191.

[6] J. Vujić, *Putešestvije* II, 199; T. Živanović, *Zakonski izvori*, 62.

[7] J. Vujić, *Putešestvije* II, 189.

would that have been. Whatever the answer was, it would be incorrect, considering that the article 11 clearly specified that the National Court would have jurisdiction over conducting trials for crimes punishable with 50 cane strokes in the first instance.[8]

Magarašević claims correctly to some extent that nahia courts were third-instance courts. Vujić claimed there had been 12 nahia courts, as Serbia was composed of the same number of nahias. However, up to 1828 when Vujić's travel memoir was published, 10 nahia courts had been founded. On the other hand, Vujić's statement that those courts were made up of two prefects and a scribe was true. Vujić stated that nahia courts were competent in cases of lesser importance, particularly in criminal matters; the latter corresponds to the truth, at least according to the Instruction.[9]

The National Court got a fair amount of space in travel memoirs. The travelers correctly state that the court consisted of 12 judges. French poet and politician Alphonse de Lamartine (1790–1869) correctly informed his readers that the court had been seated in Kragujevac and that its judges were appointed by Prince Miloš. As for its place in the judicial system, Magarašević and Vujić agree it was competent to adjudicate on the appeals on nahia courts' verdicts in civil cases, which is true. As for criminal cases, travel writers provide different accounts. Vujić correctly claimed that the National Court served as the first instance tribunal in criminal cases of higher importance, while Kanitz mistook the institution for a second-instance court in criminal trials conducted for grave crimes. According to Vujić, murder was a crime falling solely within the jurisdiction of the National Court, while Magarašević put forward it was the only court instance other than Prince Miloš authorized to impose the death penalty, which has been verified by a recent research.[10]

---

[8] F. Kanitz, *Serbien. Historisch-etnographische Reisestudien aus den Jahren 1859–1868* [Serbia. Historical and Ethnographic Travel Studies from the Years 1859–1868] (Leipzig: Verlagsbuchhandlung von Hermann Fries, 1868), 634.

[9] J. Vujić, *Putešestvije* I, 45, 51, 172, 200; *Putešestvije* II, 98, 149, 193, 201, 202; T. Živanović, *Zakonski izvori*, 62; Đ. Magarašević, *Putovanje*, 286; M. M. Popović, "Organizacija sudstva u Srbiji 1815–1838," *Rasinski anali* 10 (2012): 43–44.

[10] O. v. Pirch, *Reise in Serbien im Spätherbst* 1829 [Travel to Serbia in Late Autumn 1829] I (Berlin: Ferdinand Dümmler, 1830), 67; A. de Lamartine, *Voyage en Orient 1832–1833* (Paris: Librairie de Charles Gosselin, 1843), 335–336; Kanitz, *Serbien*, 634; J. Vujić, *Putešestvije* I, 172; *Putešestvije* II, 22, 149, 193; Đ. Magarašević, *Putovanje*, 286; D. Lučić, *Sud*

The depiction of a murder trial can be found in Vujić's travel memoir. The defendant would first be interrogated by the National Court's secretary, in the presence of all judges, whereby allegedly no torture was inflicted. However, it seems opposite to the spirit of the time – according to D. Lučić's findings, a document containing the first mention of torture before the National Court dates from 1834. The defendant was allowed to call his witnesses. If there were not any, or if the defense witnesses were insignificant and not fully credible, or if the defendant confessed, he/she would be brought before the court in three days anew. The secretary would then examine the defendant, again with judges being present, whether he/she confesses to the crime and whether his/her previous confession had been given as a result of fear or confusion. If the defendant repeats the confession, he/she would be asked for a confession for the third and the last time. If the answer was maintained positive, the death penalty would be pronounced.[11]

Two of the travel writers – Magarašević and prematurely deceased Prussian military officer Otto Dubislav von Pirch (1799–1832) point out that besides its judicial role, the National Court was tasked with executing duties of other nature. Pirch claims drafting law codes and their revision were among those tasks, which is in part surely erroneous, as draft codes were only being prepared in the building of National Court. The correctness of the other part of Pirch's claim cannot be completely excluded – it is almost certain that the drafts were discussed among some groups of dignitaries, yet it is still unknown who these "fancy Serbian persons" were.[12]

Magarašević was being idealistic, to put it mildly, when he said that the National Court was counseling with prince Miloš about "important subjects," instancing government, judiciary, and general safety. National

opštenarodni srpski [All-People Serbian Court] (master thesis defended at the Faculty of Law, University of Belgrade, 2015).

[11] J. Vujić, *Putešetvije* II, 194; D. Lučić, *Sud opštenarodni*, 40.

[12] O. v. Pirch, *Reise*, 109; M. M. Chopin, A. Ubicini, *Provinces danubiennes et roumaines* (Paris: Firmin Didot frères, 1856), 397; A. S. Jovanović, "Rad na 'toržestvenim zakonima'" [Work on Solemn Laws], *Arhiv za pravne i društvene nauke* 8:4 (1909): 259; D. Nikolić, "Rad na građanskom zakoniku u Srbiji 1829–1835. godine" [Work on Civil Code in Serbia 1829–1835], in *Sto pedeset godina od donošenja Srpskog građanskog zakonika (1844–1994)* [Hundred and Fifty Years from the Introduction of the Serbian Civil Code 1844–1994], ed. Miodrag Jovičić (Beograd: Srpska akademija nauka i umetnosti, 1996], 88.

Court in point of fact performed duties in those fields, but with a far more modest role than the travel writer noted.[13]

Obviously, the most interesting "court instance," at least judging by the space given in travel memoirs, was Prince Miloš himself. Vujić and Magarašević claim the ruler was the supreme court. *Ius gladii* (Latin: the right of the sword), the right to sentence perpetrators to death, belonged to the prince. Vujić says Miloš was in specific exercising its right when sentencing a Serb who murdered a Turk. While Kanitz says prince Miloš was sole jurisdiction having right to pronounce the death penalty, Magarašević made the allegation that the only instance authorized to administer capital punishment other than the ruler was his brother Jevrem. The latter indeed handed out the death penalty on a Sima Mihailović from Vlaška in 1826; nevertheless, his letter informing prince Miloš of the fact was excusing, which arouses doubt as to Magarašević's statement. Judicial practice of the National Court from 1825 and 1826 shows that institution was passing death sentences, which were submitted to Prince Miloš for approval.[14]Two travel writers from a later period, a French archeologist Georges Perrot (1832–1914) and an Irish traveler, James Creagh, left some lines on Prince Miloš's judgments being a mockery of justice. The Frenchman made a note on Miloš's appalling judgment in a marital dispute – two couples came to the ruler simultaneously complaining about their marital relations, and the prince simply ordered husbands to switch wives. This record resembles the examples of the Prince's travesty in adjudicating in marital matters provided by Vuk Karadžić. Creagh took over the prince's judgments appearing in the work of the famous French slavist Cyprien Robert (1807 – about 1865) *The Slavs of Turkey* (*Les Slaves de Turquie*). One of them was an instance of the ruler's inconsistency – Miloš first pardoned the kidnapper of a woman, but after seeing her beauty, quashed his own verdict and executed the death penalty by smashing the offender's head with an axe. Miloš's lack of consistency in general, as well as in exercising judicial authority, was also noted by some other authors, so it is not that unlikely that the case in question really took place. The second example was a story of Miloš eventually killing a man accused of theft after

[13] M. Gavrilović, *Miloš Obrenović* II (Beograd: Nova štamparija "Davidović," 1909), 338; Đ. Magarašević, *Putovanje*, 286; D. Lučić, *Sud opštenarodni*, 24–25.

[14] F. Kanitz, *Serbien*, 634; J. Vujić, *Putešestvije* II, 125, 201; M. Gavrilović, *Miloš*, 635; D. Lučić, *Sud opštenarodni*, 54, 61.

unsuccessful attempts to obtain confession by means of torture. Some events prove the prince was not particularly restrained when it came to the use of torture. Creagh's allegation that Miloš punished people who would wake him up in the course of afternoon repose with foot-whipping is obviously the author's error stemming from two different accounts by Robert: one, that the prince was not to be disturbed during his siesta, and two, that the riders not dismounting from a horse in front of Miloš's living quarter (*konak*) were subjected to caning.[15]

Vujić had high praise for the Serbian court system of the time. Fascinated with Toma Vučić Perišić's "court procedure," the playwright exaltedly wrote that Serbian judges were much nobler than their colleagues in enlightened countries, because they did not take bribes. Again, being in contradiction with his previous statements, Vujić says that the judge who possibly dared to accept a bribe, would be ousted by Prince Miloš on the spot and infamed, which does not speak on the nobility of Serbian judges, but their fear of punishment. Notwithstanding Vujić's self-opposed statements, one notices that the identical sanction against corrupted judges can be found in the article 12 of the Instruction to County and Nahia Prefects (*Nastavlenija knežinskim I nahijskim knezovima*, 1829). Miloš was, of course, punishing corrupt judges, but according to V. Petrić, an expert in the field, not too harshly.[16]

The mid 1830s were a period of significant changes in the Serbian court system. In 1835, district (former nahia) courts were turned into magistrates (*ispravničestva*), bodies figuring as both police and judicial authority, and the National Court was abolished and replaced by the State Council. Two years later, the "inter-instance" between magistrates and the National Court named the Great Court (*Veliki sud*), was founded. Historical sources contain mentions of peace courts, consisting of county

[15] C. Robert, *Les Slaves the Turquie* [The Slavs of Turkey] I (Paris: J. Passard, Jules Labitte, 1844), 282–284; G. Perrot, "Le prince Michel Obrenovitch et le avenément du prince Milan souvenirs d'un voyage en Serbie," *Revue de deux mondes* 82 (1869): 131; J. Creagh, *Over the Borders of Christendom and Eslamiah* I (London: Samuel Tinsley, 1876), 297–298; V. Karadžić, *Istorijski spisi* [Historical Manuscripts] (Beograd: Prosveta–Nolit, 1987), 165, 171–172, 176–177; D. Lučić, *Sud opštenarodni*, 39–40.

[16] J. Vujić, *Putešestvije* II, 191; B. Peruničić, *Belgrade Court*, 38; V. Petrić, "Krivična dela protiv vlasti i krivična dela zloupotrebe dužnosti u Srbiji 1815–1839. godine" [The Crimes against Government and the Crimes of Abuse of Power in Serbia 1815–1839], *Istorijski glasnik* 4 (1966): 89.

prefect and two kmets, being the court instance before the parties were obliged to appear previous to addressing to the magistrate.[17]

The information on the Serbian judiciary from 1835 to 1838 is provided by Kanitz and renowned French geologist Ami Boué (1794–1881). The latter visited the Balkans in 1836 and 1838 and wrote itineraries of his travels, printed in 1854. Peace courts, in Boué's words, existed in county seats, which would suggest there was one peace court per county. This idea had appeared in the mid-1830s, but was not turned into reality. Kanitz states in error that crimes punishable up to 80 cane strokes or a three-year prison sentence were to be tried in first instance by "the prefect"[18] whose negation can be seen in the legal act called Duties of Military Commanders, Magistrates and County Prefects (*Dužnosti vojeni komandanta, ispravničestva, srezski starješina*, 1836), stipulating that magistrates would try crimes carrying a sentence over than 50 cane strokes (art. 7 and 10). The second-instance court was named "superior" by Boué, who claimed its name in Serbian was simply "soud" and its seats were in the districts' seats. Kanitz's statement on magistrates is also false. The author claims they had the role of second-instance courts for criminal cases adjudicated by the prefect in first instance. In contrast to Kanitz, the Duties inform magistrates were first-instance court for trying crimes to be punished with 25 to 50 cane strokes. The Court of Appeal was the highest-instance court, seated in Belgrade – says Boué. Kanitz overlooked the Great Court and falsely stated that the Governing Council[19] was the final instance in criminal cases conducted for petty crimes.[20]

Kanitz sets forth several more general information on the Serbian judiciary of the time. The author reveals that the court procedure was summary, without the presence of lawyers. If Kanitz is to be believed,

[17] R. Ljušić, *Kneževina Srbija (1830–1839)* [The Principality of Serbia] (Beograd: Zavod za udžbenike i nastavna sredstva, 2004), 251, 253.

[18] The county prefect formed a peace court along with two kmets. Although they are explicitly called a "peace court" when judging civil cases only, the same organization as a lowest-instance court appeared in criminal cases as well. See *Zbornik zakona i uredaba u Knjažestvu Srbiji* [Collection of Laws and Regulations in the Principality of Serbia] (henceforth: *Zbornik zakona*) 30 (1877): 135–137.

[19] State Council was renamed to Governing Council in July 1835.

[20] A. Boué, *Recueil d'itinéraires dans la Turquie d'Europe* I (Vienne: W. Braumüller, Libraire de l'Academie imperial des sciences, 1854), 10; Kanitz, *Serbien*, 634; *Zbornik zakona* 30 (1877): 136–137, 141; R. Ljušić, *Kneževina Srbija*, 253.

both civil and criminal trials were pretty expeditious, lasting for no more than two months. Quite the opposite, court fees were fairly high, reaching 2.5 groschens in trials on inheritance matters of the lowest class.[21]

III. From the Turkish Constitution (1838) to the Organization of Courts Act (1865)

The so-called Turkish Constitution, introduced in 1838 and owing its name to the form of sultan's hatti-i shariff, regulated the basics of the new court organization in Serbia. The first instance tribunals were to be peace courts, authorized to pronounce final judgments in litigations valued up to 100 groschens and offences carrying up to 3 days of prison or 10 cane strokes. All other civil and criminal cases would be tried by district courts in the first instance. The Court of Appeal had the jurisdiction to deliberate on the verdicts of district courts. For a certain period of time, the Ministry of Justice was empowered to annul civil judgments, and the prince had the same authority when it came to criminal verdicts. The organization and jurisdiction of courts were first elaborated in 1839 and 1840, then in 1846, when new acts on the organization of district courts and the Court of Appeal were passed, and the Supreme Court was established. From 1850 onwards, misdemeanors were adjudicated by police courts. In the year 1860, the Supreme Court was dissolved, which consequently rendered the Court of Appeal the highest-instance judicial institution. That was the last alteration of the judicial system in Serbia before the reform of 1865.[22]

The travelers are not unanimous regarding the number of peace courts. French historian and journalist Abdolomyne Ubicini (1818–1884) informed that the peace courts existed in a number almost equal to that of municipalities; on the contrary, German geographer Anton von Etzel (1821–1870) stated there had been a peace court in every municipality. Article 1 of the *Temporary Organization and Scope of Peace Courts* (Privremeno

[21] F. Kanitz, *Serbien*, 634.

[22] See S. Šarkić, D. Popović, D. Nikolić, *Istorija srpskog pravosuđa (XII–XX vek)* [History of Serbian Judiciary 12th – 19th Century] (Beograd: Ministarstvo pravde Republike Srbije, 1997), 56; I. Krstić Mistridželović, "Donošenje i značaj Policijske uredbe iz 1850. godine" [Passing and Significance of Police Directive Act], *Bezbednost* 1–2 (2009): 419, 423–425; M. M. Popović, *Sudstvo u kneževini Srbiji (1838–1869) organizacija i osnove sudskog postupka* (Beograd: Filozofski fakultet, 2016), 39 and forth.

ustrojenije, i krug dejateljnosti primiritelnih sudova, 1839) speaks in support of Etzel.[23]

Regarding the organization of peace courts, travel writers are unanimous – the institution was made up of a president and two judges. The validity of their statement is confirmed by article 2 of Temporary Organization. On the contrary, the claim of Ernst Anton Quitzmann (1809–1879), a German doctor and medical historian, that every year one of the three judges would be replaced, could not be verified. English diplomat and traveler Andrew Archibald Paton (1811–1874) claimed that peace courts consisted of elderly people from villages. The required qualities of peace judges according to the Temporary Organization (art. 3) were honesty, conscientiousness, impartiality, incorruptibility, sharp-mindedness, reasonability and apprehensiveness.[24] In Serbian society of the time, elderliness was considered a synonym for wisdom and highly valued; however, the research on the presence of elderly people in peace courts would practically be an impossible mission.

Reverend William Denton (1815–1888), an Anglican priest who travelled around Serbia in the spring of 1862, made an incomplete record that peace courts had the jurisdiction in civil cases valued up to 200 piasters, which was the equivalent of 100 groschens. There was an indirect suggestion by Kanitz that such a small jurisdiction of peace courts had been the main reason for the over-burdening of district courts.[25]

In the passages of travel memoirs, one finds few notes on trials before the peace courts. From 1850 forth, says Kanitz, the number of cases tried by peace courts was ever more increasing. Etzel says that the procedure before peace courts was oral and summary, which fully coincides with article 32 of the Turkish Constitution. The form of procedure stayed

[23] *Zbornik zakona* I (1840): 236; A. v. Etzel, "Skizzen aus Serbien" [Sketches from Serbia], *Das Ausland* N^{r} 156 (1851), 621; A. Ubicini, "Le pays serbe et la Principauté de Serbie souvenirs de voyage" [Serbian Land and The Principality of Serbia Memories from the Travel], *Revue de deux mondes* vol. 51, N^{o} 2 (1864): 442.

[24] *Zbornik zakona* I: 236. A. A. Paton, *Servia the Youngest Member of the European Family: or a Residence in Belgrade and Travels in the Highlands and Woodlands of the Interior, During the Years 1843 and 1844* (London: Longman, Brown, Green and Longmans, 1845), 87; E. A. Quitzmann, *Reisebriefe aus Ungarn, dem Banat, Siebenbürgen, den Donaufürstenthümern, der Europäischen Türkei und Griechenland* (Stuttgart: J. B. Müllersverlagsbuchhandlung, 1850), 125.

[25] W. Denton, *Servia and the Servians* (London: Bell and Daldy, 1862), 247; F. Kanitz, *Serbien*, 125.

unchanged after the introduction of the Civil Procedure Code from 1860, which did not remain unnoticed by Denton. The judgments of peace courts, as claimed by Paton, were seldom submitted to district courts as next-instance tribunal. This sentence seems little surprising, though the report of the Serbian Ministry of Justice to the State Council for 1844 to 1847 states that very few lawsuits come to an end before peace courts.[26]

Paton noted that litigations before peace courts brought no costs to litigants. The article 9 of the Temporary Organization provides that peace courts would be charging their judgments with a fee of 2 paras per groschen and serves as a disproof of the claim.[27]

In Kanitz's travel memoir, an attentive observer may catch sight of puzzling passages on county prefects being a judicial authority of that period. The author mentions that county prefects were entitled to annul judgments of the peace courts; both civil procedure codes from 1853 and 1860 uphold the statement. Yet Kanitz provides further data, which cannot be traced in the court legislature of the time and ought to be subject of future research. County prefects, allegedly, decided on the verdicts of peace courts together with two jurors they had selected on their own.[28] Kanitz's travel memoir even describes the situation of the ill-famed Koznik (Kruševac district) county prefect Ilija Antonijević who wanted to rest rather than judge, and hence left a dispute over estate borders to his scribe to adjudge.[29]

Quitzmann mistakenly named district courts *Appelationsgericht* (court of appeal), adding there was one of them in every district, which was the stipulation of the first article of the *Organization of District Courts*

[26] *Zbornik zakona* I: 8, 238; A. A. Paton, *Servia*, 87; A. v. Etzel, *Skizzen*, 621; W. Denton, *Servia*, 247; F. Kanitz, *Serbien*, 125, 241–242; M. M. Popović, "Izveštaji Ministarstva pravde i statistika sudstva za period 1844–1847. godine" [Reports of the Ministry of Justice and the Statistics of Judiciary for the Period between 1844 and 1847], *Mešovita građa* 35 (2014): 113.

[27] Paton, *Servia*, 87; *Zbornik zakona* I: 238.

[28] Reintroduction of county peace courts was requested in the March Assembly (1840); the authorities answered the regulation on the topic was being prepared; nonetheless it did not see the light of day. See R. Ljušić, *Prvo namesništvo (1839–1840)* [The First Regency 1839–1840] (Beograd: Izdavačko preduzeće Prosveta d.d., 1995), 160–161.

[29] *Zakonik o sudejskom postupku u parnicama građanskim za Knjažestvo Serbiju* [The Code on Court Procedure in Civil Lawsuits for the Principality of Serbia] (Beograd: Pravitelstvena knjigopečatnja, 1853], 5; *Zakonik o postupku sudejskom u građanskim parnicama za Knjažestvo Srbiju* [translation sounds the same as in previous reference] (Beograd: Praviteljstvena pečatnja, 1860), 3; Kanitz, *Serbien*, 125, 241–242.

(Ustrojenije sudova okružni, 1840). As claimed by Ubicini, district courts were seated in the seats of districts. No such provision can be traced in the legislation of the time, but literature provides corroboration of Ubicini's statement. District courts, says Etzel, were formed of a president and three other judges, one of which was reportedly replaced every year, and they were appointed among the residents of a district. These allegations are disproved by the so-called conduct lists (*konduit liste*) of judges submitted to the State Council. Contrarily, Etzel's claim that minimum age for the duty of district judge was 30 years has the stronghold in the Organization of District Courts (art. 3).[30]

According to the same author, district courts' competence stretched over civil, criminal, and commercial matters. Etzel proves himself reliable on this point, as this is exactly what the article 35 of the Turkish Constitution specified. The jurisdiction of district courts, Denton claimed, had no limitation in terms of the value of lawsuits, as court procedure was oral. Apart from this particular piece of information, the travelers were not too generous in putting forward the data on the procedure of district courts. Two famous British travelers to the Balkans, Georgina Muir Mackenzie (1833–1874) and Pauline Irby (1831–1911) make a reference that the Austrian press occasionally published notes on how some of the districts in Serbia were subdued to summary criminal courts due to brigandage (*hajdučija*). In a likely polemic tone, the authors say those courts were to grate for easy suppression of brigands. The summary courts the travelers refer to were in fact ordinary district courts entitled to persecute hajduks by summary trial, meaning that the convict had no right to appeal the verdict, which would in consequence become enforceable at the very moment of passing. Taking into consideration that summary criminal procedure was in force in "the most brigand" Užice district almost ceaselessly for 24 years (1850–1873), Mackenzie's judgment can only be relative. The long-lasting difficulty of Serbian judiciary – overburden with unsolved litigations attracted the attention of Kanitz, who, in his own words, recorded 1000 pending lawsuits before the Valjevo District Court in 1860. The author of this paper disposed of court statistics for the year 1859, showing that the named court combated

[30] *Zbornik zakona* I: 182; E. A. Quitzmann, *Reisebriefe*, 125; A. Ubicini, *Le pays serbe*, 442; D. Đulić, M. Milačić, *Hronika Ćuprije* [Chronicle of Ćuprija] (Ćuprija: Opštinski odbor Saveza udruženja boraca Narodnooslobodilačkog rata, 1977), 29; Archives of Serbia (henceforth: AS), State Council (henceforth: SC), 458/1846.

with 821 unfinished litigations. Etzel claims that a judgment of a district court should be appealed to the Court of Appeal within 8 days subsequently to its pronunciation, by which he informed his readers of the content of article 36 of the Turkish Constitution.[31]

Quitzmann and his fellow ethnic, the German politician Karl Braun Wiesbaden (1822–1893), as well as Denton, call the Court of Appeal the Court of Cassation ("Cassationshof") by mistake. This judicial instance was seated in Belgrade, according to Ubicini and Denton's correct claim. Etzel's travel memoir provides the correct interpretation of the Turkish Constitution provision (art. 37) determining the organization of the Court of Appeal – the institution contained 4 judges, one of which acted as president of the court. The minimum age for the duty of the judge was set at 35 years. Braun Wiesbaden observes that the members of Court of Appeal who acquitted the complotters against the government from the Smederevo district in 1864 were the followers of the former Prince Aleksandar Karađorđević (1842–1858), retained in office by the ruling Prince Mihailo Obrenović (1860–1868). Such an allegation diverged from the fact, since two of the judges – Jevrem Grujić and Marinko Radovanović – were partisans of the Obrenović dynasty (the first however in opposition to Prince Mihailo), and Jovan Filipović was deemed a very professional and impartial judge. The procedure of the court, according to Denton, was written, which was true, although there had been ideas of switching it to oral in the years close to the preacher's travel memoir. Paton claimed that the president of the Court of Appeal was poorly paid, citing amount of a pay which equaled 300 pounds sterling yearly. The conduct list of judges contemporary to Paton's work provides no data as to the pay of Sava Šilić, interim president of the court. Unfortunately, the archive fond of the Treasury Department of Ministry of Finances, most likely containing the answer to the question, was unavailable for research due to the COVID-19 pandemic restrictions.[32]

---

[31] *Zbornik zakona* I (1840): 9; Etzel, *Skizzen*, 621; W. Denton, *Servia*, 247; G. Muir Mackenzie, A. P. Irby, *Travels in the Slavonic Provinces of Turkey-in-Europe* (London: Dadly, Ibsister & Co., 1867), xxvii–xxviii, F. Kanitz, *Serbien*, 125; O. Milosavljević, *Gorski carevi hajdučija u Čačanskom i Rudničkom okrugu u drugoj polovini 19. veka* [Mountain Czars Brigandage in Čačak and Rudnik District in the Second Half of the Nineteenth Century] (Čačak: Međuopštinski istorijski arhiv, 2016), 156–170; AS, SC, 409/1861.

[32] A. A. Paton, *Servia*, 314; E. A. Quitzmann, *Reisebriefe*, 125; Etzel, *Skizzen*, 621; W. Denton, *Servia*, 247; Ubicini, *Le pays serbe*, 442; K. Braun Wiesbaden, *Eine türkische Reise* [A Turkish Travel] III (Stuttgart: Verlag von August Auerbach, 1877), 235; M. Đ.

The Court of Cassation, the Ministry of Justice, and the Prince did not arouse the interest of travel writers, since only two of them barely mention their existence within the judicial system, providing no further details.[33]

A lot more attention was given to police courts. Russian historian and ethnologist Pavel Rovinski (1831–1916) noted that Serbian police did not only carry police duties, but also in many cases served as a judicial institution. Referring to the specifics of a police trial, Kanitz says that the police court was consisted of a county prefect, a scribe, and kmets from adjacent villages, which matches article 10 of the so-called Police Regulation (*Policijska uredba*) of 1850. This statement is true, seeing how the Criminal Code for Misdemeanors (*Kaznitelni zakonik za policajne prestupke*, 1850) encompassed such a large number of light offences the police had the jurisdiction to adjudge. Among those misdemeanors, Denton rightly names petty thefts and assaults. Denton and Kanitz provide a description of the procedure of police courts. The latter witnessed the scene in which county prefect Antonijević demonstrated the functioning of some sorts of torture devices for both men and women, which may indicate the use of torture in police investigations. Kanitz claims the procedure of police courts was oral and took place with the door open and occasionally even outdoors. He recalls a trial against a Wallachian accused of stealing a sheepskin. The stolen item was put in front of the suspect, serving as key proof of the committed offence. In the author's words, the witnesses were examined in Romanian. Denton quotes an unknown county or district prefect sentencing the offender by the name of Nicholas Stojanovich; the quotation, nonetheless, bears little resemblance to monologues from modern law and court movies.[34]

Milićević, *Pomenik znamenitih ljudi u srpskog naroda novijega doba* [Memory Book of Eminent People in Serbian Nation of Recent Time] (Beograd: Srpska kraljevska štamparija, 1888), 738; S. Jovanović, *Druga vlada Miloša i Mihaila Obrenovića (1858–1868)* [The Second Reign of Miloš and Mihailo Obrenović (1858–1868)] (Beograd: Izdavačka knjižara Gece Kona, 1923): 68; V. D. Aleksijević, *Savremenici i poslednici Dositeja Obradovića i Vuka Stef. Karadžića* [Contemporaries and Continuers of Dositej Obradović and Vuk Stef. Karadžić] XI, https://www.digitalna.nb.rs/wb/NBS/Katalozi_i_bibliografije/P_425/P_425_11#page/0/mode/1up (accessed April 15, 2020).

[33] A. Ubicini, *Le pays serbe*, 442; F. Kanitz, *Serbien*, 125.

[34] *Zbornik zakona* V (1853): 129–186, 190; W. Denton, *Servia*, 216; F. Kanitz, *Serbien*, 37, 243–244; P. A. Rovinski, *Zapisi o Srbiji 1868–1869 (iz putnikovih beležaka)* [Notes on Serbia 1868–1869 (from the traveler's records)] (translated from Russian by Drago Ćupić) (Novi Sad: Matica srpska, 1994), 134.

Etzel exposes two articles of the Turkish Constitution generally related to the judiciary. One of them guarantees the immovability of judges (art. 42), and the other states that the minister of justice was the authority to decide on the appeals against judges (art. 21).[35]

Two Britons – Paton and Captain Edmund Spencer held Serbian justice in high esteem. The former compliments rapid procedure and unbribability of Serbian courts, whereas the latter emphasizes the simplicity and effectiveness of the judiciary, much to the surprise of the author of this paper, since the court system was unsuccessfully struggling with ineffectiveness of the tribunals from the very beginning of Prince Aleksandar Karađorđević's rule. Spencer observed that courts were modeled in harmony with habits and manners of the people; the requests relating judiciary addressed to the authorities on the March Assembly (1840) and the St Peter's Day Assembly (1848) seem to relativize the traveler's observation.[36]

IV. Conclusion

Travel writers were mostly interested in the organization of courts, their jurisdiction, hierarchy of tribunals and court procedure. Some of them also provide general information on the Serbian judiciary and their impressions of its quality. The facts laid out by the travelers in some cases correspond to the truth, but there are also false data, which can certainly be attributed to the frailness of human memory or misinterpretation of the sources of information. The scenes of trials brought forth by the travelers are the most valuable parts of travel memoirs, as they show how the letter of the law was embodied in practice. The perceptions of the authors concerning the quality of justice may look odd from the Serbian point of view of the time; however one should judge the travelers'

[35] *Zbornik zakona* I: 6, 10; Etzel, *Skizzen*, 621.

[36] A. A. Paton, *Servia*, 314; *Zbornik zakona* IV (1849): 174, 198; E. Spencer, *Travels in European Turkey in 1850* I (London: Colburn and Co., 1851), 111; R. Ljušić, *Prvo namesništvo*, 160–161; U. Stanković, "Rad komisije za unapređenje građanskog postupka od 1845. Godine" [Work of the Commission for Enhancement of Civil Procedure of 1845], in *Zbornik radova međunarodnog naučnog skupa "Harmonizacija građanskog prava u regionu" održanog 26. oktobra 2012. godine na Palama* [Proceedings of the International Scientific Conference "Harmonization of Civil Law in the Region," held on October 26, 2012 in Pale), ed. Dijana Marković Bajalović (Istočno Sarajevo: Pravni fakultet Univerziteta u Istočnom Sarajevu, 2013), 146 and forth.

conclusions bearing in mind that they were coming from countries in which the court systems were more complex and trials unfolded at a much slower pace, in comparison to which the judiciary of the principality seemed ideal.

References

Aleksijević, Vlastoje D. *Savremenici i poslednici Dositeja Obradovića i Vuka Stef. Karadžića* [Contemporaries and Continuers of Dositej Obradović and Vuk Stef. Karadžić] XI, www.digitalna.nb.rs/wb/NBS/Katalozi_i_bibliografije/P_425/P_425_11#page/0/mode/1up (accessed on April 15, 2020).

Archives of Serbia, State Council.

Boué, Ami. *Recueil d'itinéraires dans la Turquie d'Europe* I. Vienne: W. Braumüller, Libraire de l'Academie imperial des sciences, 1854.

Braun Wiesbaden, Karl. *Eine türkische Reise* III. Stuttgart: Verlag von August Auerbach, 1877.

Chopin, Jean Marie. Ubicini Abdolomyne. *Provinces danubiennes et roumaines*. Paris: Firmin Didot frères, 1856.

Creagh, James. *Over the Borders of Christendom and Eslamiah* I. London: Samuel Tinsley, 1876.

Denton, Wiliam. *Servia and the Servians*. London: Bell and Daldy, 1862.

Đulić. Dimitrije, Milačić Miodrag. *Hronika Ćuprije.* Ćuprija: Opštinski odbor Saveza udruženja boraca Narodnooslobodilačkog rata, 1977.

Etzel, Anton von. "Skizzen aus Serbien." *Das Ausland* 156 (1851): 621–622.

Gavrilović, Mihailo. *Miloš Obrenović* II. Beograd: Nova štamparija "Davidović", 1909.

Jovanović, Aleksa S. "Rad na 'toržestvenim zakonima.'" *Arhiv za pravne i društvene nauke* 8:4 (1909): 257–262.

Jovanović, Slobodan. *Druga vlada Miloša i Mihaila Obrenovića (1858–1868).* Beograd: Izdavačka knjižara Gece Kona, 1923.

Jovičić, Miodrag ed. *Sto pedeset godina od donošenja Srpskog građanskog zakonika (1844–1994).* Beograd: Srpska akademija nauka i umetnosti, 1996.

Kanitz, Felix. *Serbien. Historisch-etnographische Reisestudien aus den Jahren 1859–1868*. Leipzig: Verlagsbuchhandlung von Hermann Fries, 1868.

Karadžić, Vuk. *Istorijski spisi*. Beograd: Prosveta–Nolit, 1987.

——. *Miloš Obrenović, knjaz Serbiji; Ili građa za srpsku istoriju našega vremena*. Budim: Štamparija kralj. Univers. Peštanskoga, 1828.

Krstić Mistridželović, Ivana. "Donošenje i značaj Policijske uredbe iz 1850. godine." *Bezbednost* 1–2 (2009): 414–432.

Lamartine, Alphonse de. *Voyage en Orient 1832–1833*. Paris: Librairie de Charles Gosselin, 1843.

Ljušić, Radoš. *Kneževina Srbija (1830–1839)*. Beograd: Zavod za udžbenike i nastavna sredstva, 2004.

——. *Prvo namesništvo (1839–1840)*. Beograd: Izdavačko preduzeće Prosveta d.d., 1995;

Lučić, Danica. *Sud opštenarodni srpski*. Master thesis defended at Faculty of Law in Belgrade, 2015.

Magarašević, Đorđe. *Putovanje po Srbiji u 1827. godini*; Pirh Dubislav Oto pl., *Putovanje po Srbiji u godini 1829*. Beograd: Prosveta, 1983.

Marković Bajalović Dijana ed., *Zbornik radova međunarodnog naučnog skupa "Harmonizacija građanskog prava u regionu" održanog 26. oktobra 2012. godine na Palama*. Istočno Sarajevo: Pravni fakultet Univerziteta u Istočnom Sarajevu, 2013.

Milićević, Milan Đ. *Pomenik znamenitih ljudi u srpskog naroda novijega doba*. Beograd: Srpska kraljevska štamparija, 1888.

Milosavljević, Olivera. *Gorski carevi hajdučija u Čačanskom i Rudničkom okrugu u drugoj polovini 19. veka*. Čačak: Međuopštinski istorijski arhiv, 2016.

Muir, Mackenzie Georgina, Irby Adeline Paulina. *Travels in the Slavonic Provinces of Turkey-in-Europe*. London: Dadly, Ibsister & Co., 1867.

Paton, Andrew Archibald. *Servia the Youngest Member of the European Family: or a Residence in Belgrade and Travels in the Highlands and Woodlands of the Interior, During the Years 1843 and 1844*. London: Longman, Brown, Green and Longmans, 1845.

Perrot, Georges. "Le prince Michel Obrenovitch et le avenément du prince Milan souvenirs d'un voyage en Serbie", *Revue de deux mondes* 82 (1869): 117–151.

Peruničić, Branko. *Beogradski sud 1819*–1839. Beograd: Istorijski arhiv Beograda, 1964.

Petrić, Vera. "Krivična dela protiv vlasti i krivična dela zloupotrebe dužnosti u Srbiji 1815–1839. godine", *Istorijski glasnik* 4 (1966): 77–91.

Pirch, Otto von. *Reise in Serbien im Spätherbst* 1829 I. Berlin: Ferdinand Dümmler, 1830.

Popović, Miroslav M. "Izveštaji Ministarstva pravde i statistika sudstva za period 1844–1847. godine." *Mešovita građa* 35 (2014): 107–119.

——. "Organizacija sudstva u Srbiji 1815–1838." *Rasinski anali* 10 (2012): 41–48.

——. *Sudstvo u kneževini Srbiji (1838–1869) organizacija i osnove sudskog postupka*. Beograd: Filozofski fakultet, 2016.

Quitzmann, Ernst Anton. *Reisebriefe aus Ungarn, dem Banat, Siebenbürgen, den Donaufürstenthümern, der Europäischen Türkei und Griechenland*. Stuttgart: J. B. Müllersverlagsbuchhandlung, 1850.

Robert, Cyprien. *Les Slaves the Turquie* I. Paris: J. Passard, Jules Labitte, 1844.

Rovinski, Pavel Apolonovič. *Zapisi o Srbiji 1868–1869 (iz putnikovih beležaka)* (translated from Russian by Drago Ćupić). Novi Sad: Matica srpska, 1994.

Spencer, Edmund. *Travels in European Turkey in 1850* I. London: Colburn and Co., 1851.

Šarkić, Srđan, Popović Dragoljub, Nikolić Dragan. *Istorija srpskog pravosuđa (XII–XX vek)*. Beograd: Ministarstvo pravde Republike Srbije, 1997.

Ubicini, Abdolomyne. "Le pays serbe et la Principauté de Serbie souvenirs de voyage." *Revue de deux mondes* 51: 2 (1864): 424–453.

Vujić, Joakim. *Putešestvije po Serbiji* I–II. Beograd: Srpska književna zadruga, 1901–1902.

Zakonik o postupku sudejskom u građanskim parnicama za Knjažestvo Srbiju. Beograd: Praviteljstvena pečatnja, 1860.

Zakonik o sudejskom postupku u parnicama građanskim za Knjažestvo Serbiju. Beograd: Pravitelstvena knjigopečatnja, 1853.

Zbornik zakona i uredaba u Knjažestvu Srbiji.

Živanović, Toma. *Zakonski izvori krivičnog prava Srbije i istorijski razvoj njegov i njenog krivičnog pravosuđa od 1804. do 1865*. Beograd: Srpska akademija nauka i umetnosti, 1967.