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(Re)Printing and Copyright in the Beginning of the 20th Century in Bosnia and Herzegovina

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Sažetak / Abstract

Ovaj rad na primjeru slučaja Walny protiv Kajona zbog autorskih prava prikazuje stanje u Bosni i Hercegovini na ovom polju u periodu austrougarske uprave. Kako je regulisano zakonski pravo autora i kako se to pravo moglo otuđiti, autorica kroz (pre)štampa(va)nje djela *Plan von Sarajevo und Umgebung – Plan Sarajeva i okolice* jasno oslikava. Akteri ove parnice su poznati javnosti kao književnici, vlasnici i urednici uglednih časopisa i štamparija, zbog čega ovaj slučaj zavrjeđuje posebnu pažnju.

This work focuses on the Walny vs. Kajon copyright infringement case, showing the situation in Bosnia and Herzegovina within this field during the Austro-Hungarian rule. The author shows how copyright was legally regulated and how it could have led to infringement, through methods of (re)printing of *Plan von Sarajevo und Umgebung*. Participants of this legal case are well known to public, as writers, owners and editors of respectable journals and printing houses. For this reason, this case deserves some special attention.

Uvod

Izdavačka djelatnost, pored izdavanja novih djela, podrazumijeva i štampanje i preštampavanje već objavljenih publikacija. Pokušaj uređenja u ovom segmentu napravila je prvo Velika Britanija, još početkom 18. stoljeća. Godine 1709. kraljica Anne donijela je Statut kojim su zaštićena autorska prava (Turan i Yilmaz 2014, 56). Na samom kraju istog stoljeća nakon Francuske revolucije i u toj zemlji su zakonski regulirana prava autora. Francuski zakon o zaštiti autorskih prava proklamovan 1791. godine pružao je zaštitu autoru tokom 10 godina nakon štampanja njegovog djela (Turan i Yilmaz 2014, 56). Skoro cijelo stoljeće nakon toga počeli su pregovori između više zemalja o zaštiti autorskih prava. Švicarska Konfederacija izradila je nacrt o zaštiti književnih i umjetničkih djela i uputila ga 1883. godine "svim civiliziranim zemljama" (Bogsch 1986, 19). Konkretni pregovori vođeni su u Švicarskoj, u Bernu, u periodu od septembra 1884. do septembra 1886. godine. Najvažniji rezultati ovog ugovora trebali su biti ujednačenost kriterija za priznavanje autorskih prava i opće priznavanje prava autorima bez obzira na njihovu nacionalnost. Iako

Introduction

Publishing activity, in addition to publishing new works, also includes printing and reprinting of already published publications. An attempt to arrange this segment was first made by Great Britain, as early as the beginning of the 18th century. In 1709, Queen Anne entered into force a Statute of copyright protection (Turan and Yilmaz 2014, 56). At the very end of the same century, after the French Revolution, copyright was legally regulated in that country as well. The French copyright law proclaimed in 1791. provided protection to the author for 10 years after publishing of his work (Turan and Yilmaz 2014, 56). Almost a century after that, negotiations between several countries on copyright protection began. The Swiss Confederation drafted a paper on the protection of literary and artistic works and sent it in 1883 to "all civilized countries" (Bogsch 1986, 19). Concrete negotiations were held in Switzerland, in Bern, in the period from September 1884 to September 1886. The most important results of this agreement should have been the uniformity of the criteria for the recognition of copyright and the general recognition of the rights to

je u prvoj fazi predstavnik Austro-Ugarske monarhije prisustvovao konferenciji, u konačnici su deklaraciju potpisale Belgija, Francuska, Njemačka, Velika Britanija, Italija, Španija, Švicarska, Tunis, Liberija i Haiti. Ova konvencija je revidirana više puta, prvi put 1896. godine, kada je dokument potpisala između ostalih i Crna Gora (Bogsch 1986, 19, 29).

Austro-Ugarska monarhija pridružila se zemljama potpisnicama Konvencije 1908. godine. Međutim, realna slika zaštite autorskih prava unutar monarhije, a posebno njenih priključenih zemalja, bila je dosta složena.

Ako analiziramo područje Hrvatske, koje je kao i Bosna i Hercegovina u sklopu Austro-Ugarske monarhije u tom periodu, uvidjet ćemo da se Zakon za zaštitu književnog i umjetničkog vlasništva, objavljen godine 1846, smatra "prvim učinkovitim zakonom o pravima autora na hrvatskim područjima" (Velagić i Hocenski 2014, 232). Zakon je revidiran i dopunjen 1884. godine, a u decembru 1895. proklamovan je zakon o autorskom pravu u pogledu književnih, umjetničkih i fotografskih djela (Velagić i Hocenski 2014, 232).

U Bosni i Hercegovini su se počele otvarati prve štamparije još dok je bila u sklopu Osmanskog carstva. Međutim, na zaštitu autorskog rada čekala je dosta duže od Osmanskog carstva kao i Austro-Ugarske monarhije (Turan i Yilmaz 214, 59). Zakonski okvir na koji su se autori mogli pozvati u Bosni i Hercegovini tokom austrougarske uprave bio je član 428 kaznenog zakona. Ovaj član je konkretno spominjao prava književnog i umjetničkog izražaja, ali to nije značilo da su autori imali određena prava, bez obzira dolaze li van granica BiH ili su zemaljski pripadnici. Pitanje preštampavanja je bilo ključno za zaštitu autorskog rada, ali i korištenje pseudonima koji su u tom periodu bili dosta popularni.

Cilj nam je ovim radom ukazati na pisano i realno stanje autorskih prava u Bosni i Hercegovini na početku 20. stoljeća, u periodu ekspanzije štamparija i štamparskih djela. Kroz konkretan primjer štampanja djela *Plan von Sarajevo und Umgebung – Plan Sarajeva i okolice* pokazat ćemo kako je u praksi prvih štamparskih kuća bilo moguće zaštiti ili zloupotrijebiti autorska prava. U isto vrijeme analizom ovog slučaja indirektno će se oslikati zakonska regulativa o zaštiti autorskih radova u Bosni i Hercegovini i njeno tumačenje u praksi.[1]

authors regardless of their nationality. Although a representative of the Austro-Hungarian Monarchy attended the conference in the first phase, the declaration was ultimately signed by Belgium, France, Germany, Great Britain, Italy, Spain, Switzerland, Tunisia, Liberia and Haiti. This convention was revised several times, for the first time in 1896 when, among others, Montenegro signed the document (Bogsch 1986, 19, 29).

The Austro-Hungarian Monarchy joined the signatory countries of the Convention in 1908. However, the real picture of copyright protection within the Monarchy, and especially its annexed countries, was quite complex.

If we analyse the territory of Croatia which, like Bosnia and Herzegovina, was a part of the Austro-Hungarian Monarchy in that period, we will see that the Law on the Protection of Literary and Artistic Property, published in 1846, is considered as "the first effective law on copyright in Croatian territories" (Velagić and Hocenski 2014, 232). The law was revised and amended in 1884, and in December 1895 a copyright law was proclaimed with regard of literary, artistic and photographic works (Velagić and Hocenski 2014, 232).

In Bosnia and Herzegovina, first printing houses were established while the country was part of the Ottoman Empire. However, on the protection of the author's work, Bosnia and Herzegovina waited more than the Ottoman Empire and the Austro-Hungarian Monarchy as well. (Turan and Yilmaz 214, 59). The legal framework which the authors could refer to in Bosnia and Herzegovina during the Austro-Hungarian administration was Article 428 of the Criminal Law. This article specifically mentioned the rights of literary and artistic expression, but that did not mean that the authors had certain rights, regardless of whether they came from outside BIH or were members of the country. The issue of reprinting was crucial for the protection of the author's work, but also for the use of pseudonyms, which were quite popular at that time.

The aim of this paper is to point out the written and real state of copyright in Bosnia and Herzegovina at the beginning of the 20th century, in the period of expansion of printing houses and printing works. Through a concrete example of publishing of work *Plan von Sarajevo und Umgebung – Plan for Sarajevo and vicinity*, we will show how in the practice of the first printing houses it was possible to protect or abuse copyright. At the same time, the analysis of this case will indirectly reflect the legislation on

[1] Kada su u pitanju autorska prava, pored preštampavanja, u građi možemo naći i problem korištenja pseudonima, koji su u tom periodu bili dosta popularni. Tako je Aleksa Popović tužio izdavačku

Nužno je naglasiti da parnice za autorska prava nisu bile česte u Bosni i Hercegovini u periodu austro-ugarske uprave. Nismo sigurni da li je to zato što zakon nije detaljno regulisao ovo pitanje ili nije bilo potrebe za sporovima takvog tipa. U svakom slučaju ova parnica predstavlja važan izvor prvog reda za sagledavanje ovog problema, koji je bio ključni za zakoniti rad kako izdavača, tako i autora i knjižara (Sarajevski list XXX (33), 2) (Nada VII (16), 254).[2]

Ovaj primjer smo odabrali iz više razloga, a prvenstveno zbog činjenice da su se pred sudom našla dva poznata imena, Walny i Kajon. Štamparija Daniela Kajona jedna je od prvih i izuzetno važnih štamparija u Sarajevu, a djela koja su ostavili u naslijeđe nezaobilazna su za proučavanje historije.

Trgovina knjigama vlasnika Daniela A. Kajona registrovana je u novembru 1893. godine, a već naredni mjesec obavijest o tome je štampana u službenim novinama *Sarajevski list* (Pejanović 1952, 29; Sarajevski list XVI (142), 4).[3] Iako se iz ove registracije može učiniti da je Kajon otvorio nešto poput današnje knjižare gdje su se mogle samo kupiti knjige, zapravo je trgovina knjigama podrazumijevala mnogo širi opus poslova, poput štampanja i preštampavanja raznih djela, ali i prodaje karata za koncerte (Sarajevski list XXX (133), 2; XXXIII (286), 8; XXVI (72), 3).[4] Godine 1900. Kajona prilikom jedne zahvale u štampi opisuju kao "posjednika štamparije", a ne trgovine knjigama (Sarajevski list XXIII (20), 3). Očito je da se pod knjižarom

kuću Mihajla Milanovića između ostalog i zbog toga što je na više brošura potpisao kao autora "Pertev", pseudonim koji je on koristio. Međutim, Milanović je te optužbe jednostavno pobio činjenicom da je navedene brošure za njegovu izdavačku kuću napisao Izet Pertev pa je logično da ih je tako i potpisao. Postupak je proglašen neutemeljenim "pošto izdavanje jedne brošure pod istim književnim pseudonimom pod kojim je već prije jedna druga brošura izdana bila nikako se ne može smatrati kao preštampavanje jednog književnog proizvoda, a posebnog zakona kao u Austriji, koji bi izričito zabranio bio svoj vlastiti književni proizvod pod pravnim imenom drugoga i još manje pod književnim pseudonimom drugoga izdati, u Bosni i Hercegovini neimade." Vidi: Arhiv Bosne i Hercegovine (dalje ABiH), Vrhovni sud za Bosnu i Hercegovinu (dalje VSBiH), Krivično odjeljenje (dalje KO), kutija br. 138, IV-913/16.

[2] Ni novinarski tekstovi nisu bili imuni od zloupotreba. Godine 1907. *Sarajevski list* se žalio na praksu *Hrvatskog dnevnika* iz Sarajeva koji je zloupotrijebio "U novinarstvu je uvriježen običaj, da listovi ponekad megjusobno pozajmljuju jedan od drugoga razno gradivo: priče, bilješke, vijesti i.t.d." Navodeći da je to uredu ukoliko se "kolegijalna pristojnost propisuje, da se uz pozajmljeno tugje originalno gradivo ujedno i svakad reče, iz čijeg je vrela uzeto". *Sarajevski list* navodi da *Hrvatski dnevnik* nije pisao odakle preuzima tekst "dok ga nijesmo privatno podsjetili, da to kolegijalnost i pristojnost traži". Međutim, ni to nije bilo redovno što je uredništvo lista pokušavalo spriječiti barem javnim objavama.

[3] Pejanović piše da je Kajonova štamparija otvorena 1892. godine i da je bila "srednjeg kapaciteta".

[4] Godine 1907. prilikom organizovanja koncerta s igrankom Hrvatskog pjevačkog društva Trebević, upravo "knjižara D. Kajon" je "blagonaklono" prodavala karte. Tri godine poslije u istim novinama Kajonova firma se potpisuje kao izdavačka kuća.

the protection of copyrighted works in Bosnia and Herzegovina and its interpretation in practice.[1]

It is necessary to emphasize that copyright lawsuits were not frequent in Bosnia and Herzegovina during the Austro-Hungarian rule. We are not sure whether it is because the law did not regulate this issue in detail or there was no need for such disputes of this type. In any case, this lawsuit is an important first-rate source for understanding this problem, which was crucial for the legal work of both publishers and authors and booksellers (Sarajevski list XXX (33), 2; Nada VII (16), 254).[2]

We chose this example for several reasons, primarily due to the fact that two well-known names, Walny and Kajon, appeared before the court. Publishing house of Daniel Kajon is one of the first and remarkably important printing houses in Sarajevo, and the works they left as a legacy are indispensable for the study of history.

The bookstore owned by Daniel A. Kajon was registered in November 1893, and the following month a news was published in the official newspaper *Sarajevski list* (Pejanović 1952, 29; Sarajevski list XVI (142), 4).[3] Although from this registration can be seen that Kajon opened something like today's bookstore where you could only buy books, in fact the book trade implied a much wider range of businesses such as printing and reprinting various works, but also selling concert tickets (Sarajevski

[1] When it comes to the copyright, in addition to reprinting, in the materials, we can also find the problem of pseudonym use, which were quite popular at that time. That is how Aleksa Popović sued the publishing house of Mihajlo Milanović, and among other things, he sued because they have the name "Pertev", pseudonym he used, signed as the author on several brochures. However, Milanović simply refuted those accusations with the fact that the mentioned brochures for his publishing house were written by Izet Pertev, so it is logical that he signed them that way. Process was declared unfounded "since publishing of a brochure with the same literary pseudonym under which another brochure was published before cannot in any way be considered as a reprint of a literary product, and a special law as in Austria, which would explicitly prohibit publishing of one's own literary product under the legal name of the other and even less under the literary pseudonym of the other, is law that Bosnia and Herzegovina did not have." See: The Archives of Bosnia and Herzegovina (onwards ABIH), Supreme Court of Bosnia and Herzegovina (onwards SCBIH), Criminal Division (onwards CD), box No. 138, IV-913/16.

[2] Journalistic texts were not immune from misuse either. In 1907, *Sarajevski list* complained about the practice of *Hrvatski dnevnik* from Sarajevo, which misused: "It is a common custom in journalism, that journals sometimes borrow various materials from each other: stories, notes, news, etc." Stating that it is all right if "collegial decency prescribes that in addition to borrowed someone else's original material, it is also always said from whose well it was taken", *Sarajevski list* states that *Hrvatski dnevnik* did not write from where they took the text "until we reminded them privately, that collegiality and decency demand it". However, it was not common for the newspaper's editorial board either to attempt to prevent them at least by public announcements.

[3] Pejanović writes that Kajon's printing house was opened in 1892 and that it was "of medium capacity".

podrazumijevalo i štampanje, preštampavanje, zapravo sve što se odnosi na izdavačku politiku. Godine 1908. pitanje prava preštampavanja i izdavanja bit će od ključne važnosti u radu trgovine knjigama Daniela A. Kajona.

Poput Daniela A. Kajona i Adolf Walny je važna ličnost u bosanskohercegovačkoj historiji štamparstva, a posebno arhitekture. On je bio dugogodišnji izdavač i redaktor godišnjaka *Bosnischer Bote – Bosanski glasnik*, a članke je objavljivao i u *Sarajevskom listu* i časopisu *Nada* (Sarajevski list XIX (24), 1; Nada II (4), 68–69). Godine 1898. bio je zvanični zastupnik za Bosnu i Hercegovinu na međunarodnoj izložbi za obrt i hranu u Pragu (Sarajevski list XXI (20), 1–2). Njegov nacrt urađen kao detaljna karta pod nazivom *Plan von Sarajevo und Umgebung* i danas se koristi kao izvor za sagledavanje razvoja grada (Fejzić i Fejzić 2018).

Upravo je Walnyjeva karta *Plan Sarajeva i okolice* bila razlog pokretanja sudskog spora između Adolfa Walnyja i Daniela A. Kajona 1907. godine. Kada je ova tužba pokrenuta, izdavačka kuća Daniel Kajon bavila se izdavanjem i štampanjem već punih 15 godina. To nam govori da je njen vlasnik bio potpuno upoznat sa zakonskom regulativom vezanom za prava štampanja i preštampavanja djela. Upravo na tu "rupu u zakonu" se Kajon u jednom trenutku odbrane i pozvao, tako da ovaj slučaj u potpunosti oslikava (ne)postojanje i (ne)poštivanje zakonskih regulativa.

Sudski spor Walny protiv Kajona

Djelo pod naslovom *Kajon's Plan von Sarajevo und Umgebung* dobilo je svoje mjesto u izlogu knjižare Daniela A. Kajona krajem 1907. godine. I možda bi sve prošlo bez ikakvog problema i ovaj *Plan Sarajeva i okolice* štampan u 2100 primjeraka ubrzo bio rasprodan da ga u aprilu 1908. godine Adolf Walny nije ugledao. Posumnjavši da se radi o kopiji njegovog djela, on je odmah pokrenuo sudsku parnicu protiv izdavačke kuće Daniel A. Kajon zbog krađe autorskih prava, tj. preštampavanja njegovog djela pod drugim naslovom.

Walnyjeva karta objavljena je kao prilog u godišnjaku *Bosnischer Bote* pod naslovom "Walny's Plan von Sarajevo und Umgebung", dok je karta koju je objavio Kajon samo umjesto Walnyjevog imena nosila Kajonovo i zvala se "Kajon's Plan von Sarajevo und Umgebung". Već po naslovu jasno se vidi da je pravo štampanja i preštampavanja upitno.

Cijeli proces počeo je tako što je Walny nakon saznanja o štampanju ove karte pokrenuo privatnu

list XXX (133), 2; XXXIII (286), 8; XXVI (72), 3).[4] In 1900, during a letter of thanks in the press, Kajon was described as "the owner of a printing house," not a bookstore (Sarajevski list XXIII (20), 3). It is obvious that the bookstore also implied printing, reprinting, in fact everything related to the publishing policies. In 1908, the question of the right to reprint and publish will be crucial in the work of the Daniel A. Kajon's book trade.

Also, as Daniel A. Kajon, Adolf Walny is an important figure in the history of printing in Bosnia and Herzegovina, but especially in architecture. He was a long-time publisher and editor of the yearbook *Bosnischer Bote – Bosanski glasnik* (Bosnian Herald), and he also published articles in *Sarajevski list* and journal *Nada* (Sarajevski list XIX (24), 1; Nada II (4), 68–69). In 1898 he was the official representative for Bosnia and Herzegovina at the International Exhibition of Crafts and Food in Prague (Sarajevski list XXI (20), 1–2). His plan was done as a detailed map under the name *Plan von Sarajevo und Umgebung* that is still used today as a source for overviewing the development of the city (Fejzić and Fejzić 2018).

Walny's map *Plan for Sarajevo and vicinity* was precisely the reason for the initiation of litigation between Adolf Walny and Daniel A. Kajon in 1907. When this lawsuit was filed, the publishing house Daniel Kajon had been engaged in publishing and printing for 15 years. This tells us that its owner was fully acquainted with the legal regulations related to the rights of printing and reprinting of works. To this "legal loophole" Kajon has referred at one moment of defence, so that this case fully reflects the (non)existence and (non)abiding legal regulations.

Litigation Walny vs. Kajon

A work entitled *Kajon's Plan von Sarajevo und Umgebung* got its place in the window of Daniel A. Kajon's bookstore in late 1907. And maybe everything would have gone without any problems and this Plan of Sarajevo and vicinity printed in 2100 copies would have been sold out soon if Adolf Walny had not seen it in April 1908.

Suspecting that it was a copy of his work, he immediately initiated a lawsuit against the publishing house Daniel A. Kajon for theft of copyright, i.e. reprinting of his work under another title. Walny's

[4] In 1907, during the organization of a concert with a dance of the Hrvatsko pjevačko društvo Trebević (Croatian Singing Society Trebević), "D. Kajon bookstore" was "favourably" selling the tickets. Three years later, in the same newspaper, Kajon's company was signed as a publishing house.

tužbu protiv Kajonove izdavačke kuće. Kao ličnog zastupnika u tužbi imenovao je privatnog advokata dr. Halida Hrasnicu. Izdavačka kuća Kajon nije imenovala zastupnika nego se optuženi Daniel Kajon branio lično. Sud je prvo detaljno ispitao da li postoje osnove za podizanje optužnice, nakon čega je u junu 1908. godine ona i zvanično podignuta. U optužnici je pisalo da se tuženom sudi zbog prestupa po članu 428 kaznenog zakona. Ovaj član kaznenog zakona bio je jedini na koji su se autori u Bosni i Hercegovini mogli pozvati na zaštitu "književnog i umjetničkog vlasništva" (Kazneni zakon 1897, 129).[5]

S obzirom na veoma šturu zakonsku zaštitu, Walny je punu godinu dana pokušavao dokazati da Kajon nije imao pravo štampati *Plan Sarajeva i okolice* te da se ne radi o novom nego već objavljenom, samo preštampanom djelu.

Adolf Walny je u tužbi jasno naveo da je Kajon "bez njegove dozvole, daklen neovlašteno, kopirao njegov nacrt, koji je prije 4–5 godina na svoj račun u c. i kr. Vojničko-geografskom institutu u Beču dao izraditi i izdao kao prilog knjigu 'Bosnischer Bote' i u posebnom izdanju pod naslovom 'Walny's plan von Sarajevo und Umgebung'" (ABiH, VSBiH, KO, k. 73, IV-908/422). Svjestan mogućih zloupotreba na koricama karte, Adolf je napisao da sva prava štampanja i umnožavanja ima samo autor, ali to očito nije bilo dovoljno (Sarajevski list XXVII (103), 1; ABiH, VSBiH, KO, k. 73, IV-908/422).[6]

map was published as supplement to the yearbook *Bosnischer Bote* entitled "Walny's Plan von Sarajevo und Umgebung", while the map published by Kajon only had Kajon's name instead of Walny's and was called "Kajon's Plan von Sarajevo und Umgebung". The title clearly shows that the right to print and reprint is questionable.

The whole process started when Walny, after learning about the printing of this map, filed a private lawsuit against Kajon's publishing house. He appointed a private lawyer, Dr Halid Hrasnica, as his personal representative in the lawsuit. The Kajon publishing house did not appoint a representative, but the accused Daniel Kajon defended himself personally. The court first examined in detail whether there were grounds for filing an indictment, after which it was officially filed in June 1908. The indictment stated that the defendant was being tried for an offence under Article 428 of the Criminal Law. This article of the criminal law was the only one that authors in Bosnia and Herzegovina could invoke to protect "literary and artistic property" (Kazneni zakon 1897, 129).[5]

Given the very strict legal protection, Walny spent a whole year trying to prove that Kajon did not have the right to print the *Plan of Sarajevo and vicinity* and that it was not a new work but an already published one, only reprinted.

Adolf Walny clearly stated in the lawsuit that Kajon "without his permission, therefore unauthorized, copied his plan, which was 4–5 years ago on his account in k. u k. Military Geographic Institute in Vienna commissioned and published as a supplement in the book 'Bosnischer Bote' and in a special edition entitled 'Walny's plan von Sarajevo

[5] Član 428 kaznenog zakona je glasio: "Prestupak protiv književnog i umjetničkog vlasništva. Kazna. Svako neovlašteno preštampavanje i svako s njim u zakonima izjednačeno umnožavanje ili ponačinanje kakvog književnog i umjetničkog proizvoda valja kazniti na zahtjev oštećenika kao prestupak, pa valja pokraj gragjansko-pravne odštete, koju zakon ustanovljuje, kazniti onog, ko to učini, ili je pri izvedenju toga znalice sudjelovao, ili ko s proizvodima toga znalice trguje, ne samo gubitkom (konfiskacijom) zatečenih primjeraka, otisaka, saljevaka i t.d., razloženjem štamparskog sloga, a kod umjetnih djela, u koliko kakva pogodba megju ponačiniteljem i oštećenikom što drugo ne opredjeljujuje, i razorenjem ploča, kamenova, oblika i drugih predmeta, koji su isključivo za izvedenje toga umnožavanja služili, nego takogjer i novčanom kaznom (globom) od dvadeset i pet do hiljadu forinti, ili u slučaju da krivac nije kadar platiti, zatvorom od pet dana do šest mjeseci, a u slučajevima ponovljanja ili ako je krivac prije toga barem već dva puta kažnjen bio, i gubitkom obrta. Takogjer valja zaplijenjene primjerke uništiti, u koliko se po pogodbi s onim, koji je tim prestupkom oštećen, ne upotrebe na njegovu odštetu. Isto tako, ako se povredom isključivog prava sačinitelja (autora) ili njegovih pravnih našljednika priredi javna predstava nekog dramatičnog ili muzikalnog djela u cijelosti, ili sa skraćenjima i neznatnim promjenama valja i to kazniti kao prestupak, ne samo gubitkom (zapljenjenjem) protiv pravno upotrebljenih rukopisa (knjižica o sadržaju, partitura, uloga), nego i globom od deset do dvjesta forinti, ili, ako krivac nije kadar platiti, razmjernim zatvorom."

[6] Oznaka "Alle Rechte vorbehalten i vervielveltigung vorbehalten" nedvojbeno je ukazivala na to "da je vlasnik Adolf Walny sebi pridržao pravo pomnožavanja ove karte kao i sva druga prava, a tim drugim zabranio umnožavanje karte i sve druga prava na tu kartu", stajalo je u presudi. Sličnu opasku stavio je i Martin Gjurgjević na tekst "O vjerskim odnošajima u Japanskoj" objavljen 1904. godine, u četiri nastavka u *Sarajevskom listu*.

[5] Article 428 of the Criminal Law read: "Offense against literary and artistic property. Penalty. Any unauthorized reprinting and any equal reproduction or counterfeiting of any literary and artistic product within the law should be punished at the request of the injured party as offence, so, in addition to the civil-legal compensation, which is established by law, it is necessary to punish the one who does that, or participate willingly in the execution, or who knowingly trades with the products, not only by losing (confiscating) the found copies, prints, type casting moulds, etc., also by disassembling the printing press, and in the case of works of art, if settlement between the culprit and the injured party is not resolved, by destroying plates, stones, shapes and other objects which were used exclusively for the derivation of that reproduction, but also by a fine (penalty) from twenty-five to one thousand forints, or in case the culprit is unable to pay, imprisonment from five days to six months, and in cases of repetition or if the culprit has been punished at least twice before, with the loss of trade as well. The confiscated copies must also be destroyed, if they are not used in the settlement for the compensation of injured party. Likewise, if the exclusive right of the compiler (author) or his legal successors is violated by the public performance of a dramatic or musical work in full, or with reduction and minor changes, it should be also punished as offense, not just with the loss (confiscation) of illegally used manuscripts (booklets on the content, music sheets, roles), but also with the fine of ten to two hundred forints, or, if the culprit is unable to pay, proportional imprisonment."

Upotreba ovakvog natpisa jasno ukazuje na koji su se način pokušavala zaštiti autorska prava, s obzirom na to da zakon nije bio precizan u tom pitanju.

Dok je Walny tvrdio da je njegova karta samo preštampana pod drugim imenom, Kajon se branio da njegov plan nije kopija karte tužitelja, već da je to "originalna radnja". Naime, Kajon je na saslušanju ispričao kako je plan za njega napravio "gradski mjernik" Vladislav Walichnowski, da je on taj *Plan Sarajeva i okolice* od Vladislava naručio te da mu je za taj posao platio iznos od 180 kruna. Također je naveo da je Vladislavu trebalo 7 do 8 mjeseci da taj posao uradi i gotov plan njemu donese. Smatrao je da plan nije "ni književni ni umjetnički proizvod, te u opće ne može biti objektom prestupka u § 428 kz" (ABiH, VSBiH, KO, k. 73, IV-908/422).

Podatak da je Kajon platio 180 kruna za izradu tako komplikovanog plana jasno je ukazivala prema tvrdnji Adolfa da se radi o kopiji, a nikako o novom planu. Kako bi se to dokazalo, na sud je pozvan Vladislav lično. Međutim, on je u međuvremenu napustio Sarajevo, tako da nije mogao pristupiti sudu na glavnoj raspravi (ABiH, VSBiH, KO, k. 73, IV-908/422).[7]

Kako bi se ustanovilo da li se radi o originalu ili kopiji Adolfovog plana, sud je odlučio da se Kajonov plan provjeri od strane sudskih vještaka. Za taj posao odabrana su dva vještaka: prof. Ferdinand Welz i "mjernik" Karlo Konečny.[8] Zadatak im je bio da "sravne dvje karte i pronadju jeli koja od njih kopirana". U uputama dostavljenim vještacima napomenuto je da "ne bi smetalo originalnost rada" ukoliko se Vladislav praveći Kajonov *Plan Sarajeva i okolice* "poslužio (se) bio Walnyevim planom kao izvorom ili da se je drugima radnjama poslužio, te na temelju više radnja da je napravio novu samostalnu radnju pri čemu bi imao upotrebljene izvore navesti" (ABiH, VSBiH, KO, k.138, IV-913/16).[9]

und Umgebung'" (ABIH, SCBIH, CD, b. 73, IV-908/422). Aware of possible abuses, on the cover of the map, Adolf wrote that only the author has all the rights to print and reproduce, but this was clearly not enough (Sarajevski list XXVII (103), 1; ABIH, SCBIH, CD, b. 73, IV-908/422).[6] The use of such inscription clearly indicates how copyright was sought to be protected, as the law was not precise on that issue.

While Walny claimed that his map was only reprinted under a different name, Kajon defended himself that his plan was not a copy of the plaintiff's map, but that it was "the original work." In fact, Kajon said at the hearing that the plan for him was made by the "city surveyor" Vladislav Walichnowski, that he has ordered from Vladislav the *Plan for Sarajevo and vicinity* and that he paid him 180 Kronen for the work. He also stated that it took Vladislav 7 to 8 months to do the job and bring him the finished plan. He considered that the plan was "neither a literary nor an artistic product, and in general could not be the object of an offense in the § 428 of Criminal law" (ABIH, SCBIH, CD, b. 73, IV-908/422).

The fact that Kajon paid 180 Kronen for making such a complicated plan clearly indicated according to Adolf's claim that it was a copy, and not a new plan. In order to prove that, Vladislav was summoned to come to court in person. However, he left Sarajevo in the meantime so he could not testify in court at the main hearing (ABIH, SCBIH, CD, b. 73, IV-908/422).[7]

In order to determine whether it was the original or a copy of Adolf's plan, the court decided to have Kajon's plan checked by court experts. Two experts were selected for the job, professor Ferdinand Welz and "surveyor" Karlo Konečny.[8] Their task was to "compare two maps and find which of them was copied." The instructions submitted to the experts stated that "the originality of the work would not matter" if Vladislav, while making Kajon's *Plan*

[7] Iako se Vladislav W. nije pojavio na saslušanju, Sud je smatrao da njegov iskaz nikako ne bi mogao biti "pouzdan" s obzirom na to da je bio saučesnik u pravljenju spornog plana. Napomenuvši da je on imao pravo prema § 161 k. p. "uskratiti svjedočanstvo" jer "je imao razloge bojati se da bi morao odgovarati makar civilno pravno za to što je radnju Walnyevu kopirao doćim je po navodu optuženog imao izraditi samostalno radnju".

[8] Mjernik – geometar

[9] Pitanje navoda odakle je preuzet tekst nije bilo ključno u odluci da li je tekst originalan ili preuzet. To se jasno vidi na primjeru Alekse Popovića koji je tužio Mihajla Milovanovića da je njegovu brošuru "Sarajevska revolucija 1878." kopirao i objavio kao svoje autorsko djelo. Vještaci su u tom slučaju utvrdili "da inkriminirana brošura optuženog neodgovara u cjelosti brošuri privatnog tužitelja" jer se pojedine rečenice iz Popovićeve brošure ne nalaze u Milovanovićevoj. Sud je zaključio da se ne može "inkriminirana brošura optuženoga smatrati u smislu propisa § 428 k.z. pretiskom brošure privatnog tužitelja jer ista neodgovara u cijelosti brošuri privatnog tužitelja već sadržava mnoge promjene", iako je umnogome bila potpuno slična, a Milovanović nije nigdje kao izvor naveo Popovićevu brošuru.

[6] Marking "Alle Rechte vorbehalten and vervielveltigung vorbehalten" undeniably indicated that "the owner, Adolf Walny, reserved to himself the right to reproduce this map as well as all other rights, and thus prohibited the others from reproducing the map and all other rights to that map" stood in the verdict. Martin Gjurgjević made a similar remark on the text "O vjerskim odnošajima u Japanskoj" (About Religious Relations in Japan) published in 1904, in four sequels in *Sarajevski list*.

[7] Although Vladislav W. did not appear at the hearing, the Court considered that his statement could in no way be "reliable" given that he had been accomplice in drawing up the debatable plan. Making a remark that he was entitled under the § 161 of Criminal trials "to deny the testimony" because "he had reason to fear that he would have to answer by civil law for copying Walny's work, especially since he had to make his own work, according to the accused."

[8] Surveyor – geometer

Welz i Konečny su dostavili sudu detaljan izvještaj u kojem su naveli da "Kajonov plan je po mnijenju vještaka tako sličan na prvi pogled planu Walnyjevom da se oba mogu lako zamjeniti". To ipak nije bilo ključno na što su se ovi vještaci pozvali kada su zaključili da je Kajonov plan samo kopija Walnyjevoga. Mnogobrojne greške koje je sam Walny napravio bile su ponovljene u Kajonovom planu, dok su građevine koje su nakon štampanja Walnyjevog plana izgrađene ili srušene ostale nacrtane i u Kajonovom planu kao da se ništa nije promijenilo (ABiH, VSBiH, KO, k. 73, IV-908/422).[10] Konture oba plana bile su potpuno jednake "a napose t.zv. Schichten-linien kojima su visina terena označene su tako napadno kongruentne kako nikad ne bi mogle biti da je svaka od njih samostalno radnja. Obadvije karte predstavljaju sasvim isti teren skroz na skroz i predstavljaju ga na istim načinom. I jedna i druga karta počima i svršava na istoku i zapadu sjeveru i jugu baš sasvim točno na istom mjestu, što bi pri originalnoj radnji obih nemoguće bilo." Nakon toga je slijedio logičan zaključak da je "plan Kajanov samo kopija Walnyeva plana" (ABiH, VSBiH, KO, k. 73, IV-908/422).

Kajon je nakon toga odlučio promijeniti strategiju odbrane pozivajući se na nepostojanje zakonske regulative. Svjestan da "izmedju Bosne i Herecgovine i Austro-ugarske monarhije ne postoji državni ugovor, kojim bi bio zajamčen reciprocitet autorskog prava", Kajon je smatrao da se njegov čin ne može smatrati zakonskim prekršajem na koji se misli u kaznenom zakonu u § 428. (http://www.dziv.hr),[11] ustvrdivši, ako i jeste to djelo kažnjivo, da je on bio "u takovoj bludnji koja ga ispričava jer je držao da je njegov čin u pomanjkanju posebnih propisa o au-

of Sarajevo and vicinity, "used Walny's plan as a source or used other work, and based on several works have made a new independent work where he would have noted used sources" (ABIH, SCBIH, CD, b. 138, IV-913/16).[9]

Welz and Konečny provided the court with a detailed report stating that "Kajon's plan is, in the expert's opinion, so similar at first glance to Walny's plan that both can be mixed up easily." This, however, was not crucial to what these experts referred when they concluded that Kajon's plan was only a copy of Walniy's. Numerous mistakes made by Walny himself were repeated in the Kajon's plan, while the buildings that were built or demolished after the printing of the Walniy's plan remained drawn in the Kajon's plan as if nothing had changed (ABIH, SCBIH, CD, b. 73, IV-908/422).[10] The contours of both plans were exactly the same "and especially so called Schichten-linien which indicate the height of the terrain are so strikingly congruent that each of them could never be independent work." Both maps represent exactly the same terrain all the way through and represent it in the same way. Both maps begin and end in the east and west north and south in exactly the same place, which would be impossible in the original work of both. "It was followed by the logical conclusion that 'Kajon's plan is just a copy of Walny's plan'" (ABIH, SCBIH, CD, b. 73, IV-908/422).

Kajon then decided to change his defence strategy, invoking the lack of legislation. Aware that "be-

[9] The question of citation where the text was taken from was not crucial in deciding whether the text was original or taken. This is clearly seen in the example of Aleksa Popović, who sued Mihajlo Milovanović for copying and publishing his brochure "Sarajevo Revolution 1878" as his own work. In that case, the experts determined "that the incriminated brochure of the accused did not correspond in its entirety to the brochure of the private plaintive" because certain sentences from Popović's brochure were not in Milovanović's. The Court concluded that "the incriminated brochure of the accused cannot be considered in terms of the regulation of § 428 of Criminal law as reprint of the private plantive's brochure because it does not fully correspond to the private plantive's brochure, but already contains many changes." Although in many ways it was completely similar, Milovanović did not cite Popović's brochure as a source.

[10] The report said: "Both maps under E and F-8 have Zlatistija instead Zlatište, both maps under E-6 have note Städtischer bauhof that has never been there, because the fairground is in that place. At point B-6, both maps incorrectly noted Viehmarkt (Cattle market) that has never been there. Many more similar mistakes have been pointed out. In Walny's plan, third building of the National Government is missing in E-5 because it didn't exist, and in Kajon's plan it is also missing, although it has existed in 1906/7. In H-5, according to Walny's plan, a whole group of houses from 1904 existed, group in 1906/7 was gone, and yet, it was charted in Kajon's plan. In H-3 in both plans KOvaci was written instead Kovači. In B-5, both plans military barracks are marked incorrectly with Lager-kasare instead k. u k. Defensions lager. Elevation point 768 in both plans is marked incorrectly and it had to be 827 meters. It is the same with I-7, in both plans indicated height of Čolina kapa is 909 instead 960 meters...."

[10] U izvještaju je pisalo: "U obadvije karte imadu pod E i F-8 Zlatistija mjesto Zlatište obadvije karte imadu pod E-6 zamilježeno Städtischer bauhof koji tamo nikad bio nije, jer je na tom mjestu sajmište. Na mjestu B-6 je u obadvije karte zabilježeno pogriješno Viehmarkt koji tamo nikad bio nije. Sličnih pogriješaka istaknuto je još mnogo. U Walnyevom planu nema treće zgrade Zemaljske vlade u E-5 ucrtane jer tada postojala nije, a ni u Kajonovom planu je nema premda je godine 1906/7 postojala. U H-5 ima po Walnyevom planu čitava grupa kuća koja je 1904 postojala te grupe 1906/7 više nije bilo, a ipak je ucrtana u Kajonovom planu. U H-3 je napisano u obadva plana KOvaci mjesto Kovači. U B-5 su u obadva plana označene vojničke kasarne pogriješno sa Lager-kasarne mjesto k.u k. Defensions lager. Kota 768 je u obadva plana pogriješno zabilježena te je u obadva morala biti 827 metara. Isto tako je kod I-7 u obadva plana naznačena visina Čoline kape sa 909 umjesto 960 metara..."

[11] Ako uporedimo Zakon o autorskom pravu u pogledu književnih, umjetničkijeh i fotografskijeh djela iz 1895. objavljenog za "kraljevine i zemlje, zastupane u carevinskom vijeću", uvidjet ćemo da se u članu 2 prava daju "za djela inostranaca, ako su izašla u Njemačkom carstvu, i za djela njemačkih državljana, koja nijesu izašla, ovaj zakon vrijedi", ali samo u slučaju "dokle je data uzajamnost". Bosna i Hercegovina nije sudjelovala u uzajamnom potpisivanju sporazuma o autorskom pravu, koje je Hrvatsko-ugarski sabor nostrifikovao još 1884. godine.

torskom pravu dozvoljen" (ABiH, VSBiH, KO, k. 73, IV-908/422). Ovo je bilo izuzetno važno jer Bosna i Hercegovina zaista nije imala regulisan zakon o autorskim pravima niti potpisan sporazum o važenju austrijskog zakona po tom pitanju. Stoga je sud morao ustanoviti da li se zaista radi o književnom ili umjetničkom djelu koje je bilo zaštićeno kaznenim zakonom, i to striktno famoznim članom 428.

Nakon detaljnog ispitivanja sud je zaključio da zabrana preštampavanja bez dozvole autora "postoji svagdje gdje je zakonom zaštićena ali i svugdje gdje zakonom nije isključena". Pojasnivši da u § 428 k. z. "nije zaštićeno književno i umjetničko vlasništvo samo ono koje je stečeno u Bosni i Hercegovini, nego je zaštićeno bez obzira svačije književno i umjetničko vlasništvo te zakon ne pravi razlike, gdje je ovo stečeno" sud je dalje pojasnio da po "općem značenju u § 428 kz. upotrebljena riječ preštampavanje predpostavlja da je najprije postojao jedan proizvod štampe, po drugi put drugim pločama ili formama, što služi za umnožavanje, štampan akar i po istom štamparu" (ABiH, VSBiH, KO, k. 73, IV-908/422).

Sud je u ovom slučaju odlučio da nema potrebe "više ispitivati da li izvan odredbe kaznenog zakona postoje kakovi drugi propisi bilo u posebnim zakonima bilo u temelju državnih ugovora, po kojim bi se navedeni pojmovi imali prosudjivati, a napose da li je kakvim državnim ugovorom zajamčena zaštita autorskog prava koje valja u Austro-ugarskoj monarhiji, da bude zaštićeno i u Bosni i Hercegovini", navodeći da je za crtanje tako komplikovanih karti "potrebna (je) velika vještina u crtanju, a osim toga znanje svih propisa, kako se imadu na karti predstaviti faktična stanja ustanovljena izmjerama, i sasvim maleni prostori opseg je teško sasvim točno nacrtom prestaviti" i zaključivši da se ona zbog toga smatra "umjetničkim" djelom koje je zaštićeno članom zakona 428.

Sudskom vijeću nije promakla ni činjenica da je *Plan Sarajeva i okolice* Kajon štampao u štampariji Eduarda Strchea, ali da on nije svoje ime stavio na koricu. Štamparije su koristile svaku priliku za reklamiranje i nisu propuštale mogućnost pisanja svog imena na sve što bi izašlo iz njihove štamparije. Sud je smatrao da je taj Eduardov potez trebao biti znak Kajonu, čak iako nije znao da se radi o kopiji Walnyjevog plana, da nešto nije uredu s planom na koji stavlja svoje ime (ABiH, VSBiH, KO, k. 73, IV-908/422).[12]

[12] "Napadno je da na Kajonovom planu nema bilješke da je izradjen u Warnsdorfu kod Eduarda Strechea. Očevidno se ustručavao Eduard

ian Monarchy government contract which would guarantee the reciprocity of copyright doesn't exist", Kajon considered that his act could not be considered as a legal offense referred to the Criminal Code in the § 428. (http://www.dziv.hr),[11] arguing that if it is a criminal offense, he was "in such misapprehension, it excuses him because he thought that his act in the absence of special copyright regulations is permissible" (ABIH, SCBIH, CD, b. 73, IV-908/422). This was extremely important because Bosnia and Herzegovina really did not have a regulated copyright law or signed agreement on the validity of Austrian law on this issue. Therefore, the court had to establish whether it was really a literary or artistic work that was protected by criminal law and by a strictly famous article 428.

After a detailed examination, the Court concluded that the ban on reprinting without the author's permission "it exists everywhere where it is protected by law but also wherever it is not excluded by law." Explaining that in the § 428 of the Criminal law, "literary and artistic property acquired in Bosnia and Herzegovina are not the only one protected, everyone's literary and artistic property is protected regardless of the place of property acquiring, the law makes no distinction." The court further clarified that by "general meaning in the § 428 of the Criminal law, used word reprinting assumes that first there was one printing product, and secondly, other plates or forms which serve for reproducing and printed sheets are from the same printer" (ABIH, SCBIH, CD, b. 73, IV-908/422).

The court decided in this case that there was no need "to examine more whether there are any other regulations outside the regulations of the Criminal law, either in special laws or on the basis of government contracts, according to which these terms should be judged, and especially whether any government contract guarantees copyright protection in the Austro-Hungarian Monarchy will be protected in Bosnia and Herzegovina as well." Stating that for drawing such complicated maps "great skill in drawing is required, as well as knowledge of all regulations as to be able to represent the factual conditions on the map provided by measurements." And for very

[11] If we compare the Copyright Law with regard to literary, artistic and photographic works from 1895 published for "kingdoms and lands, represented in the imperial council", we will see that in the article 2 rights are given "for the works of foreigners, if they came out in the German Empire, and for the works of German citizens, which did not come out, this law applies" but only in case "as long as reciprocity is given." Bosnia and Herzegovina did not participate in the mutual signing of the copyright agreement, which was already validated by the Croatian-Hungarian Parliament in 1884.

Nakon svih pokušaja, na samom kraju Kajon je pokušao tužbu poništiti i tvrdnjom da je sama optužnica pokrenuta prekasno. Međutim, činjenica da Walny živi u Beču, te da je u Sarajevo stigao tek 19 dana prije nego što je podnio prijavu, bila je dovoljna da se slučaj ne može proglasiti zastarjelim.

Punu godinu dana nakon pokretanja tužbe, sud je donio konačnu odluku u kojoj je Kajon A. Daniel proglašen krivim za "neovlašteno preštampavanje" Walnyjevog *Plana Sarajeva i okolice*, te da je "znalice učinio odnosno sudjelovao kod toga da bude Walnyev plan preštampan i izdan pod naslovom Kajonov plan i da je znalice tim proizvodom trgovao". Također je naglašeno da "Optuženi kao knjižar i nakladnik znade sasvim dobro da je zakon propisao da na svakom štampano spisu mora biti naznačeno mjesto gdje je štampan i ime štamparije", kao i da "Nijedan štampar koji korektno postupa ne će propustiti da ovom propisu udovolji, a ako imade razloga da se sa svojom radnjom ponudi, udovoljiti će ovim prepisima u vlastitom interesu, jer će na taj način sam za se reklamu činiti", zaključivši da je "u objektivnom i u subjektivnom pravcu dokazana krivnja optuženoga" (ABiH, VSBiH, KO, k. 73, IV-908/422).

Olakšavajuća okolnost za Kajona bila je ta što mu je to bio prvi prekršaj, a otežavajuća da je prekršaj bio kažnjiv po dva osnova. U trenutku presude Daniel A. Kajon je imao 51 godinu i imovinu u vrijednosti od 50.000 kruna, a kažnjen je novčanom kaznom od 200 kruna. Kazna se mogla iz materijalne pretvoriti u zatvorsku, tako što je umjesto 200 kruna u zatvoru trebao provesti 20 dana. Kompletan tiraž mu je oduzet, a morao je platiti i sudske troškove.

Zaključak

Ovaj slučaj pokazatelj je problema s kojima su se susretali ne samo autori nego i štamparske kuće u nedostatku jasnog zakonskog okvira o autorskim pravima u Bosni i Hercegovini u periodu austrougarske uprave. Dokazati da je neko djelo umjetnički ili književni originalno nije bilo jednostavno. Mnogi autori poput Alekse Popovića nisu uspijevali svoje radove zaštititi. Parnica Walny protiv Kajona možda bi imala i drugačiji epilog samo da je sud odlučio da djelo nije niti umjetnički niti književni izražaj, što nije bila rijetkost. Svjesni da ih zakon neće zaštititi, autori su često na korice štampali upozorenje

na Kajonov plan svoju firmu staviti jer je vidio da je ovo samo kopija Walnyevog plana... Ako li on nije odredio da se ispusti ime štamparije i mjesto štampanja morala je u njemu nastati dvojba iz kojeg li razloga se štampar ustručava dati svoje ime", pisalo je u zapisniku.

small spaces, it is difficult to accurately represent on the plan range of perimeters. Concluding that map is therefore considered as "artistic" work protected by Article 428.

The Trial Chamber did not miss the fact that the *Plan of Sarajevo and vicinity* was printed by Kajon in the printing house of Eduard Strche, but that he did not put his name on the cover. The printing houses used every opportunity for advertising and did not miss the opportunity to write their name on everything that would come out of their printing house. The court held that Eduard's act should have been a sign to Kajon, even though he did not know that it was a copy of Walny's plan, that something was wrong with the plan on which he is adding his name (ABIH, SCBIH, CD, b. 73, IV-908/422).[12]

After all attempts, at the very end, Kajon tried to nullify the lawsuit by claiming that the charge itself was initiated too late. However, the fact that Walny lives in Vienna, and that he arrived in Sarajevo only 19 days before he filed an appeal, was sufficient that the case could not be declared as time-barred.

A full year after the lawsuit was filed, the Court issued a final decision finding Kajon A. Daniel guilty of Walny's *Plan for Sarajevo and vicinity* "unauthorized reprinting" and that he "knowingly did i.e. participated in the reprinting and publishing the Walny's plan under the title Kajon's plan and that he has traded with that product." It was also emphasized that "The Accused, as a bookseller and publisher, knows quite well that the law prescribes that on every printed text must be indicated the place of publishing and the name of the printing house." Also, "No printer who acts correctly will fail to comply to this regulation, and if he has a reason to recommend himself with the work, he will comply to these regulations in his own interest, because in that way he will make an advertisement for himself" concluding that "the guilt of the accused has been proven in an objective and subjective way" (ABIH, SCBIH, CD, b. 73, IV-908/422).

Mitigating circumstance for Kajon was that it was his first offense, and the aggravating circumstance was that the offense was punishable on two grounds. At the time of the verdict, Daniel A. Kajon was 51 years old and had assets worth 50,000 Kronen and

[12] "It is striking that there is no note on Kajon's plan that it was made in Warnsdorf by Eduard Streche. Obviously, Eduard was hesitant to put his company on Kajon's plan because he saw that this was just a copy of Walny's plan ... If he did not order for the name of the printing house and the place of printing to be omitted, there must have been doubt as to why the printer was reluctant to give his name" – it was written in the transcript.

da je preštampavanje zabranjeno bez dozvole autora, što je bar djelimično osiguravalo da će prije preštampavanja drugi izdavač dobro razmisliti.

Da zakon nije precizan te da austrougarski zakoni nisu važeći i na teritoriju Bosne i Hercegovine bili su svjesni i autori i štamparije. U toku samog suđenja optuženi kao olakšavajuću okolnost jasno navodi da zakon nije regulisao pitanje preštampavanja. Walny protiv Kajona je parnica koja ukazuje na više važnih činjenica iz historije štampanja i izdavačke djelatnosti, oslikavši realno stanje u ovom segmentu.

Kroz ovaj primjer pokazano je kako su štampanje, preštampavanje i zaštita autorskih prava izgledali s druge strane, iz ugla aktera i vremena prvih godina ekspanzije štamparija u Sarajevu, a zaštita autorskih prava bila tek u povoju.

Više od jednog stoljeća nakon ove parnice u kojoj je jasno dokazano da je Kajon bez dozvole kopirao djelo Walnyja i objavio ga pod svojim imenom, nekoliko kopija koje su u tom trenutku već bile prodane danas služe, isto kao i originalno djelo, kao izvor za sliku Sarajeva i razvoja grada u tom periodu.

was fined with 200 Kronen. The sentence could be changed from material to imprisonment, so that instead of 200 Kronen he had to spend 20 days in prison. The entire circulation was taken away from him, and he had to pay court costs as well.

Conclusion

This case is an indicator of the problems faced not only by the authors but also by the printing houses in the absence of a clear legal framework on copyright in Bosnia and Herzegovina during the Austro-Hungarian rule. Proving that artistic or literary work is original was not easy. Many authors, such as Aleksa Popović, failed to protect their work. The Walny vs. Kajon lawsuit might have had a different epilogue only if the court had ruled that the work was neither an artistic nor a literary expression, which was not uncommon. Aware that the law would not protect them, the authors often printed on the cover a warning that reprinting was prohibited without the author's permission, which at least partially ensured that another publisher would think twice before reprinting.

The authors and printing houses were aware that the law was not precise and that the Austro-Hungarian laws were not valid on the territory of Bosnia and Herzegovina. During the trial itself, the Accused clearly stated as a mitigating circumstance that the law did not regulate the issue of reprinting. Walny vs. Kajon is a lawsuit that points to several important facts from the history of printing and publishing, depicting the real situation in this segment.

This example shows how printing, reprinting and copyright protection looked from the other side, from the point of view of participants and the time of the first years of expansion of printing houses in Sarajevo, when copyright protection was still in the beginning.

More than a century after this lawsuit in which it was clearly proven that Kajon copied Walny's work without permission and published it under his own name, several copies already sold at the time, serve today, just like the original work, as a source for the picture of Sarajevo and the development of the city in that period.

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