
WINE AS AGRICULTURAL AND FOOD PRODUCT: A HISTORICAL AND COMPARATIVE LEGAL APPROACH

Aleksandra Jovanovic¹, Aneta Atanasovska Cvetković²

*Corresponding author E-mail: a.atanasovska@yahoo.com

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ABSTRACT

Wine is not just a product of modern times. Wine, one of the oldest drinks in the world, was sold and inherited by ancient civilizations. Its importance is indicated by the regulation of wine in the Codes of ancient Mesopotamia and Roman law. Today, this agri-food product is sold on both the domestic and foreign markets, and it is indisputable that the production and sale of this product must be legally regulated. The authors of this paper, by analyzing the legal provisions of Roman law, the Law on Wine and the Criminal Code of Republic of Serbia, point out the importance of the existence and expansion of legal provisions related to wine and its producers and precise criminal law provisions in case of sale of wine produced contrary to legal regulations and contrary to the health of people who consumed the same. The stated purpose of the paper, in order to draw a conclusion about the importance of specifying legal provisions, was achieved by presenting the historical and positive legal regulation, using the historical method and comparative analysis.

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Introduction

A well known saying about wine as “a blissful drop – a gift from Gods”, has been perpetuated for a long time, long before the birth of civilization, and long before Jesus offering wine filled Holy Grail at the Last Supper urging for a “drink of his blood”, and long before the Slavs inhabited the Balkans.

Common grape vine appeared on the planet Earth long before man (Avramov, 1975). Records corroborating this fact can be found in the literature referring to grape vine and

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- 1 Aleksandra Jovanović, PhD., Associate professor, Faculty of Law, Security and Management „Constantin the Great“, University Union – Nikola Tesla, Niš, Serbia, Phone: +381 63 8 324 081, E-mail: aleksandra.aj17@gmail.com, ORCID ID: (<https://orcid.org/0000-0003-1062-3351>)
 - 2 Aneta Atanasovska Cvetković, PhD., Assistant professor, Faculty of Law, Security and Management „Constantin the Great“, University Union – Nikola Tesla, Niš, Serbia, Phone: +381 64 9 128 946, E-mail: a.atanasovska@yahoo.com, ORCID ID: (<https://orcid.org/0000-0002-4489-5040>)

its first appearance, claiming that first grape vine that appeared even before first man was the wild grape vine *Vitis vinifera* (Mijatović, Jovanović, 2014). Common grape vine is also mentioned in the Bible³, and scientists believe that wines made from raw fruits were not unknown to man of the ancient times.

Also, the first forms of trade and punishment known to man, the first natural, commodity exchanges of the ancient civilizations were made through wine and grain. The Great Hammurabi (Stanimirović, 2011) and its Code⁴ provide penalties in the part related to wine and taverns. Apart from enjoying wine the pharaohs also enjoyed growing wine along the great river Nile, and the great Greek poet Homer wrote about good wines from Greece and Macedonia. All this above mentioned clarifies that the oldest languages in the world contained words for wine, grapes and vines.

The Great Roman Empire is considered to be the “culprit” for the expansion of common grape vine and wine in our region, on the Balkan Peninsula, and the immigrating Slavs accepted the way of growing vines and making wine (Hristov, 2010).

The Middle Ages could be characterized as significant for expanding the cultivation of wines and making wine. Thanks to priests and monasteries, common grape vine and wine were gaining in importance on the Balkan Peninsula. This expansion, however, was interrupted by the Turks invading the territory of the Balkan Peninsula and their religious believes forbidding the use of alcohol (Hristov, 2010).

The 18th and 19th century mark ups and downs in the development of common grape vine and wine. Namely, history recognizes the expansion of grapevine and wine cultivation in the 18th century on the European continent, but the 19th century highlights a decadence of that development. Historical facts show that in the 19th century, in 1864, grapevine disease⁵ was transmitted from America causing a destruction of a large number of seedlings. Thus, it was even believed that certain varieties of grapes and vines were destroyed forever. However, on the soil of Europe, the application of chemicals for the eradication of diseases was introduced, and in this manner the common grape vine was saved and had re-experienced its spread and development (Avramov, 1975).

Today, the Republic of Serbia, with its regions⁶ where grapes and vines are grown, is considered to be one of the countries with a long tradition of wine and grape vines cultivation, both family and industry based. The family and industrial tradition of wine

3 The Holy Bible, The Old Testament, Genesis, Chapter 9, 9:21 And Noah began to be a husbandman, and he planted a vineyard; 9:22 And he drank of the wine, and was drunken; and he was uncovered within his tent.

4 Art. 108.: If a wine seller does not take grain for the price of a drink but takes money by the large weight, or if she makes the measure of drink smaller than the measure of grain, they shall call that wine seller to account and throw her into the water.

5 Phylloxera (*Phylloxera vastatrix*, *Dactylosphera vitifolii*, *Phylloxera vitifolii*)

6 Ordinance on the regionalization of wine-growing geographical production areas (Article 3, “Official Gazette of the RS”, No. 45 of 22 May, 2015)

production and its sale is regulated by legal provisions that do allow the production and sale of this agri-food product, which is the subject of this paper.

Materials and methods

In order to reach objective results, the historical method and comparative analysis were used. The main source of data used in this paper are legal regulations: regulations of Roman law and contemporary law of the Republic of Serbia with reference to the regulations of the surrounding countries. For the purposes of this paper, the Law will be observed from the aspect of wine, wine producers and penal provisions related to the production and trade of wine.

The main purpose of this paper is to point out the need for precise legal provisions related to wine and its producers, criminal legal provisions in the case of the sale of wine produced contrary to the legal regulations. The ultimate purpose is to prevent the occurrence of harmful consequences for the health of people who consumed this agri-food product which was produced with a flaw or inaccuracy. This indicates that the analysis in the paper is based on the following hypotheses: wine is an important agricultural and food product since the oldest civilization, there is a need for more precise determination of certain provisions of the Law on Wine and sanctioning activities that inadvertently cause harmful consequences for humans and the environment.

The sale of wine in Roman law

One of the aims of this paper is a segmented presentation of wine in the Roman law. It is termed segmented because the way of selling wine and inheriting it in the Roman law will be shown in small-scale range. It is an indisputable fact that the Romans, in their characteristic manner of strong developed legal awareness and logic, and having in mind the fact that one of the basic trade products was wine, made sure that it had a place in the Digests (Pandects).⁷ When it comes to the sale of wine in Roman law, there are no books or titles dealing especially with the sale of wine in the Digests. However, if we read carefully Book 18 of the Digest⁸ entitled “Concerning the contract of purchase and agreements between purchaser and vendor, and what things cannot become the objects of the same”, we will be noticing texts referring precisely to the wine and its sales.

Before elaborating on the sale of wine, we must point out the fact that the contract of sale (*emptio venditio*) (Maksimović, Despotović, 2017) is one of the most important and significant contracts in the Roman law (Atanasovska Cvetković, 2021). It belongs to the group of consensual contracts with its own characteristics. Thus, the characteristics

7 Digests (pandects) are part of Justinian’s codification - Corpus iuris civilis. Namely, this great codification, which was carried out by order of Emperor Justinian I (526-565) contains three legal codes: Codex, Digests and Institutions. Finally, in Middle Ages Novellae are appended to Corpus Iuris Civilis which represented the new imperial regulations that were not included in the codification during the reign of Emperor Justinian I.

8 Hereinafter: D.18

of this contract are: for its conclusion, the simple consent, the will of the contracting parties is sufficient; the object of the contract is the subject being sold and its price; bilaterally - an equally binding contract where each contracting party appears both as a creditor and as a debtor (Ignjatović, Šutova, 2013) with the *bona fide* characteristics of the contract itself (Bujuklić, 2015).

The specificity of Roman law related to wine and its sale is that wine as a subject of sale is closely related to its measure (Bělovski, 2019). Therefore, if the wine was sold in separate amphora (*amphorae*⁹), the price was determined separately for each amphora. Hence, it could be said that the contract on the purchase of wine was concluded when the price was agreed on or, better said, when the price was determined for each amphora separately, and the subject of the contract was, of course, the wine. It is interesting to note that if the wine was sold in casks and vessels, it had to be sealed to prevent the wine from losing the quality. (D. 18.1.35.5)

Apart from amphorae, wine could also be sold in today's language phrased, "in bulk". Accordingly, the great Roman legal minds foresaw such a sale as well. In Digests, Book 18, titles 35, 6, Guy prescribed that if wine was sold from a wine cellar in 100 measures, the risk of sale would be on the seller as a contracting party, regardless of whether the price as the object of the contract had already been determined and fixed for all 100 measures, as a whole, or the price was determined for each measure individually. Guy anticipated the risk in the measurement in terms of whether as many measures were actually sold as agreed. In accordance with Book D.18.6.1, when it comes to measuring wine in bulk, the seller had the responsibility to keep the wine until it was measured. However, if the seller set a specific date for measuring the wine and that date was not respected, the seller had the right to pour out the wine. This pouring was to be carried out in the presence of witnesses, and the buyer was to be informed that the seller intended to do so. (D .18.6.1.3)

The Roman law, when it comes to the sale of wine, offers another specificity. The wine had to be tasted before it was sold, that is, a wine-tasting had to be performed (D .18.6.4 pr.). Although this title relates to the seller's risk if the wine was not tasted at a certain time, and the sale was conditioned by the deadline, one thing was assured: the amazing Roman lawyers took care of the quality of the wine that was sold, and the buyer was given an opportunity to perform wine-testing as to be convinced of the quality of the wine. In that line, Book D.18.6.4.1. states that it was quite unusual for someone to buy wine without wine-tasting, especially in case of "wholesale" purchase.

Additionally, the Roman law also stipulates that the seller has to take into account the condition or, better said, the quality of the wine when selling the wine. Under the "condition" or "quality" of wine, the Roman law took into account wine's acidity and

9 Under the Roman law, wine was kept in *vasa vinaria*. *Vasa vinaria*, in papers dedicated to wine, is a generic term, thus in Latin translations and terms dedicated to vessels in which wine was stored following terms can be distinguished: amphorae (*amphorae*), barrels (*dolia*) – tankers, jars (*cadī*), urns (*urnae*), barrels (*cuppae*). (Aličić, 2017)

moldiness. Therefore, the wine seller was not allowed to permit the wine to turn sour or moldy. In such a sale, only the Roman law gave preference to the buyer. This meant that the buyer could not buy such wine, and the seller was forbidden to sell the wine in that condition. (D.18.6.6.) On the other hand, the Roman law protected the seller. Thus, if the wine became sour or moldy after the sale, the buyer would suffer the consequences of such damage. (D.18.6.1.pr.)

Finally, when we talk about the sale of wine in the Roman law, it also foresaw the break of the amphorae, or the vessels in which the wine was stored. Of course, it was indisputable that by breaking amphorae, wine was poured out. The Roman law in this case indicates that if the sale was made, then the responsibility for breaking up the vessels, or amphorae bear the buyer, not the seller. (D.18.6.1.pr.)

Although the sale of wine in the Roman law deserves special elaboration in a special scientific paper, concerning only these few segments presented, we are of the opinion that the Roman legal minds fully took into account the sale of the “blissful gift of Gods”.

The legal analysis of Serbian wine regulations

With the increase of production capacities, especially private sector based, the tendency of this activity is more than obvious - higher growth, development and marketing of this product, both on domestic and world market.¹⁰The Law on Wine¹¹ (“Official Gazette of the RS” No. 41/2009 and 93/2012) is a successor to the Law on Wine and Brandy (“Official Gazette of the RS”, No. 70/94, 13/02-SUS and 101/05 - other law) which regulates wine in the Republic of Serbia and contains 73 articles. With this Law, the legislator regulates in more detail the production, processing and quality of wine (Art. 1, Law on Wine). It is an indisputable fact that the production of good wine requires grapes must and crushed fruit, so the legislator regulates the production, processing and quality of grapes, must and crushed fruit with this law. For the purpose of this paper, the Law will be observed from the aspect of wine, wine producers and penal provisions related to the production and trade of wine.

Since the Republic of Serbia aspires to be promoted in the world, among other things, by the placement of wine, the legislator took care that the produced wine meets the norms and qualities, both in terms of production, packaging and declaration (Art. 2, Law on Wine). In no case is the production of wine directly from native hybrids and nurseries (parent plant) allowed, and the use of sugar, brandy, ethanol and all those means that can increase the amount, and change the natural ingredients of wine are prohibited (Art. 3, Law on Wine).

It has already been mentioned that wine is considered an agricultural and food product. The Republic of Serbia Law on Wine gives an accurate definition of wine, so the legislator says: “Wine is an agricultural and food product obtained by complete or

10 Wine export to the Russian market, the EU market and the CEFTA area is increasing.

11 Hereinafter: Law

partial alcoholic fermentation of fresh grapes, must and crushed fruits from grape varieties”(Art. 5, Law on Wine). Such a definition is contained in the Law on Wine of the Republic of Srpska (Art. 3, Official Gazette of the Republic of Srpska, No. 80/2015) and the Law on Wine of the Federation of Bosnia and Herzegovina (Art. 2, “Official Gazette of the FBiH”, No. 55/2012). The Law on Wine of the Republic of Croatia (Art.3, “Official Gazette of the Republic of Croatia, No.32/19) determines the meaning of the term “wine” as a product of grapevine. The definition of wine as a product is also accepted in the Law on Wine of the Republic of North Macedonia (Art. 3, “Official Gazette of the Republic of North Macedonia” No. 235/2019) and the Law on Wine of Bulgaria (Art. 2, Law on Wine and Spirits DV. No. 45/2012). It is obvious that wine is marked as a product in the laws, but the laws on wine of the Republic of Serbia and the Republic of Srpska define this product more closely and clearly, emphasizing two important conditions: that it is an agricultural product and it is intended for nutrition.

Throughout this paper, wine is mentioned as a product that should have its own quality and should be produced on the basis of set standards, so the question arises of the type of wines existing in the Republic of Serbia. The legislator gives the answer to this question dividing wine into three categories. Thus, in the Republic of Serbia, according to the Law, wine can be categorized as: still wine (*in strict sensu*), special wine, and wine for distillation (Art.7, p. 1, Law on Wine).¹² In this way, the legislator gives general indications and guidelines of what these types of wines mean and what producers should keep in mind when are producing such wines. On the other hand, the legislator leaves space for other detail normative regulation in other laws and regulations.

12 Still wine, in accordance with the Law, is any wine that does not release carbon dioxide. This wine must be produced on the basis of ecological procedures for the treatment of grapes, must and crushed fruits, with the usual fermentation (Art.7, p.2, Law on Wine). A special wine is a wine that is produced by specific, special oenological processes. It is believed that its characteristics do not originate only from grapes, but also from the applied special oenological procedures. (Ordinance on oenological practices and oenological products for the production of must, wine and other products - Official Gazette of RS 26 /15, 93/2015, 41/2017, 84/2018); (Art.7, p.3, Law on Wine). Hence, special wines, in accordance with the Law, are divided into: natural dessert wine, liqueur wine, aromatized wine, sparkling wine, quality sparkling wine, aromatized quality sparkling wine, sparkling wine, semi-sparkling wine, lightly sparkling wine and other special wines (Art.7, p.4, Law on Wine). When it comes to wine for distillation, it is more than clear that the legislator clearly says that this wine is intended for distillation (Art 7, p.5, Law on Wine). The legislator, wanting to fully express himself in the Law itself, talks about the categories of still wines. Thus, still wine, in accordance with the method of production and the type of wine area, is divided into: table wine and wine with geographical origin. Hence, the legislator classifies wine of geographical origin into: regional wine and quality wine with geographical origin (Art.8, p.2, Law on Wine). On the other hand, the legislator divides wine with geographical origin into: wine with controlled geographical origin, and quality and premium wine with controlled and guaranteed geographical origin and quality (Art.8, p.5, Law on Wine).

A wine producer, any legal entity or entrepreneur engaged in wine production, registered in the Wine Register (Art. 17, p.1, Law on Wine) should have facilities, premises, should fulfill concrete technical requirements, have appropriate storage and storage vessels¹³, devices and equipment (Art.17, p.3, Law on Wine). With regard to the production process itself, the legislator by this Law, establishes a rule requiring the existence of professional staff with appropriate education and experience (Art.17, p.6, Law on Wine). It is from this rigorous legal norm that the legislator's awareness is visible: winemaking and wine are important branches of agriculture and economy that should include knowledge and quality in order for the wine to be placed on the market as a final (finished) product. Having in mind the above, the producer is obliged, by this Law, to use the prescribed oenological procedures and means that preserve the natural characteristics of wine. By defining the wine producer it is established the responsible person who, in case of non-compliance with legal provisions when placing wine on the market, knows the Law on Wine and the Criminal Code of the Republic of Serbia. The list of responsible persons should be expanded, so in the anticipation of the liability of persons, we think, should be also included: those who control the quality of wine, those who have inspection powers, the ones who placed wine on the market (and it is not wine producers but distributors) and legal entities that issue decisions on placing wine on the market.

The legislator, determining the conditions for placing wine on the market, explicitly states in Article 46 of this Law that wine may be offered to the consumer only in the original packaging and of the prescribed quality. We believe that a more precise and adequate legal solution is offered by the Law on Wine of the Republic of Croatia ("Official Gazette of the Republic of Croatia, No.32/19) by stipulating in section 8 "Placing on the market and conditions of sale of wine" Article 55, wine produced in Croatia, after the completion of the procedure of its finishing in accordance with the production technology and after the issuance of the decision on placing on the market. The provisions of this law, harmonized with the laws and regulations of the European Union, provide for administrative verification of mandatory declarations and other documents related to wine production by the Agency and verification of oenological practices in accordance with Article 4 of Commission Regulation (EC) no. 606/2009, with the prior approval of the Minister, thus the control of natural or legal persons wishing to conduct an oenological procedure is performed. Such a legal provision reduces the possibility of placing wine with a flaw or inaccuracy on the market, which automatically leads to a reduced possibility of committing offenses provided by the Law on Wine and criminal offenses specified in the Criminal Code of Republic of Serbia.

Also, we will pay attention to the penal provisions prescribed by the Law on Wine. The legislator divides the criminal provision into: economic misdemeanors, misdemeanors

13 Every wine producer should have special vessels and containers for storing table wine, for which production has not been used grapes originating from the Republic of Serbia. At the same time, every producer of wine should have adequate facilities for storing produced wine which was made from grapes originating from Republic of Serbia.

committed by a company, misdemeanors committed by an entrepreneur, misdemeanors committed by a natural person (Art. 64-68, Law on Wine). Fines (Stojanović, 2012) are envisaged for all these offenses and the prescribed amount ranges from 50,000 to 3,000,000 dinars, depending on whether the offense was committed by a natural person or a company, or other legal entity, and whether it is an economic offense.

An economic offense (economic misdemeanor) is punishable for a company, or other legal entity. The legislator lists in detail which actions will be considered as crime offense, and sanctions it with a fine in the amount of 300,000 - 3,000,000 dinars. An economic offense is considered to be illegal activities related to wine production, wine storage and inadequate production facilities, if there is no registration of producers in the Wine Register, lack of appropriate packaging, if the prescribed oenological procedures and oenological means are not used, if there is no appropriate packaging and wrapping of wine, etc.

The financial sanction is imposed on the one who produces wine using native hybrids and grapes from the nurseries (parent plants, mother plantations), which is prohibited by this Law. At the same time, any producer who uses sugar, ethanol, or brandy in the processes of wine production thus changing the natural ingredients of the must, is committing a procedure explicitly prohibited by this Act (Art. 64, p.1-2, Law on Wine).

Also, a financial sanction will be prescribed for an economic offense if the wine producer does not have adequate facilities, facilities not connected to the facilities producing distillate and, if there are no appropriate premises for the storage of oenological agents and raw materials. According to the law, the lack of appropriate containers for storing table wine not originating from the Republic of Serbia is punishable, as well as the lack of appropriate containers for wine produced from grape varieties grown in the Republic of Serbia (Art. 64, p. 3-4, Law on Wine).

It has already been mentioned that the use of oenological procedures and means in wine production not complying with the law, is not allowed, therefore, the legislator, if they are used, considers them as an economic crime, and fines them. Also, this law prohibits the addition of sugar and concentrated must in the production of wine with geographical origin, and the legislator fines this violation as well. It penalizes the production of wine of the geographical origin without a previously approved decree in which the wine is recognized as a mark with its geographical origin (Art. 64, p. 2, 7, 8, Law on Wine).

In some respect, the legislator also protects consumers, final consumers, so he penalizes any placing on the market of wine that is not original, is not of the prescribed quality, and does not have the appropriate packaging. In this regard, it is also punishable to place on the market a wine that has not been declared in the prescribed manner, and if a legal entity or a company, places on the market wine purchased in bulk, or wine needing further processing without any appropriate evidence to prove the quality of such wine, sanctions are also imposed by the legislator (Art. 64, p.18-19, Law on Wine).

As for the prescribed fines for the company, according to this Law, they range from 100,000 to 1,000,000 dinars (Art. 65, Law on Wine). Thus, a company will be financially sanctioned if it does not keep records and mark each wine-carrier with wine that is in bulk, and is intended for production, aging and storage (Art. 65, p. 6-7, Law on Wine). When wine storage and transport are mentioned, the legislator also imposes sanctions if wine is stored, sold and transported contrary to this Law (Art. 65, p. 16, Law on Wine). At the same time, the legislator will sanction the packaging and declaration of wine, if it is done contrary to the regulations, and if the wine of geographical origin is not marked with the appropriate record mark (Art. 65, p.11-12, Law on Wine).

In the area of legal entity, company misdemeanors, the legislator specifically protects final consumers. Thus, table wine that is offered to consumers in bulk, and is produced in the company's winery and from the grapes belonging to the winery, is sold outside of it. The same intention (protection of the final consumer) exists in the situation when the legislator prescribes that wine with geographical origin, and wine with additional traditional designation "young", may not be placed on the market by the company, contrary to the provisions of this Law (Art. 65, p.14-17, Law on Wine).

Fines intended for misdemeanors committed by an entrepreneur, in accordance with this Law, are prescribed in the range from 150,000 to 500,000 dinars, and from 50,000 to 200,000 dinars (Art. 66-67, Law on Wine).

The larger amount refers to the following violations: performing wine production activities when the producer is not entered in the Wine Register; if during wine production sugar, brandy, ethanol and other substances that change natural ingredients of the must are used; if there are no separate facilities not interconnected with the facilities where distillates are produced, or oenological products are stored; if there are no separate vessels for storage of table wine not made from grapes from the Republic of Serbia, from vessels for storage of wine from grapes from the Republic of Serbia; if oenological practices and means by which the natural characteristics of wine cannot be preserved and developed are applied; if sugar is added to both rectified and concentrated rectified must when making wines of geographical origin; if wine from the Republic of Serbia is mixed with other imported wines; if wine is repackaged from its original packaging; if wine is placed on the market not in the original packaging and as such is offered to the final consumer; if wine is bought and sold exclusively from another manufacturer in bulk for further processing (Art. 66, Law on Wine). The enumerations listed in this way give the impression that economic offenses are prevailing, however, the legislator in this way comprehensively, evenly and purposefully distributes the fines, being fully aware of the importance of viticulture in both agricultural and economic production, and of further distribution of wine, both in the domestic and foreign markets.

A smaller wine related fine, conditionally speaking, is prescribed by the legislator in the following cases: if wine records are not kept, if not every bulk wine container intended for production, storage and aging of wine is marked; if wine was placed on the market although the shortcomings were not remedied; if wine is packaged and declared

contrary to the quality regulations; if wine of geographical origin is not marked with a record stamp; if table wine produced from own grapes is offered in bulk outside the winery the same wine is produced in; if wine of geographical origin, or wine marked “young” is placed on the market contrary to the provisions and rules of this Law (Art. 67, p. 6, 7, 8, 11, 12, 14, 17, Law on Wine).

The legal provisions presented in this way, dedicated to fines, indicate the intention of the legislator to fully regulate wine production as an important branch of both the economic and agricultural branches in the Republic of Serbia. In addition to fines, the Law on Wine provides a protective measure - prohibiting the performance of certain activities for legal entities and responsible persons to perform certain duties for one to five years in the case of wine production using grapes directly native hybrids and grapes from nurseries (mother plant) (Art.64, pr.1 p1, Law on Wine).

The Republic of Serbia’s Law on Wine does not provide for criminal liability as does the Law on Wine of the Republic of North Macedonia in Article 59-v. Criminal liability is provided for a wine producer who places wine on the market in case of submitting an unreliable report to the relevant Ministry; use of funds contrary to the statement of the responsible person given before the notary under material and criminal responsibility that the funds obtained from the sale of exported wine will be used primarily to pay debts based on purchased but unpaid grapes: does not submit a report on funds obtained from the sale of wine turnover and the manner of spending them, within the prescribed period of 15 days from the date of receipt of the decision to place wine on the market or submit a false report to the State Inspectorate for Agriculture. The envisaged punishment for the mentioned criminal responsibility is a prison sentence of one to five years. Criminal liability of wine producers in the Republic of Serbia is provided exclusively in the Criminal Code of the Republic of Serbia. We are of the opinion that the criminal responsibility provided for in the Law on Wine Republic of North Macedonia, adjusted, can be implemented in the Criminal Code of Republic of Serbia.

Criminal liability of wine producers

A large number of human activities aimed at human well-being, unintentionally or unconsciously cause harmful consequences aimed at the person, or the environment which he lives in (Jovanović, 2017). Thus, according to the Law on Wine, Article 50, in the Republic of Serbia it is not allowed to sell wine in several cases: in bulk at markets and in restaurants; if bottling, especially service bottling, is done by persons who are not registered in the Wine Register, and if wines which are spoiled, with flaw or inaccuracy are traded and sold (except for further processing), regarding those that are not suitable for human consumption.

All the above mentioned corroborates the seriousness of the legislator, wishing to avoid the consequences that arise from the Criminal Code (“Official Gazette of RS”, No. 85/2005, 88/2005-corrigendum, 107/2005-corrigendum, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016) of the Republic of Serbia (Stojanović, 2011). The Republic of Serbia,

through its legislation, protects both producers and consumers, and consumers of wine. However, if the producers, nevertheless, put on the market wine that is spoiled, has a flaw or inaccuracy, they will be liable in accordance with the legal rules prescribed by this Criminal Code.

Namely, the Criminal Code of the Republic of Serbia in Chapter 23 prescribes criminal offenses against the human health. The protective object is human health, and the consequence is a threat to human life. Hence, Article 256 explicitly lists several sentences: imprisonment from six months to five years, imprisonment for up to three years, imprisonment for up to one year, and a fine. These penalties also apply to those who sell¹⁴ and market harmful foodstuffs, food or drink.

Pursuant to the Criminal Code, in the same article, paragraph 2 speaks of imprisonment and a fine. In accordance to this paragraph, a wine producer who releases wine that has not been inspected by an authorized person¹⁵ shall be punished by imprisonment for a term not exceeding three years. This position comprises two acts of execution: placing on the market, in this case drinks - wine, without the necessary inspection by an authorized person at the moment when the wine should be inspected in accordance with regulations, as well as placing wine on the market with a deadline not for human use.

These two paragraphs of this article, without a doubt, state that intent prevails, attributing the right to a judge of the Criminal Courts, if there is a case related to wine production, to examine whether this crime was committed intentionally, or in negligence (Topalović, 2010, Marković, 2020). Why? Since placing the wine on the market with certain inadequacy and inaccuracy fatal to human health is a criminal offense committed through negligence, the Criminal Code offers the mildest punishment of all those listed in Article 256. Therefore, if this criminal offense is committed through negligence, then the legislator prescribes a prison sentence of one year for the perpetrator of this crime. This penalty is also prescribed in the article as an alternative because it contains “or”, so it is possible to impose an alternative fine - a fine, which is not the case with the penalties in the previous two paragraphs.

Finally, in Article 256 of the Criminal Code, the legislator unequivocally states that the product (in our case, wine) shall be confiscated. This indicates the fact that the Republic of Serbia takes care not to damage the health of potential, future buyers, consumers, and consumers of wine that has a flaw and an inaccuracy, and thus prevents the occurrence of large and unforeseeable consequences, such as death, which would occur as a result of alcohol poisoning, for example, from wine.

Conclusion

The ultimate goal is to prevent the occurrence of harmful consequences for the health of people who consumed this agri-food product produced with a defect. This indicates that the analysis in the paper is based on the following hypotheses: wine is an important

14 Although the perpetrator of this crime can be any person, for the purpose of this paper we consider only wine producers

15 In this case, the agricultural inspector is in accordance with the law on wine.

agri-food product since the oldest civilization, there is a need for more precise definition of certain provisions of the Law on Wine and sanctioning activities that inadvertently cause harmful consequences for humans and the environment.

Undoubtedly, wine and wine production are gaining large importance in the Republic of Serbia. Wine, as shown in this paper, has been known to man since the ancient times. Through the fragmented representation of wine in the Roman law, it could be said that even in the Roman times it occupied an important place in society, and could be sold and inherited in accordance with the rules valid in Rome at that time. It is indisputable that the Romans took care of wine's quality and manner of storage. The famous amphorae collected 26 liters of wine but other forms and types of vessels were also used, also collecting a certain amount of wine. We must not fail to notice that the sale of wine was in accordance with the special rules given both in terms of the weight and size of the vessel, and that it was considered a generic thing. After a brief insight into the place of wine in the Roman law, one might gain or confirm the impression that the "a blissful gift from Gods" had primacy in Roman society as a commodity used long before money was used as a means of payment. The analysis of the sale of wine in Roman law confirmed the hypothesis that wine has been a significant product since the earliest civilization.

After reviewing the Law on Wine, specifically the provisions dedicated to wine, production and types of wine that are determined by law, one gets the impression that the Republic of Serbia cares about the production process, quality and marketing. The use of inappropriate oenological practices and oenological products is prohibited. It seems that the Republic of Serbia intends to bring wine and its production to an enviable level as one of the leading agricultural and food products in the country. Comparing the Law on Wine of the Republic of Serbia with the laws on wine of the surrounding, neighboring countries, we come to the conclusion that it precisely defines wine as an agricultural and food product. We comment on the fact that certain bylaws such as the Ordinance on quality and other requirements for wine ("Official Gazette of RS" No. 87/2011 and 26/2015) use the term product, which the Criminal Code itself do, and should be used the term agri-food product defined in the Republic of Serbia's Law on Wine. This law also shows the aspiration of the Republic of Serbia to bring order to production, and this is reflected in the penal provisions. Penalties, which are not small values, allow us to think that all those companies and individuals who are seriously engaged or intend to engage in wine and its production, must adhere to a number of legal rules and measures to obtain a superior product that is important for our country. The penal provisions of the law are provided just for economic offenses and misdemeanors, but not for criminal liability, as the Republic of North Macedonia's Law on Wine does. We believe that criminal responsibility and sanctions should be left to the definition in the Criminal Code, which does not mean that it should not be extended in the image of the legal definition of North Macedonia. By comparative analysis of the law on wines, we came to the conclusion that it is necessary to regulate, more precisely, the placing of wine on the market and the conditions for the sale of wine, as provided by laws adapted to European Union regulations. It is also

necessary to expand the list of responsible persons, which is currently limited to natural and legal persons who produce wine. The mentioned conclusions do not suggest a “bad” Law on Wine, but propose the need to amend and the need to expand the Criminal Code, which confirms the hypothesis of more precise determination of certain provisions of the Law on Wine and sanctioning activities that inadvertently cause harmful consequences for humans and the environment.

We should especially keep in mind the case of “Zozovacha” from 1998, when 43 people lost their lives due to the unprofessional handling during the production of alcoholic beverages. This case warns one about the terrible scale of the problem if the rules and principles prescribed by the Law are not respected. This case leads us to the need for a more precise legal determination of the production and trade of products due to defects whose ultimate goal is to prevent harmful effects on the health of people who consumed this agri-food product produced with a flaw or inaccuracy. In this manner, it is interesting to state that the Republic of Croatia in their Law on Wine in article 38, p. 2, forbid the sale of diseased wines, defective wines, wines and other grape and wine products harmful to health, so we do feel that the legislator of our country should follow this concrete example by amendment in the Law on Wine such article.

The authors believe that criminal responsibility, at least in the case of wine production, should not be left only to “the one who produces and puts such wine on the market”. In this context, the authors believe that Article 256 of the Criminal Code of the Republic of Serbia should be expanded, and criminal liability should exist against those responsible for wine quality, in this case agricultural inspectors, because they are the ultimate instance in creating a product safe for human’s health.

In the end, the research in this paper showed and confirmed that wine is not only a part of history and our tables, but also a part of our legislation as an agri-food product.

Conflict of interests

The authors declare no conflict of interest.

References

1. Аврамов, Л. (1975), *Практично виноградарство*, Нолит, Београд [in English: Avramov, L. (1975) Practical viticulture, Nolit, Belgrade]
2. Аличић, С. (2017), Винске посуде (*vasa vinaria*) у Римском праву, *Анали Правног факултета у Београду*, 65(1), 131-150. [in English: Aličić, S. (2017), Wine vessels (*vasa vinaria*) in Roman law, *Annals of the Faculty of Law in Belgrade*, 65(1), 131-150.]
3. Атанасовска Цветковић, А. (2021) Римскиот *emptio venditio* (договор за купопродажба) во францускиот Code civil од 1804 година, *Годишен зборник, Правен факултет Штип*, vol.XI, 2021, 31-41. [in English: Atanasovska Svetković, A. (2021) The Roman *emptio venditio* (contract of sale) in the French Civil Code of 1804, *Year book, Faculty of Law in Shtip*, vol.XI, 2021, 31-41.]

4. Bělovský, P. (2019), *Perficio emptio* in case of a sale of wine in Roman law, *Fundamina (Pretoria)* 25(2), 1-11. <http://dx.doi.org/10.17159/2411-7870/2019/v25n2a1>.
5. Бујуклић, Ж. (2015), *Римско приватно право*, Београд, [in English: Bujuklić, Ž. (2015), *Roman private law*, Belgrade]
6. Digest (Pandects) of Justinijan, can be found: <https://droitromain.univ-grenoble-alpes.fr/>
7. Gaj, *Institucije*, (1982), Nolit, Београд, [in English: Gaius, *Institutions*, (1982), Nolit, Belgrade]
8. Христов, П. Т., (2010), *Лозарство општо*, Скопје [In English: Hristov, P.T, (2010), *Viticulture, general*, Skopje]
9. Игњатовић, М., Шутова, М. (2013), Класификација правних послова, *Зборник радова Правног факултета у Нишу*, LXIV, 179-198. [in English: Ignjatović, M., Šutova, M., (2013) *Classification of legal affairs*, *Proceedings of the Faculty of Law in Niš*, LXIV, 179-198]
10. Jovanović, A., *Ekološki kriminalitet i ekološki delikti u pravu Republike Srbije*, *Ecologica*, 87/2017, 517-519. [in English: Jovanović, A., *Ecological crime and ecological torts in the law of the Republic of Serbia*, *Ecologica*, 87/2017, 517-519.]
11. Кораћ, Н., Циндрић, П., Медић, М., Иванишевић, Д., (2016), *Воћарство и виноградарство (део виноградарство)*, Нови Сад [in English: Korać, N., Cindrić, P., Medić, M., Ivanišević, D., (2016) *Fruit growing and viticulture (part viticulture)*, Novi Sad]
12. Кривични законик („Сл.гласник РС“, бр.85/2005, 88/2005-испр., 107/2005-испр., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 и 35/2019.) [in English: *Criminal Code “Official Gazette of RS”, No. 85/2005, 88/2005-corrigendum, 107/2005-corrigendum, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019*)]
13. Maksimović, S., Despotović, D., (2017), *Ugovor o kupoprodaji u rimskom pravu*, *Pravo-teorija i praksa*, 7-9/2017, 62-71 [in English: Maksimović, S., Despotović, D., (2017), *The contract of sale in Roman law*, *Law-theory and practice* 7-9/2017, 62-71]
14. Marković, B., (2020), *Nehat-Culpa, Crimen*, *Časopis za krivične nauke*, (XI) 2/2020, 194-197 [in English: Marković, B. (2020), *Negligence - Culpa, Crimen*, *Journal for Criminal Justice* (XI) 2/2020, 194-197]
15. Машкин, Н.А., (1951), *Историја старог Рима*, Београд [in English: Maškin, N.A., (1951), *History of the ancient Rome*, Belgrade]
16. Мijatović, D., Jovanović, T., (2014), *Ampelografija*, Ванја Лука [in English: Mijatović, D., Jovanović, T., (2014), *Ampelography*, Ванја Лука]
17. Николић, Д., Ђорђевић, А., (2002), *Законски текстови старог и средњег века*, Ниш [in English: Nikolić, D., Đorđević, A., (2002), *Legal texts of the Old and Middle Ages*, Niš]

18. Правилник о енолошким поступцима и енолошка средствима за производњу шире, вина и других производа (Сл. гласник РС 26/15, 93/2015, 41/2017, 84/2018) [*in English*: Ordinance on oenological procedures and oenological products for the production of must, wine and other products (Official Gazette of RS 26 / 15, 93 / 2015, 41 / 2017, 84 / 2018)]
19. Правилник о квалитету и другим захтевима за вино Сл. лист СРЈ, 54/99 и 39/2002, Сл. лист СЦГ, 56/2003 и Сл. гласник РС 87/2011 и 26/15-др. правилник) [*in English*: Ordinance on quality and other requirements for wine (Official Gazette of the FRY, 54/99 and 39/2002, Official Gazette of Serbia and Montenegro, 56/2003 and Official Gazette of the RS 87/2011 and 26/15-26/15-another rulebook)]
20. Правилник о рејонизацији географских производствених подручја («Службени гласник РС», 45 /2015.) [*in English*: Rulebook on regionalization of geographical production areas (“Official Gazette of RS”, 45/2015)]
21. Станимировић, В., (2011), Нови поглед на Хамурабијев законик (I део), *Анали Правног факултета у Београду*, LIX, 1/2011, 133-159 [*in English*: Stanimirović, V., (2011) A New Look at Hammurabi’s Code (Part I), *Annals of the Faculty of Law in Belgrade* LIX, 1/2011, 133-159]
22. Станимировић, В., (2011), Нови поглед на Хамурабијев законик (II део), *Анали Правног факултета у Београду*, LIX, 2/2011, 91-121 [*in English*: Stanimirović, V., (2011) A New Look at Hammurabi’s Code (Part II), *Annals of the Faculty of Law in Belgrade* LIX, 2/2011, 91-121]
23. Stojanović, Z., (2011), Preventivna funkcija krivičnog prava, *Crimen, Časopis za krivične nauke*, (II) 1/2011, 3-25 [*in English*: Stojanović, Z. (2011), Preventive function of criminal law, *Crimen, Journal for Criminal Justice* (II) 1/2011, 3-25]
24. Stojanović, Z., (2012), Vežanost suda kaznenim rasponima novčane kazne, *Crimen, Časopis za krivične nauke*, (III) 1/2012, 95-104, [*in English*: Court attachment to penalty ranges of fines *Crimen, Journal for Criminal Justice*, (III) 1/2012, 95-104]
25. Topalović, Z., (2010), Granične međe umišljaja i nehata, prvi deo, *Crimen, Časopis za krivične nauke* (I) 1/2010, 91-119, [*in English*: Boundaries of intent and negligence, part one, *Journal for Criminal Justice*, (I) 1/2010, 91-119]
26. Закон о вину („Сл.Гласник РС“ бр. 41/2009 и 93/2012), [*in English*: Law on Wine “Official Gazette of RS” No. 41/2009 and 93/2012)] available at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2009/41/9/reg>
27. Закон за виното, Република Северна Македонија, („Службен весник на Република Северна Македонија“ бр. 235/2019), [*in English*: Law on Wine of the Republic of North Macedonia (“Official Gazette of Republic of North Macedonia”, No. 235/2019)] available at: <https://diz.gov.mk/wp-content/uploads/2021/01/%D0%97%D0%90%D0%9A%D0%9E%D0%9D-%D0%97%D0%90-%D0%92%D0%98%D0%9D%D0%9E%D0%A2%D0%9E.pdf>

28. Закон за виното и спиритните напитки, Република Бугарска, ДВ. бр. 45/2012. [in English: Law on Wine and Spirits of Bulgaria, DV., No. 45/2012] available at: <https://e-gconsult.com/zvsn/>
29. Закон о вину, Република Српска, („Сл. Гласник Републике Српске“, бр. 80/2015), [in English: Law on Wine of the Republic of Srpska “Official Gazette of the Republic of Srpska”, No. 80/2015)] available at: https://www.vladars.net/srSPCyrl/Vlada/Ministarstva/mps/%D0%B1%D0%BE%D1%98%D0%B0%D0%BD/Documents/Zakon%20o%20vinu_SL.gl.RS%2080_15.pdf
30. Закон о вину, Federacija Bosna i Hercegovina, („Sl. Glasnik FBiH“, br.55/2012) [in English: Law on Wine of the Federation of Bosnia and Hercegovina, “Official Gazette” No. 55/2012] available at: <https://www.paragraf.ba/propisi/fbih/zakon-o-vinu.html>
31. Закон о вину, Republika Hrvatska (Narodne novine, br.32/19), [in English: Law on Wine “Official Gazette of the Republic of Croatia”, No.32/19)] available at: <https://www.zakon.hr/z/277/Zakon-o-vinu>