



## Grave Robbery in Early Mediaeval Frankish Laws

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**Abstract.** Almost all German codices – except for *Lex Saxonum*, *Lex Thuringorum*, and *Ewa Chamavorum* – extensively discuss legal protection of the grave and the dead body and sanction persons who disgrace them. This scope of issues is dwelt upon in details by *Edictum Theodorici*, *Leges Visigothorum*, *Lex Burgundionum*, *Edictus Rothari*, *Lex Salica*, *Lex Ribuaria*, the *Pactus*, *Lex Alamannorum*, and *Lex Baiuvariorum*. In the present paper, we analyse the state of facts that constitute grave robbery in Frankish laws. This investigation requires the analysis of the legal source base as well as some examination in the history of language, which allows a comparative analysis of the issue and helps to highlight the various layers of the norms of Frankish laws by the example of this state of facts.

**Keywords:** Early Mediaeval legal history, sepulchrum violatum, wargus, Lex Salica, Lex Ribuaria

From among Frankish sources, first it is worth investigating *Lex Ribuaria* recorded in the first half of the 7<sup>th</sup> c. Under the title *De corporibus expoliatis*, the law distinguishes plundering of an unburied corpse and an already buried corpse. In case of plundering an unburied corpse, if the perpetrator admits his/her act, s/he shall pay sixty *solidi*, if s/he denies it and s/he has been proved to have committed the act, s/he shall pay one hundred *solidi* and the *dilatura*, or s/he shall take a cleansing oath together with six fellow oath takers (this issue will be discussed later).<sup>1</sup> *Dilatura* is usually interpreted in the sense of *default penalty* – nevertheless, the term covers the reward to be paid to the *delator*, the

1 *Lex Ribuaria* 55, 1. „Si quis autem hominem mortuum, antequam humetur, expoliaverit, si interrogatus confessus fuerit, bis trigenos solidos multetur. Si autem negaverit et postea convictus fuerit, bis quinquaginta solidos cum dilatura multetur, aut cum VI iuret.”

person who makes the charge.<sup>2</sup> In the above-mentioned case of plundering the dead person, the perpetrator shall pay two hundred *solidi*.<sup>3</sup>

It should be noted that a few titles later *Lex Ribuaria* returns to this issue and under the title *De corpore expoliato* expounds the state of facts of plundering an unburied and a buried corpse again; however, here it no longer distinguishes a perpetrator who admits his/her act from the one who denies it. The robber of an unburied corpse shall pay one hundred *solidi*, shall return or compensate for the robbed valuables, and shall bear the reward of the person who made the charges.<sup>4</sup> Compared to the state of facts referred to in the above-mentioned title, the difference is that in the former the lawmaker might have presumed that the injured party had been killed by the perpetrator and for this reason inserted the distinction between an admitting and a denying perpetrator in the text subsequently, which is supported by the fact that a cleansing oath to be taken together with six fellow oath takers is completely senseless in case of a perpetrator who admits his/her act. In the light of that, the latter title refers to the state of facts when the plundered person has not been killed by the robber.<sup>5</sup> With respect to the two hundred *solidi* penalty imposed on the person who plunders an already buried person, there is no difference between the two titles, but the latter adds a stipulation to it, concordant with *Lex Salica*, stating that the perpetrator will be considered *wargus* ‘until’ – emphatically ‘until and so long as’ – he has paid the *conpositio* to the relatives of the injured party.<sup>6</sup>

The analysis of the relevant loci of *Lex Salica* is significantly more problematic than the examination of the folk laws containing fairly clear provisions, discussed so far, which can be attributed to a considerable extent to uncertainties of the texts left to us, wherefore – for the avoidance of doubt – we shall consistently use the terms of Eckhardt’s *editio*.<sup>7</sup> In the most reliable manuscripts (A2, A3, A4, C5, C6), the state of facts of plundering a yet unburied dead person of a free status can be found under the title *De supervenientis vel expoliationibus*, and the law orders its punishment by a one-hundred-*solidi* penalty.<sup>8</sup> In agreement with Eckhardt, the term *chreumusido* can be translated as body snatching (*Leichenberaubung*).<sup>9</sup> However, a few titles later, the state of facts of body

2 Nehlsen 1972. 313.

3 *Lex Ribuaria* 55, 2. „Si quis mortuum effodire praesumpserit, quater quinquagenos solid. multetur aut cum XII iuret.”

4 *Lex Ribuaria* 88, 1. „Si quis corpus mortuum, priusquam sepeliatur, expoliaverit, C sol. cum capitale et dilatura multetur.”

5 Nehlsen 1978. 136.

6 *Lex Ribuaria* 88, 2. „Si autem eum ex homo traxerit et expoliaverit, CC sol. cum capitale et dilatura culpabilis iudicetur, vel wargus sit (hoc est expulsus), usque ad parentibus satisfecerit.”

7 Eckhardt 1969.

8 *Lex Salica* 14, 9. „Si quis hominem mortuum antequam in terra mitatur in furtum expoliaverit, malb. chreumusido sunt den. III M qui fac. sol. C cupl. iud.”

9 Eckhardt 1962. 281.

snatching occurs again (under the title *De corporibus expoliatis*), and on this locus there are considerable differences between the manuscripts that belong to group A and group C, since the texts of group C set out sixty-two-and-a-half *solidi* penalty and speak about the corpse of a dead person only (*corpus hominis mortui*);<sup>10</sup> yet, the texts of group A stipulate a *conpositio* amounting to sixty-three *solidi* and mention the corpse of a killed person (*corpus occisi hominis*).<sup>11</sup> Eckhardt corrected the term *freomosido* in the glossary (interpreted by him as the robbing of a free man) and replaced it by *chreosido* that occurred before;<sup>12</sup> yet, no matter which text version we accept, the amounts of the *conpositio* set out in the two titles are by no means equal, which is adopted by *Lex Salica Karolina* too.<sup>13</sup> At the same time, newer manuscripts (D, E) mention body snatching at one place only, and they order its punishment by sixty-two and a half *solidi*.<sup>14</sup> There is a good chance that *Lex Salica Karolina* did not adopt the two separate states of facts – specifically: the differentiation of plundering a person killed by the robber (*occisus*) and of a dead person not injured by the robber (*mortuus*) – because it did not become deeply rooted in legal literacy. On the other hand, it maintained the double amount of *conpositio*: sixty-two and a half and one hundred *solidi*, which might have meant that the man who plundered the valuables of a dead person was obliged to pay one hundred *solidi*, while the one who killed his victim first and then plundered him was obliged to pay, in addition to blood money for murder, sixty-two and a half *solidi*.<sup>15</sup>

In case of plundering a dead slave, the perpetrator was set to pay thirty-five *solidi* to the slave's master;<sup>16</sup> if, however, the objects with the slave did not exceed the value of forty *denarii*, then the perpetrator was obliged to pay merely fifteen *solidi*.<sup>17</sup>

All these amounts of *conpositio* properly harmonize with other blood moneys regulated in *Lex Salica*: a robber of a free man shall pay sixty-two and a half *solidi*

10 *Lex Salica* 55, 1. (C6) „Si quis corpus hominis mortui antequam in terra mitatur in furtum expoliaverit, malb. freomodiso sunt den. IIMD qui fac. sol. LXII semis culp. iud.”

11 *Ibid.* 55, 1. (A1) „Si quis corpus occisi hominis antequam in terra mittatur expoliaverit in furtum, mal. uuaderio hoc est f. sol. LXIII culp. iudic.”

12 Eckhardt 1962. 205.

13 *Lex Salica Karolina* 17, 1. „Si quis hominem mortuum antequam in terra mittatur in furtu expoliaverit, IVM denariis qui faciunt solidos C culpabilis iudicetur.; 57, 1. Si quis corpus hominis mortui antequam in terra mitatur per furtum expoliaverit, MMD denariis qui faciunt solidos LXII semis culpabilis iudicetur.”

14 *Lex Salica Karolina* 19, 1. (D) „Si quis corpus occisi hominis, antequam in terra mittatur, in furtum expoliaverit, mallobergo chreo mardo (sunt dinarii MMD qui faciunt) solidus LXII semis culpabilis iudicetur.”

15 Nehlsen 1978. 138.

16 *Lex Salica* 35, 6. (C6) „Si quis servum alienum mortuum in furtum expoliaverit et ei super XL den. valentes tulerit, malb. teofriomosido IMCCCC den. qui fac. sol. XXXV culp. iudic.”

17 *Lex Salica* 35, 7. (C6) „Si quis spolia minus XL den. valuerit, teofriomosido DC den. qui fac. sol. XV culp. iud.”

too,<sup>18</sup> just as those who intrude into an alien courtyard<sup>19</sup> or commit bodily injury causing paralysis of the hands;<sup>20</sup> similarly, a person who plunders a live slave shall pay thirty-five or fifteen *solidi*.<sup>21</sup> The *conpositio* amounting to one hundred *solidi* occurs in the case of robbing a sleeping person.<sup>22</sup>

Actual robbery of a grave is dealt with by the groups of older manuscripts (A, C, K) under two titles: *De supervenientis vel expoliationibus* and *De corporibus expoliatis*. In the case of the first, the person robbing a grave shall pay two hundred *solidi*.<sup>23</sup> The second locus (according to groups A and C) again stipulates indemnification of two hundred *solidi*; however, it includes the stipulation containing the term *wargus*, which gives rise to extensive disputes that condemn the perpetrator as *wargus* until s/he has discharged his/her debt. A person considered *wargus* ‘outcast’ is compelled to live outside society until the relatives of the injured party ask the judge to let him/her return, until which time nobody, not even his/her next of kin or relatives, can give him/her bread or shelter; so, s/he is thrust into an *exlex* ‘outlaw’ status, and anybody who breaches this prohibition shall pay fifteen *solidi*.<sup>24</sup> The groups of manuscripts D and E explain the term *wargus* by the word *expellis* ‘expelled’ and again add that the perpetrator can live his/her life solely as an outcast until paying off the *conpositio*.<sup>25</sup>

From among the provisions on the desecration of a grave, the greatest attention in literature so far has been paid to title 55 of *Lex Salica*,<sup>26</sup> as it is here that the word *wargus* can be read as a synonym of *expulsus* or *expellis*, which was translated by Jacob Grimm as ‘robber’ or ‘wolf’, in view of the fact that the person cast out of the community is the inhabitant of the wilderness just as a beast, and anybody

18 *Lex Salica* 14, 1.

19 *Lex Salica* 14, 6.

20 *Lex Salica* 29, 2.

21 *Lex Salica* 35, 2. 3.

22 *Lex Salica* 26, 1.

23 *Lex Salica* 14, 10. (A2) „Si quis hominem exfuderit et expoliaverit, mal. turni cale sunt din. VIIIM fac. sol. CC cui fuerit adprobatum cul. iud.; (C6) Si quis hominem mortuum effoderit vel expoliaverit, malb. ternechallis sive odocarina sunt den. VIIIM qui fac. sol. CC culp. iud.”

24 *Lex Salica* 55, 4. (A, C) „Si quis corpus iam sepultum effoderit et expoliaverit et ei fuerit adprobatum, mallobergo muther hoc est, uuargus sit usque in diem illam quam ille cum parentibus ipsius defuncti conveniat, ut et ipsi pro eo rogare debeant, ut ei inter homines liceat accedere. Et qui ei, antequam cum parentibus conponat, aut panem dederit aut hospitalem dederit, seu parentes, seu uxor sua proxima, DC denariois qui faciunt solidos XV culpabilis iudicetur. Tamen auctor sceleris, qui hoc admisisse probatur aut efodisse, mallobergo tornechale sunt, VIIIM denarios qui faciunt solidos CC culpabilis iudicetur.”

25 *Lex Salica* 55, 4. (D, E) „Si quis corpus sepultum exfodierit et expoliaverit, uuargus sit, id est expelliis, usque in diem illum, quam ipsa causa cum parentibus defuncti faciat emendare et ipsi parentes rogare ad iudicem debeant, ut ei inter homines liceat habitare, si tamen auctor sceleris, mallobergo turnichal, (sunt dinarii VIIIM qui faciunt) solidus CC culpabilis iudicetur. Et qui eum, antequam cum parentibus defuncti satisfaciatur, ospicium dederit, (sunt dinarii DC qui faciunt) solidus XV culpabilis iudicetur.”

26 Geffcken 1898. 205 et seq.; Unruh 1957. 1–40; Jacoby 1974.

can kill him/her with impunity just as a wolf.<sup>27</sup> This conception was confirmed by Wilda's view,<sup>28</sup> which stated that a close connection can be made between *wargus* – interpreted by him in the context of restlessness (*Friedlosigkeit*) – and the Old Norse *vargr* 'malefactor', 'wolf'; in spite of all the criticism,<sup>29</sup> this view prevailed both in older<sup>30</sup> and contemporary German legal history.<sup>31</sup>

For example, Mitteis defines *Friedlosigkeit* – in organic relation to the legal content of the meaning of the term *wargus* – as follows: it includes violation of the interests of the people and the state (for example, body snatching, since thereby the perpetrator makes it impossible to exercise the cult of the dead), acts committed with vile intentions, by stealth. Due to all that, the perpetrator will become an outlaw (*exlex*, *outlaw*), his wife shall be considered a widow and his children orphans; from then on, he must live in the wilderness, far from any human community, just as if he were a werewolf (*Werwolt*, *gerit caput lupinum*).<sup>32</sup> Kaufmann also connects the phrase *wargus* with the Anglo-Saxon word *vearg* and the Old Norse word *vargr* and relates the person cast out of the community – specifically concerning the robbing of a grave, considered religious crime – to a wolf that lives outside human society, civilization.<sup>33</sup> In his interpretation, Erler goes even further: he calls attention to the aspect of the wolf in Old German religion based on which it was associated with body snatching and the consumption of corpses/carrion and was therefore considered a demon of death. So, he provides further *indicium* with regard to a desecrator of a grave or a body snatcher for relating him/her to a wolf.<sup>34</sup> It should be underlined that Erler considered this identification an allegory, imagery manifesting itself in law as well as one of the most magnificent documents of archaic thinking.<sup>35</sup> A similar position, a position unambiguously considering body snatching/desecration of a grave one of the major crimes, was taken in this respect by Amira<sup>36</sup> and His<sup>37</sup> too. In literature, it was Nehlsen who called attention for the first time – quite properly – to the point that in relation to this state of facts extreme care should be taken when comparing sources, especially in involving northern sources.<sup>38</sup>

When interpreting this locus – to obtain an answer to the question as to whether the *wargus* locus covers an institution of ancient German customary law *ex asse*

27 Grimm 1922. I. 270; 334 et seq.

28 Wilda 1842. 278 et seq.

29 Rehfeldt 1961. 437–439.

30 Brunner 1906. I. 410 et seq.

31 Mitteis 1978. 31 et seq.

32 Mitteis 1978. 31.

33 Kaufmann 1971. 25–32.

34 Erler 1938/40. 303–317.

35 Erler 1938/40. 317.

36 Amira 1922.

37 His 1928. 159.

38 Nehlsen 1978. 111.

indeed –, it is worth examining ecclesiastical law making as well. The Council of Toledo IV held in 633 classified the desecration of a grave as *sacrilegium*.<sup>39</sup> *Poenitential Romanum* from the 8<sup>th</sup> c. sentences a cleric who commits desecration of a grave to seven-year penitence, including three years on bread and water;<sup>40</sup> in other words, it imposes the same punishment as on a layman committing manslaughter,<sup>41</sup> and *Poenitential Casinense* dating from the early 8<sup>th</sup> c. prescribes a five-year penitence<sup>42</sup> (exactly as many as in case of kidnapping/abduction),<sup>43</sup> just as the Frankish *Poenitential Parisiense*,<sup>44</sup> *Poenitential Merseburgense*,<sup>45</sup> and *Poenitential Hubertense*.<sup>46</sup> If the perpetrator was not willing to submit to either secular punishment (payment of *conpositio*) or ecclesiastical penalty (penitence), the church had the opportunity to excommunicate him/her from the church, i.e. apply the *anathema* against him/her.<sup>47</sup> This sanction was applied, for example, against those who caused damage to ecclesiastical property, who stubbornly refused to pay reparation;<sup>48</sup> however, similar punishment was imposed in accordance with *Poenitential Vinniai* on clerics who committed homicide and who were allowed to enter the community again only after a long penitence and reconciliation with the relatives of the injured party.<sup>49</sup> The sanction of *Poenitential Columbiani*<sup>50</sup> created in Gallia – which can be definitely compared with this provision – states that a *homicida* who does not submit to secular punishment must be expelled from the community and can enter it again when a cleric attests that s/he has paid the *conpositio* to the relatives of the injured party.<sup>51</sup> In accordance with *Lex Salica*, the relatives themselves stand witness that payment of the *conpositio* has been made.

In case of abduction of nuns, the expulsion of a perpetrator who fails to perform the punishment imposed on him is prescribed by *Lex Baiuvariorum* too,<sup>52</sup> and the phrase *expellatur de provincia* used by it is a clear reminiscence of the phrase *wargus sit, id est expellis* of *Lex Salica*.<sup>53</sup>

39 *Concilium Toletanum IV.* (a. 633) 46. „Si quis clericus in demoliendis sepulcris fuerit deprehensus, quia facinus hoc pro sacrilegio legibus publicis sanguine vindicatur, oportet canonibus in tali scelere proditum a clericatus ordine submoveri, et poenitentiae triennio deputari.”

40 *Poenitential Romanum* 29.

41 *Poenitential Romanum* 4.

42 *Poenitential Casinense* 76.

43 *Poenitential Casinense* 79.

44 *Poenitential Parisiense* 9.

45 *Poenitential Merseburgense* 15.

46 *Poenitential Hubertense* 16.

47 Cf. *Concilium Toletanum IV.* (a. 633) 75.

48 *Concilium Turonense II.* (a. 567) 25.

49 *Poenitential Vinniai* 23.

50 Laporte 1958. 20 et seq.

51 *Poenitential Columbiani* 15.

52 *Lex Baiuvariorum* 1, 11.

53 *Lex Salica* 55, 4.

On the other hand, ecclesiastical law making contains, in addition to excommunication, a prohibition of maintaining contact with the outcast. For example, the relevant canon of the Council of Arles concluded in 506<sup>54</sup> was inserted in *Collectio vetus Gallica* created between 585 and 626/27, which forbids any kind of connection with the outcast.<sup>55</sup> In 511, the Council of Orléans I<sup>56</sup> set similar regulations; what is more, it subjected persons breaching this prohibition to *anathema* (*excommunicatio*).

Based on all that, it can be stated that the provision of *Lex Salica* highly corresponds to the ecclesiastical law making of the period, i.e. the efforts of the church to cast out from society those who are reluctant to pay the penalty and to ensure that all kind of solidarity and communication with them shall be prohibited until it is proved credibly – by testimony of the relatives of the injured party in *Lex Salica* – that they have discharged the statutory sanction. As the church introduced this practice already from the late Antiquity, the current ruler who took such action against perpetrators in case of robbery or desecration of a grave could rely on the support of the church. As far as *Lex Baiuvariorum* is concerned, ecclesiastical assistance in drafting the text can be considered fairly clear; however, based on that, even in the case of *Lex Salica*, the contribution of the clergy to editing cannot be ruled out either.<sup>57</sup>

Now, it is worth examining what the term *wargus* covers in *Lex Salica* and to what extent it can be considered a surviving element of ancient German linguistic tradition and written law. Three loci in Wulfila's Gothic translation of the New Testament are noteworthy with respect to the translation of the verb *damnare* and its derivatives. It interprets the text on condemnation of Jesus in the Gospel according to St. Matthew (*et damnabunt eum morte*) by the phrase *jah gawargjand ina dauþan*,<sup>58</sup> in which *gawargjand* corresponds to the Latin verb *damnare*.<sup>59</sup> The noun *damnatio* in one of the loci of St. Paul<sup>60</sup> is translated into Gothic by the word *wargiþa*<sup>61</sup> and in another locus<sup>62</sup> *condemnatio* corresponds to the Gothic noun *gawargeins*.<sup>63</sup>

54 *Concilium Arelatense* (a. 442–506) 2.

55 *Collectio vetus Gallica* 17, 12. „Si quis a communione sacerdotale fuerit auctoritate suspensus, hunc non solum a clericorum, sed etiam a totius populi conloquio adque convictu placuit excludi, donec resepiciens ad sanitatem redire festinet.”

56 *Concilium Aurelianense I.* (a. 511) 11. „De his, qui suscepta paenitentia religionem suae professionis obliti ad saecularia relabuntur, placuit eos a communicatione suspendi et ab omnium catholicorum convivio separari. Quod si post interdictum cum iis quisquam praesumserit manducare, et ipse communione privetur.”

57 Nehlsen 1978. 154.

58 *Evangelium secundum Marcum* 10, 33.

59 Feist 1939. 210; 325; 551; Nehlsen 1978. 154.

60 Paulus, *Epistola ad Romanos* 13, 2.

61 Feist: *op. cit.* 551; Nehlsen 1978. 155.

62 Paulus, *Epistola ad Corinthos* 2, 7, 3.

63 Feist 1939. 325; Nehlsen 1978. 155.

The term *wargus* in this form occurs for the first time in one of Sidonius Apollinaris's letters, which relates that a woman was abducted by *varguses*, i.e. highwaymen, and explains that this is how local robbers are called (*latrunculi*).<sup>64</sup> In chronological order, this locus is followed by the relevant passage of *Lex Salica*;<sup>65</sup> however, this law contains both the noun *wargus* and the verb *wargare* in relation to kidnapping an alien slave where *plagiavit* is explained by *wargaverit*.<sup>66</sup> this *locus* supports that *wargare* means 'to kidnap' ('to abduct').<sup>67</sup> The first loci of the Carolingian Age can be found in the Anglo-Saxon *Heliand*: Judas ends his life *warg an wargil*,<sup>68</sup> the convicted rogues crucified alongside Christ die as rogues deserve to die (*waragtrewe*),<sup>69</sup> and the author puts the word *giwaragean* into Christ's mouth regarding those condemned to the pains of hell.<sup>70</sup> Tatianus's Old High German translation of the Gospel contains *firwergit*<sup>71</sup> and *forwergiton*<sup>72</sup> as equivalents of *maledicti*.<sup>73</sup> In the light of all that, it is not surprising that the authoritative lexicon lists the phrases *wiergan* and *weargcwedolian* as equivalents of *maledicere*, *maledictio*, *maledictus*, and *malignari*.<sup>74</sup> The terms *anathemazatus*, *maledictus*, *profugus*, *vagus*, and *rapax* that appear in ecclesiastical law making, applied by the lawmaker to a person expelled from the community, can be taken as equivalents of the phrases *wargus*, *gawargjan*, *warc*, etc.<sup>75</sup>

Based on the above, Nehlsen excludes a *limine* that the phrase *wargr* (*vargr*) means *wolf* with respect to early mediaeval sources and adds that the (mostly Old Norse) underlying sources are from the 11<sup>th</sup> c. or from later periods, and thereby he deprives the *Friedlosigkeit* theory of one of its most important bases. He asserts that the term *wargus* is the German equivalent of the ecclesiastical usage and that the loci of *Lex Salica* (and *Lex Ribuaria*) indicate merely borrowing of ecclesiastical law making and do not prove the ancient German theory and continued existence of ancient German faith.<sup>76</sup> Furthermore, he makes it clear that expulsion from the community did not incur *ipso facto*; instead, the perpetrator had to wander the world alone as Cain (*more Cain vagus et profogus*) only as a consequence of failure of the payment of *conpositio*, i.e. the refusal of

64 Sidonius Apollinaris, *Epistulae* 6, 4. „... forte Vargorum, hoc enim nomine indigenas latrunculos nuncupant”.

65 *Lex Salica* 55, 4.

66 *Lex Salica* 66. (E); 65. (D).

67 Nehlsen 1972. 110 et seq.; Nehlsen 1978. 155.

68 *Heliand* 5168.

69 *Heliand* 5563.

70 *Heliand* 25131.

71 *Evangelium secundum Iohannem* 7, 49.

72 *Evangelium secundum Matthaeum* 25, 41.

73 Nehlsen 1978. 156.

74 Köbler 1975. 189.

75 Nehlsen 1978. 156.

76 Nehlsen 1978. 157 et seq.



statutory punishment.<sup>77</sup> Therefore, in this case, living the life of a *wargus* is the consequence of defiance of the law, as it seems to be supported by the phrase *si noluerit emendare et reddere*<sup>78</sup> in *Lex Baiuvariorum*.<sup>79</sup>

On the other hand, still with regard to the phrase *wargus*, the question arises as to why the later groups of texts of *Lex Salica* (E) completely omitted this term from the text. Probably because this folk law term without any explanation would have been no longer interpretable in the Carolingian Age.<sup>80</sup> The Middle Latin term *wargus* appears to be related to the following German words: the Old Norse *vargr* 'malefactor', 'wolf', the Anglo-Saxon *wearg* 'outcast', 'damned', 'malefactor', and the Old High German (*Althochdeutsch*) *warg/warch* 'enemy', 'devil'; and to the Gothic words: *gawarjagan* 'to condemn', *wargiþa* and *gawargeins* 'judgment', 'condemnation'.<sup>81</sup> Furthermore, the following words can be considered related phrases: the Old Saxon *giwaragean* 'to condemn a malefactor', *warg/warag* 'malefactor', 'devil', *wurgil* 'rope', *wargtreo* 'gallows', the Old English *warhtreo* 'gallows-bird', the Old Norse *gorvargr* 'cattle thief', *kaksnarvarher* and *brennuvargr* 'murderer by arson', *mordvargr* 'murderer' and *vargdropi* 'descendant of an outcast'.<sup>82</sup> The etymology of all these phrases that can be traced back to the Old German word *\*uarg-a* is not fully clarified;<sup>83</sup> yet, if we presume to find its origin in the Indo-European root *\*uer-gh* 'to wind', 'to press', 'to strangle', then *wargus* might mean 'strangler' and 'the person to be strangled'.<sup>84</sup> In the light of the above, Schmidt-Wiegand can see a clear connection with the meaning *wolf*; at the same time, he claims that it should be investigated whether this word carried the meaning *hostis* 'alien', 'enemy' in ancient German times already, and as underlying words he refers to the Langobardic *waregang* and the Old English *waeregenga* 'alien', 'protection seeker'.<sup>85</sup>

Consequently, it should be analysed in what connection, chronology the meaning *malefactor* is related to the meaning *wolf*, in other words, which meaning can be considered primary with respect to the phrase *wargus/vargr*. It can be declared beyond doubt that the meaning *malefactor* is much earlier in terms of the age of the source since sources from the Continent in this sense occur from the 6<sup>th</sup> c. already, while the meaning *wolf*, besides the meaning *malefactor*, can be documented only in Old Norse sources from five centuries later. On the other hand, it should not be forgotten that the Old Norse terminology was

77 Nehlsen 1978. 164.

78 *Lex Baiuvariorum* 1, 11.

79 Nehlsen 1978. 165.

80 Schmidt-Wiegand 1978. 190.

81 Schmidt-Wiegand 1978. 191; Feist 1939. 210. 551.

82 Sehrt 1966. 641 et seq.; 725; Schützeichel 1974. 222; Vries 1962. 183; 645.

83 Jacoby 1974. 12.

84 Pokorný 1959. 735.

85 Schmidt-Wiegand 1978. 191; Baesecke 1935. 96; Rhee 1970. 133 et seq.

basically developed later than the Continental one.<sup>86</sup> In the light of that, the Old Norse phrase *vargr* – irrespective of whether ‘malefactor’ or ‘wolf’ is considered the primary meaning – belongs to a later layer compared to Continental terms and even within Old Norse.<sup>87</sup> Also, it should be made clear that both on the Continent and on northern territories relatively few traces of pagan tradition can be found in laws written down since all the rulers wanted, by enacting such laws, to eliminate ancient German elements and introduce Christian thinking and legal awareness.<sup>88</sup> After all, Schmidt-Wiegand finds that *wargus* as a legal term should be interpreted in a wider sense, as expulsion from the community, and refuses the primacy of the meaning *wolf/werewolf*, although he acknowledges the significance of further development of the term to this direction both on the Continent and in the north. Expulsion (*Acht*) was imposed on perpetrators of all the acts (desecration/robbing of a grave, manslaughter by arson, assassination, breach of peace, etc.) that was denoted by the Gothic and Old Norse legal language by the phrase *fairina* and *nidingsverk*, respectively, and whose sanction, i.e. expulsion, was expressed by the Old Swedish word *utlægher*, the Old Norse *utlagr*, the Anglo-Saxon *utlath*, the Middle High German *ēlos*, and the Middle Latin *exlex*. The transformation of the meaning *outcast* and its extension by the meaning *wolf* can be undoubtedly connected with the fact that it was noted in *Lex Salica* already that a malefactor who has failed to pay *compositio* hides in the forest (*per silvas vadit*),<sup>89</sup> and later s/he was denoted by the phrase *wealdgenga* by the Anglo-Saxon sources and *skōgarmadr* by the Old Norse sources.<sup>90</sup>

As a result, with regard to all these codices, it can be established that formulation of the state of facts of desecration or robbery of a grave and the related sanction clearly draws on Roman and canon law roots. As a matter of fact, these provisions organically fit in with the spirit and system of sanctions of German laws; both the system of sanctions and the images related to it imply a genuine connection with ancient German (pagan) thoughts and religion.

86 Schmidt-Wiegand 1978. 193.

87 Jacoby 1974. 15 et seq.

88 Schmidt-Wiegand 1978. 194.

89 *Lex Salica* 115. „Nam si certe fuerit malus homo, qui malei in pago faciat et non habeat ubi consistat, nec res unde componat, et per silvas vadit et in praesentia nec agens nec parentes ipsum adducere possunt...”

90 Schmidt-Wiegand 1978. 196.

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